

Protection of the Environment in Times of Armed Conflict

Report from the Expert Meeting on
Protection of the Environment in times of Armed Conflict,
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Foreword

Protection of the environment in times of armed conflict has been the subject of increased international attention in recent years. In 2009, the UN Environmental Program (UNEP) published a report containing several concrete proposals on how to enhance protection of the environment in times of armed conflicts. The International Committee of the Red Cross (ICRC) has been working on the topic since the 1990s. In its study on the current state of international humanitarian law (IHL), which was submitted for consideration by the 31st International Conference of the Red Cross and Red Crescent in 2011, the ICRC identified the protection of the environment in armed conflict as one of the areas in which IHL could be clarified and expanded. Furthermore, a number of challenges were outlined in the study, inter alia, the lack of specific protection and uncertainties about the exact scope and content of existing customary rules on the protection of the natural environment in non-international armed conflicts, the lack of mechanisms to address the environmental consequences of hostilities, and the need to clarify the practical application of existing legal protections under IHL. In 2013, the UN International Law Commission (ILC) decided to include the topic 'Protection of the environment in relation to armed conflict' in its programme of work. The Special Rapporteur, Dr Marie Jacobsson, is expected to complete her third and final report in 2016. Problems and challenges of the protection of the environment in armed conflicts have also been addressed in a growing number of scholarly articles.

Experts and scholars tend to agree on the limitations of the existing rules of IHL concerning the protection of environment. Additional Protocol I to the Geneva Conventions of 1949 addresses environmental concerns in two articles (35 and 55), which set the threshold for prohibited action at the level of causing 'widespread, long-term and severe' damage to the environment. This formulation establishes a threshold that is both imprecise and high – too high, it has been noted, to affect conventional warfare.¹ Moreover, it is unclear whether the prohibition can be applied in NIAC. Further challenges are related to the definition of 'environment', the need to enhance the protection of certain areas of environmental importance, and the lack of mechanisms to establish accountability for environmental damage caused in relation to an armed conflict. The

¹ Michael Bothe, Carl Bruch, Jordan Diamond, and David Jensen, 'International law protecting the environment during armed conflict: gaps and opportunities. 92 *International Review of the Red Cross* (2010), 569–592, at 576.

only existing convention dedicated solely to the environmental impact of warfare, the ENMOD Convention,² was adopted nearly forty years ago, as were Additional Protocols I and II to the Geneva Conventions (API and APII). This means that the existing treaty law in IHL precedes the extensive development of international environmental law (IEL) in recent decades. The ICRC Customary Law Study of 2005 found that under customary law the general principles on the conduct of hostilities apply to the natural environment in both international armed conflict (IAC) and in non-international armed conflict (NIAC).³ The ICRC has also been revising its 1994 Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict to take into account developments in treaty law and customary IHL. The UNEP and the ILC, on their part, have both turned their attention to other legal regimes, which pertain to the protection of environment and may be applicable also in armed conflicts. The UNEP study considered in this respect the relevant provisions of IEL, international criminal law, and international human rights law (IHRL) in addition to IHL. The ILC, according to the proposal of the Special Rapporteur, has considered the topic in three temporal phases – before, during, and after conflict – rather than from the perspective of particular regimes of international law. At the same time, the approach chosen by the ILC entails a broad view of the applicable law in all phases. Even during an armed conflict, other rules of international law continue to apply and there is value in clarifying how these different regimes interact with each other.

The increased prominence that this topic has acquired among experts and scholars has not been matched by a similar development when it comes to political will and attitudes of states. As became evident during the preparatory phases of the 2011 International Conference of the Red Cross and Red Crescent, states did not identify the protection of the natural environment as a priority topic to be dealt with at the Conference, focusing instead on other areas of IHL requiring strengthening. This result echoed the reluctance of the UN General Assembly during the 1990s to continue to discuss the ICRC Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict. Against this background, the Governments of

² Convention on the Prohibition of military or any hostile use of environmental modification techniques, 10 December 1976.

³ The Customary IHL Study identified two further customary rules addressing the protection of the natural environment applicable in international and, arguably also in non-international armed conflict. Since 2007, the practice collection of the Study is being updated, tracking developments in practice and making it accessible on a public Database.

Denmark, Finland, Sweden and Norway, together with the National Red Cross Societies, decided to make a pledge at the 2011 International Conference, committing to furthering the discussion on the protection of the environment in times of armed conflict (see annex 1). The Helsinki Expert Workshop of September 2015, the report of which is now made available to interested readers, was part of the implementation of this pledge. The other part entailed commissioning an empirical study on the environmental effects of armed conflicts that was published in late 2014.⁴

The Helsinki Workshop discussed the environmental consequences of armed conflicts on the basis of the conclusions of the empirical study and a presentation of the UNEP's recent work on the subject. Legal challenges relating to the protection of the environment in relation to armed conflicts were discussed with a reference to the ILC's ongoing study as well as the ICRC's work on revising the 1994 Guidelines. Furthermore, improving the implementation of and respect for the law was among the discussion themes. The report also includes a number of conclusions and recommendations on how the protection of environment could be enhanced taking into account the accumulated knowledge about environmental effects of armed conflicts, on the one hand, as well as the changing nature of conflicts, on the other.

The Nordic governments and the National Red Cross Societies of Denmark, Finland, Norway and Sweden wish to stress that armed conflicts cause serious damage to the natural environment and may have severe and long-lasting consequences both to the nature and to populations that depend on natural resources for their survival. We hope that the present report will draw attention to the need to take action so as to provide a more substantive legal basis for the protection of environment in armed conflict.

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⁴ This study, facilitated by the government of Norway, is accessible through the following link: <http://ilpi.org/publications/armed-conflicts-environmental-consequences-and-their-derived-humanitarian-effect/>

1. Background for the Workshop/Nordic Pledge

Päivi Kaukoranta introduced the session by recalling that the expert meeting was organised as part of the pledge made by Nordic states to the International Conference of the Red Cross in 2011 (see annex 1). The first part of the pledge led to the commission of a report on the empirical environmental effects of armed conflict, delivered by ILPI in 2014. The gathered expert-workshop responds to the second part of the pledge. Experts and representatives of Nordic states have been invited to discuss and identify measures that may improve protection of the environment in armed conflict (see participation list, annex 2).

The timeliness of the subject was noted by pointing in particular to the work of the ILC and the appointment of a Special Rapporteur on the Protection of the Environment in relation to Armed Conflict (Marie Jacobsson).

Margit Tveiten expressed that the expert meeting provides an important opportunity to address the issue of environmental protection in relation to armed conflict, drawing attention to the severe, long-lasting and multifaceted effects of armed conflict on the environment. Environmental effects leave ecosystems in turmoil, may degrade food security and endanger entire populations. Environmental effects also impact peace building efforts and the rebuilding of post-conflict societies.

The Nordic countries have expressed strong support to the work of the Special Rapporteur. This meeting offers the opportunity to address numerous questions about the status and implementation of current international law: What harm is caused, and why? What measures have been adopted to limit such harm? Can the harm identified be explained by reference to unclear rules on protection of the environment in armed conflict, or rather due to a lack of proper implementation of the rules, or a combination? What types of best practice can be identified, shared and built upon? The Helsinki expert workshop offers a valuable avenue for identifying further steps to address this pressing issue.

The background document for the expert workshop is enclosed in annex 3.

2. Summary of sessions

2.1 Session I. Armed Conflict and Environmental Consequences

Chair *Helen Obregón Gieseken* identified the objectives of the session as (1) assessment of what environmental harm is caused and why, (2) what measures have been taken to address this harm, and (3) what could be done to address the environmental damage caused by armed conflict, such as post-conflict mechanisms and reparations.

2.1.1 Conclusions of the ILPI Report on Environmental Consequences of Armed Conflict. (Cecilie Hellestveit)

The ILPI study investigates the direct and derived environmental consequences of armed conflict across four case studies with particular emphasis on derived humanitarian effects. The objective of the study is to contribute to a clearer picture of the humanitarian effects of environmental damage caused by armed conflict. The complicated causal relationship between environmental degradation and armed conflict was beyond the scope of the report. The study was based on the assumption that armed conflicts cause *immediate* environmental consequences with secondary effects, and *derived* environmental and humanitarian consequences, also causing secondary environmental effects. The following conflicts were selected for study: The Iraq war in 1991 (IAC) and the ensuing insurgency (NIAC), the Russo-Georgian conflict of 2008 (IAC), the protracted conflict in the Democratic Republic of Congo (NIAC), and the enduring civil war in Colombia (NIAC).

Hostilities in the Russo-Georgian conflict of 2008 caused numerous environmental effects such as deforestation, UXO proliferation and degradation of designated national parks and reserves. Derived effects essentially consisted of internal displacement and reduced livelihood. The interstate war was short and intensive, and caused substantial direct (and short-term) environmental effects, while the long-term effects were limited.

The Iraq-Kuwait war (1991) caused substantial direct effects that included aerial, terrestrial and marine contamination. The derived effects were also severe. However, most of them were reversed with time. The Iraqi NIAC after 1991, on the contrary caused a large range of partly intentional environmental degradation, including Marshland modification, extinction of species and harm caused to fragile zones. The derived and permanent environmental effects of this latter conflict were more severe.

The protracted NIAC in the Democratic Republic of the Congo has caused various direct effects such as deforestation, wildlife degradation and degradation of national parks. However, the derived long-term effects consisted of massive displacement, deteriorated human health, and increased danger to national parks. Exploitation of the environment during the conflict places the

environment at the centre of the conflict. The DRC illustrates that derived effects are often more severe to the environment than immediate consequences.

The enduring NIAC in Colombia resulted in numerous direct environmental effects such as deforestation, degradation of wildlife and terrestrial contamination in addition to harm to national parks. Increased harm to national parks was also counted among the derived effects, which also included reduced livelihood, internal displacement and organised crime. The Colombian conflict demonstrates the prevalent link between the economy of armed conflict, environmental degradation and derived humanitarian effects.

For a complete overview of the identified direct and indirect effects, see annex 4.

The main conclusions of the report were presented in the following points

- (1) the direct immediate damages to environment were most extensive in the IACs
- (2) the derived, long-term effects were more severe in the NIACs, including displacement and challenges of sustenance
- (3) protracted NIACs limited the ability of authorities to take measures to protect the environment, exacerbating derived environmental effects
- (4) all examined conflicts, irrespective of character and scope, caused direct or indirect damage to zones of particular ecological concern (natural parks and reserves)

Hellestveit observed that causal effects between the armed conflict and environmental harm were easier to establish in IACs than in protracted NIACs. Increased attention to environmental protection in some situations also seemed to be entangled with the dynamic of the armed conflict in ways detrimental to the environment. Examples included actors who had intentionally destroyed endangered species in order to decrease outside interest in their area of control, and several instances where both fighters and civilians relied on natural parks for protection against attacks and for sustenance, causing substantial harm to the parks.

2.1.2 UNEP's Work and Conclusions on the Environmental Consequences of Armed Conflict, (David Jensen)

Jensen presented the Disasters and Conflicts Programme of UNEP, consisting of crisis prevention, response and recovery, 80% of which are field operations and 20% consists of knowledge generation. The programme engages in environmental assessments, environmental capacity building, environmental peace-building and eco-disaster risk reduction and analysis.

Jensen brought attention to the challenges of terminology. For instance, does “environment” and “natural resources” also include non-renewable resources? Jensen emphasised that natural resources play different roles along the peace and security continuum. Multiple risks are associated with natural resources. They may be used as a weapon of war, exploited and harmed. They may cause grievances and tension, fuel and finance continued conflict, and provide incentives for peace spoiling. However, natural resources also represent opportunities as they provide

incentives for peace, such as entry-points for dialogue, employment and livelihoods, as well as economic incentives for peacemaking.

UNEP distinguishes between direct and indirect environmental impacts from armed conflict.

Direct impacts arise from military action during or immediately after conflict. It comprises direct targeting of the environment and scorched earth tactics, incidental damage, impacts from weapons and military operations, toxic hazards from damage to infrastructure and industry, as well as financing of conflict through looting of the environment and conflict resources. Direct damage is often more acute and site-specific. Jensen made the observation that direct damage seems to be more extensive in IACs. One example of such direct impacts on the environment occurred during the Kosovo conflict, when 100 bomb craters were identified inside national parks and protected areas in Serbia. While a range of legal instruments may provide protection, the level of protection is lower in NIACs.

Indirect impacts refer to secondary impacts that can be credibly sourced to the conflict, such as coping and survival strategies of local populations, conflict economy legacies and profiteering, breakdown of institutions and local governance, impact of peacekeeping and humanitarian operations, as well as impacts of temporary settlements and infrastructure. These impacts may in turn affect human health, livelihoods and displacement. Examples include Rwanda, where population displacement caused deforestation, and Darfur, where demands for bricks increased five times due to international operations which in turn contributed to significant deforestation (over 50,000 trees per year). Legal protection in this area arises mostly from human rights law and environmental law, and the weakest protection is found in NIAC.

Additional gaps and challenges in connection to protection of the environment include imprecise definitions of environmental damage such as the terms “wide-spread”, “long-term” and “severe” (API articles 35.3 and 55). The high threshold and triple cumulative requirement is almost impossible to satisfy. Further, the lack of definitions of “conflict resources” or “for the benefit of the population” in relation to the exercise of permanent sovereignty over natural resources represents a challenge and would benefit from clarification, as would requirements for the environment to constitute a civilian object or a military objective. Finally, the regulatory framework regarding the exploitation of natural resources by parties to an armed conflict is fragmented, and the scope of applicability of IEL for the protection for natural resources should be clarified.

2.1.3 Discussion highlights

The overall themes of the discussion revolved around institutional frameworks, difficulties in implementing and enforcing existing law, the challenge of protecting natural parks and other ecologically sensitive sites, and availability of data.

It was noted that a challenge for effective mechanisms is found in the institutional breakdown to enforce the rules associated with armed conflict, a problem that seemed to be more severe in protracted NIACs. The task is to find ways to enforce principles where national institutions are denied access or have disintegrated. The nature of institutions is a further challenge. While certain institutions aspire to rebuild the state, other institutions or individuals may be engaged in profiteering and pillaging the state. The latter is the main problem. It was noted that there are poor incentives for leaders to rebuild the state instead of pillaging. Large commercial actors establish unregulated businesses to exploit resources, benefitting from the lack of regulation and institutional breakdown. Important actors thus benefit from poor implementation.

While the environment is not often on the list of priorities of governments when negotiating peace, there does tend to be a focus on “natural resources” instead of “the environment”. Similarly, when decisions on the relocation of displaced persons are made, concerns to prevent renewed conflict are stronger than environmental considerations.

On the issue of natural parks and zones of particular ecological concern, IAC and NIACs alike seemed to have detrimental effects for such areas. It was noted that natural parks are deserted, thereby offering advantages as bases for military operations. They also attract displaced persons since there are better chances to find livelihoods. Denying access may have huge humanitarian consequences, pitting conservation needs against human rights.

The effects of granting a high level of protection for areas of major ecological importance against attacks were also discussed. It was inquired whether identification of such areas may in fact increase their vulnerability, making them *more* attractive for non-state armed groups to use as bases for military operations. Although increased protection may have certain negative effects during the conduct of hostilities, it may raise expectations about how States conduct hostilities. It may also serve to increase focus on environmental effects in the aftermath of hostilities /conflict.

The question of scope of international rules was discussed. Whose behaviour are the rules aiming to limit? It was noted that non-state armed groups have obligations under IHL. Armed groups seeking political legitimacy are more prone to take the environment into account, as it may increase local support and indicate responsible management. Other types of non-state armed groups seeking to exploit the situation cannot be easily reached by law. It was also discussed what kind of damage the rules seek to address. The worst damages and those that can realistically be addressed with law are not necessarily the same. Existing international law provides protection for the environment in armed conflict. The main challenge is linked to natural resources and environment that is located in strategic areas or takes on a function in the armed conflict (military, social or economic).

The legal obligations of state authorities consisting of a combination of IHL, HRL and IEL are difficult to implement in areas where the state has no control. While IHL governing belligerent occupation provides a comprehensive set of rules, these rules are premised on the *effective control*

by a State of a foreign territory (or parts thereof). The value of analogous application of these rules to situations where the main problem is the lack of state control was therefore questioned. It was underlined that the rules and regulations relevant for providing protection of the environment are also found in EU bodies, bilateral and multilateral arrangements and national mechanisms.

Attention was brought to the availability of data to assess damage. The mandate of UNEP makes environmental assessments dependent on the active participation of member states. It was also noted that in compensation schemes, data may be used to claim compensation, and could therefore easily be politicised. The lack of good baseline studies represents a problem.

2.2 Session II: Existing Law and Legal Challenges Related to the Protection of the Environment in Relation to Armed Conflict

The session was chaired by Tuomas Kuokkanen. He identified three broad topics relating to the session: (1) existing rules and principles, (2) potential gaps, and (3) possible ways forward in the future development of the law.

2.2.1 The Work of the ILC on the Protection of the Environment in Relation to Armed Conflicts, (Marie Jacobsson)

Jacobsson presented three distinct phases in the development of international law and Protection of the Environment in Relation to Armed Conflicts (PErAC), situating the renewed attention on PErAC in a historical setting and outlining the basic legal framework. The first phase (1960s-80s) witnessed the Vietnam War, and led to ENMOD, API and II and the Stockholm Declaration. The second phase (1990s) came after the Iraq-Kuwait war, with concerted efforts to move things forward. The United Nations Compensations Commission (UNCC) (1991) and the ICRC Guidelines (1994) are the main heritage of the second phase. The on-going third phase (2010s) has been occasioned by a combination of elements such as new war techniques, increased concern about environmental issues, courts increasingly addressing the issue and the work of UNEP.

In 2009 UNEP, the ICRC and the Environmental Law Institute (ELI) proposed that 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. A revised version of the suggestion with the title ‘Protection of the environment in relation to armed conflict’ was included in ILCs long-term programme of work in 2011. The Special Rapporteur was appointed in 2013, and she presented a work plan extending over three years. The three reports are classified according to the temporal perspective of armed conflict (before – during – after conflict) rather than particular regimes of international law. It is important to view PErAC not solely through the lenses of LOAC/IHL, as these rules co-exist with other rules and regimes of international law. The work will

not address root causes, cultural heritage, specific weapons or general questions of refugee law, and it will not attempt to revise IHL.

The first report (2014) addresses the obligations before conflict, comprising IEL, IHL, human rights law (HRL), state practice and case law. This includes sustainable development, the principles of prevention and precaution under IEL, the polluter pays principle, and environmental impact assessments. The second report (2015) concerns obligations *during* conflict, and contains extensive case law studies. In this area, practice is often available but the *opinio juris* element is lacking. The report confirms that environmental principles apply also during armed conflict. When applying the rules and principles of conduct of hostilities (distinction, proportionality, precautions in attack, military necessity) the environment must be taken into account, and reprisals against the environment are prohibited. Protected areas (nuclear weapon free zones, natural heritage zones, demilitarized zones, cultural heritage) enjoy special protection. The report has been published, but has yet to be debated in the UN General Assembly, in the 6th Committee. The third report concerning obligations post-conflict and other pending issues (applicability of environmental principles in armed conflict, principle of humanity and occupation) will be delivered in 2016.

2.2.2 *Protection of the Natural Environment in Armed Conflict: Existing IHL Rules and Contemporary Challenges, (Helen Obregón Gieseken).*

Helen Obregón Gieseken gave a brief overview of existing rules of IHL relevant to the natural environment, noting that IHL protects the natural environment through two levels of protection.

The first level of protection consists of general principles and rules of IHL, including the general principles on the conduct of hostilities. These rules apply to the natural environment, as confirmed in the ICRC Customary IHL Study rules 43-44. The principle of distinction establishes that no part of the natural environment may be attacked unless it has been turned into a military objective. Even if it is deemed a military objective, it is protected through the principle of proportionality against incidental damage which would be excessive in relation to the concrete and direct military advantage anticipated. The principle of precaution obliges those who plan or decide upon an attack to do everything feasible to verify that the natural environment is a military objective, and obliges the parties to take constant care to spare the natural environment and to take all feasible precautions in their choice of means and methods of warfare with a view to avoiding, and in any event minimizing, incidental loss to the natural environment. Furthermore, rules concerning pillage, wanton destruction and objects indispensable to the civilian population also provide protection to the natural environment.

The second level of protection comprises those rules that specifically provide protection to the natural environment. API articles 35(3) and 55 prohibit the resort to means and methods of warfare which are intended, or may be expected, to cause widespread, long-term and severe

damage to the natural environment. Article 55 also provides that care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage, and explicitly prohibits attacks against the natural environment by way of reprisals.

Finally, when looking at the protection of the natural environment, customary rules of IHL applicable to the natural environment are listed in the ICRC Customary IHL Study, rules 43-45. In addition to the express recognition that the general principles on the conduct of hostilities apply to the natural environment, Rule 43, which is applicable in IAC and NIAC, also prohibits destruction of any part of the natural environment, unless required by imperative military necessity. According to Rule 44, which is applicable in IAC, and arguably also in NIAC, means and methods of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. In addition, lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions. Rule 45, which is applicable in IAC and NIAC, establishes a prohibition on the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. Furthermore, destruction of the natural environment may not be used as a weapon.

Obregón Gieseken then moved on to discuss challenges. The 2009 ICRC study on the current state of IHL and challenges to IHL arising from armed conflict identified the protection of the natural environment, and noted the need to better disseminate, implement and enforce existing rules, drawing attention to certain notable aspects where there is a need to clarify and expand IHL.

Several issues arise when applying existing law. The natural environment is civilian in nature and protected by general rules of IHL as such unless some of its elements are turned into a military objective. Elements of the natural environment may be turned into a military objective if, by their nature, location, purpose or use, they make an effective contribution to military action and if their total or partial destruction, in the circumstances ruling at the time, offers a definite military advantage. While in practice it may be difficult to determine when a part of the natural environment can become a military objective, what is clear is that the “contribution to military action” has to be both effective and directed towards the actual war-fighting capabilities of a party to the conflict. In this sense, if a civilian object merely contributes towards the war-sustaining capabilities of a party to the conflict, it does not qualify as a military objective. With regard to the principle of proportionality, what can be considered as excessive incidental damage to the natural environment as compared to the concrete and direct military advantage anticipated? Determining the effects on the natural environment is much more complicated than establishing damage to civilian infrastructure. In addition, the threshold of “widespread, long-term and severe” must be clarified, and its application to NIAC settled.

There is a need to develop new provisions to protect areas of major ecological importance. The objective would be to place these areas off-limits to any form of military activity by delineating and designating them as demilitarized zones before, or at least at the outset of, armed conflict. There is also a need for new international mechanisms to address the immediate and long-term consequences of armed conflict. These should be entitled to monitor damage, investigate alleged violations of relevant international rules and decide on the most appropriate forms of reparation, as well as assess and address environmental damage resulting from lawful acts of war. New norms on international assistance and cooperation could get inspiration from similar rules for dealing with the legacy of landmines, cluster munitions and explosive remnants of war.

The 1994 ICRC Guidelines are currently being updated, and will be circulated to experts once finalized. The idea is not to develop new law but to reflect the current state of IHL on the protection of the natural environment in armed conflict.

2.2.3 Legal opportunities and practical measures: Applying the World Heritage Convention in the Democratic Republic of the Congo, (Britta Sjöstedt).

IEL can inform the application of IHL, for instance the IEL principle of prevention and the precautionary approach can inform the principle of precaution under IHL. The thresholds of API articles 35(3) and 55 should take into account scientific information. The release of toxic substances into the environment is also viewed more stringently today than 30 years ago. A core element in environmental law is taking care of unknown risks.

Specific environmental treaties must be looked at in light of the entire treaty system. Often they are perceived as framework conventions with vague commitments, vague phrasing, that must be implemented in a concrete context. Focus ought to shift towards the treaties' mechanisms to *support* states to comply with their obligations, including through capacity building, and providing equipment. Particularly during or after conflict this approach could offer a valuable avenue, when states struggle with protection of the environment due to institutional breakdown.

Application of the UNESCO World Heritage Convention (WHC) to the case of DRC was presented. The conflict in the DRC is taking place by or in five different World Heritage sites. Four of these have been controlled by armed groups at different times, and represent sources of income. Park rangers control the parks, carrying weapons. With knowledge of the park, they are "at the frontline of the battlefield". Both the non-state armed groups and the government are suspicious, and the rangers have been targeted from both sides. In 2009 a project was launched with measures to increase protection. UNESCO negotiated between the parties, arguing that the sites and park rangers should be considered neutral and protected from attacks, and park rangers should be allowed to work. As a result, respect has increased. Park rangers inform the non-state armed groups about their controlling, avoiding casualties. Park rangers are assisted by UNESCO in terms of

training, equipment and salaries when necessary. UNESCO has also called on the Congolese army to assist the park rangers in areas not controlled by non-state armed groups, conducting joint patrols with the army and receiving training from the army. This practice does raise problems in terms of the neutrality of the rangers. The Congolese army is poorly paid, and are often themselves involved with illegal exploitation of park resources. Park rangers on the other hand are often better equipped than the army, funded by foreign aid. Park rangers pay the soldiers for their joint controls, offering different incentives.

IEL can inform the application and content of IHL. However, it will be important to determine potential clashes between the two regimes, such as the ban under IEL to harm sites, and the lawfulness of certain harm under IHL if parts of it have been converted into military objectives. This has not yet been sufficiently studied. IEL may offer possibilities of funding. In the DRC, marking of the sites has brought both attention and funds to the parks.

2.2.4 Discussion highlights

It was noted that what is legally possible and politically possible are not always the same thing. All participants agreed that focus is currently on guidelines rather than new treaty provisions for armed conflicts. Clarification of the law should be sought through guidelines and principles, and by extending principles from other fields of law in efforts to strengthen the legal protection of the environment in armed conflict.

The question of intangibility of the natural environment as an object was raised. The Draft Principles state that “the natural environment cannot be attacked unless..”, which implies that the natural environment is civilian in nature. In this regard, it is widely recognized that the general principles on the conduct of hostilities, which are rules of customary international law applicable in IAC and NIAC, apply to the natural environment. What needs clarification is how to apply these principles to the natural environment. For instance, what is “feasible”, and what is “foreseeable” in this context?

Clarifying the existing threshold of “widespread, long-term and severe damage” may risk maintaining the high threshold intended at the time of drafting of API. Ways should be found to bring the bar more in line with environmental concerns of the present, and to move away from the very high threshold. Reliance on dynamic interpretation of treaties would suggest that environmental damage as presently perceived may be more relevant than perceptions at the time of drafting the treaties.

The principle of precaution under IHL and the principle of prevention under IEL are distinct principles that should not be mixed. Precautions in attack under IHL impose both prevention and care.

There is no established definition of the environment under IEL or IHL. This is a complex issue, and there is a prevalent fear to go beyond existing treaties. “Natural environment” is used in

most IHL provisions, and is relied on by the ICRC for the purposes of IHL. Under IHL, this term should be understood in the widest sense possible. It includes everything that is not man-made, including the atmosphere, the air, the ozone layer, oceans and other bodies of water, soil, rocks, plants and animals; thus avoiding a restrictive approach. It was questioned whether environmental assessments could factor into API article 36-assessments, whereby States must determine whether the employment of weapons, means or methods of warfare that they acquire in some or all circumstances would be prohibited under international law. This issue will appear in the last report by the ILC Rapporteur.

Emphasis was made on the importance of strong treaty organs with a broad mandate to carry out compliance mechanisms. Treaties without access to funds would not be equally successful. It was also suggested that for example the Wetlands Convention has a potential to function in the same way as the World Heritage Convention.

Suggestions that were raised included mapping exercise about legal obligations, particularly actors with financial obligations, establishment of best practice in terms of the practical application of the principle of proportionality to the natural environment, guidance to states along the lines of UN Guiding Principles on IDPs was another suggestion. It was emphasized that domestic regulation in individual countries applies before, during and after conflict. Mapping of practice rather than “state practice” would offer one possible avenue to identify best practice.

Finally, it was noted that environmental improvements in the Military happened also as a consequence of economic incentives. The need to be at the forefront and ahead of the military development in these areas was underlined.

2.3 Session III: Current Implementation of the Law, and Improving Implementation and Respect for the Law

Chair Jani Leino introduced the session by noting that the ambition was to influence behaviour. The stated law should be integrated into doctrine, education, training and sanctions.

2.3.1 Some perspectives on challenges regarding current implementation of existing rules, (Cecilie Hellestveit).

The ILPI report’s review of the practice of states and non-state armed groups was used as reference to address the extent to which the natural environment is taken into account in the planning and execution of military operations.

States operationalize their obligations through domestic legislation, military manuals, and rules of engagement/ standing operational procedures. These latter sources are often classified.

Information is scarce, raising the question whether actions on the ground result from lack of rules, poor implementation or the lack of respect for them.

Non-state armed groups are bound by IHL to the extent that they are parties to an armed conflict. Binding obligations are expressed through bilateral agreements or unilateral declarations (e.g. DRC, Colombia and Georgia), and by internal rules and regulations. The environment is not often represented in declarations, as emphasis is mostly on protection of civilians. There is profound reluctance against treating non-state actors like states, something that limits the opportunities to influence non-state armed groups actions and to increase compliance.

In the case of Iraq, no Iraqi manual or operational documents concerned the environment. The USAF Commander Handbook (1980) limited environmental restrictions to weapons. In terms of enforcement, the UNCC awarded approximately 7 % of its total as compensation for environmental damages of scorched earth in Kuwait. The Iraqi High Criminal Court 2005 Article 12(2) E contained a provision on environmental damage in IAC, but no prosecutions were made under that provision. In the *Anfal* case, destruction of livestock and water wells was viewed as targeting of the civilian population.

With respect to domestic measures, the issue of extraterritorial applicability of domestic law arises. The Russian Criminal Code 1996 article 358 prohibits “ecocide”, but is not applicable extraterritorially, e.g. to Georgia. Another challenge relates to how domestic legislation applies to non-state armed groups.

On the level of international criminal law, there are important jurisdictional limits. Under article 8(2)(b)(iv) of the Rome Statute “intentionally launching an attack in the knowledge that such attack will cause [...] widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” is a war crime. This provision is only applicable to IAC. Hence, in order to prosecute environmental crimes in NIAC under the Rome Statute, it would have to be prosecuted for instance as a crime against humanity (murder or extermination), or as war crimes of direct targeting of the civilian population [8(2)(e)(i)], or wanton destruction of property [8(2)(e) (xii)].

Enforcement of IHL rules relative to the environment through international criminal law suffers from considerable jurisdictional constraints – particularly in respect of NIAC. Measures at the domestic level may strengthen environmental protection, but this will not necessarily impact non-state armed groups in an effective manner. And finally, environmental damage is often viewed as secondary to harm to civilians in enforcement mechanisms.

2.3.2 Implementation and respect for the law on protection of the environment from a military perspective, (Steven Hill).

Protection of the environment in armed conflict is getting increased attention. NATO includes environmental elements among its security concerns. Key environmental risks shape NATO planning and operations, as they have the potential to significantly affect NATO activity.

In Afghanistan, NATO has ramped down its presence, and practical challenges such as the closing of military camps are generating environmental issues. The recent SOFA with Afghanistan contains several provisions stipulating respect for national law. It stipulates “respect for Afghan environmental laws and standards, with regard to due standards” (available on NATO’s website).

In Europe, NATO has revitalized old contingency plans for large military manoeuvres across countries. There is now an entirely different reality in terms of environmental law at the national level. In terms of compliance and enforcement, due to NATO’s structure (alliance of 28 nations, two of which are not parties to API (US and Turkey)), there is a mix of legal obligations. NATO develops practices that bridge the framework differences between its member nations.

The relationship between environmental concerns and operational imperatives places environmental considerations in a second order, yet the principles are not that weak. NATO requires respect for host nations environmental law (unless sending state has a higher level of environmental protection). Collective responsibility of NATO allies also entails environmental dimensions. The various tasks of NATO commanders also have an environmental element, such as including environmental protection in ROEs, or negotiating environmental protection measures with non-state actors. The NATO model rules of engagement have an annex relating to environmental protection. This is replicated in many RoE documents of specific operations.

Many NATO policies take the form of standardization agreements and have a bearing on the protection of the environment with agreements on petroleum, waste management, and military compounds. Furthermore, the environmental component is mandated in NATO doctrine with regards to research and training. Many of the over 40 research centres in NATO countries deal with how to introduce environmentally friendly technology. Enforcement and compliance is achieved through various regulations and policies. However, there is no criminal enforcement at the NATO level, as the focus is on national criminal prosecutions.

One possible focus could be on how international institutions may serve to put the spotlight on national legislation and policies. We should invite more research into how the international mechanisms can be marshalled to improve the domestic implementation of the rules.

2.3.3 *Civil and criminal liability as means to improve respect for the law, (Elina Pirjatanniemi).*

Environmental law is being pushed forward and introduced into new fields. Environmental criminal law is one such new field. The aim of criminal liability is prevention. The legitimate purpose is to control behaviour, and deter acts that are detrimental in a given society. Environmental criminal law can only have marginal effects, although it still has a role to play.

National and international criminal law are very different in one sense. At the level of national law “the best criminal law is social policy”, whereas criminal law at the international level

has a different function, representing the *symbolic relevance* of an issue. The emphasis on accountability and punishment is therefore more important.

Under national criminal law there are three basic requirements for it to be efficient in preventing crimes: (1) knowledge about what is prohibited, (2) likelihood of getting caught and (3) harshness of sanctions. International criminal law has not been subject to many criminological studies, and its actual preventive effects are still difficult to confirm. Lawyers tend to overestimate the effects of treaties and constitutions. Most people are unaware of these rules, and follow the rules closest to their everyday lives. The best effects of criminal law are achieved by internalising/mainstreaming the rules and disseminating them to relevant groups. The principle of legality must also be kept in mind. Criminal law is mostly concerned with individual responsibility, causal links and proportionality.

Civil liability for ecological damage is increasingly accepted without links to injured persons, but while certain conventions relevant to civil liability apply during armed conflict, others may not. The basic principle is that the polluter is responsible. The objective of environmental law is prevention of harm to the environment. Compensation schemes can be innovative in giving value to what an environmental area is worth. Criminal and civil liabilities are reactionary measures, and thus not ideal from an environmental perspective, although they send out the message that environmental concerns are protected and sanctioned. In order to increase implementation of the rules, a major emphasis must be on *precautionary* action such as training and development of professional ethics.

2.3.4 Discussion highlights

It was noted that waste-management is often contracted out by military actors, as was the case in Kosovo. It may even be framed as an engineering issue. Supervisions and accountability mechanisms are not satisfactory in these instances. The issue of private military and security companies (PMSCs) was brought up as a challenge at the level of regulation. PMSCs in Iraq were under the jurisdiction of the status of forces agreement (SOFA), with immunity in Iraqi courts. It was inquired whether incentives for environmental protection could be given through SOFAs. Newer SOFAs incorporate environmental concerns and loopholes are corrected as they emerge. Soft law instruments/good practices can have a big impact through incorporation into actual practice. The Montreux Document, for instance does not have an environmental aspect and should be looked into.

The compensation scheme under the UNCC (Iraq-Kuwait) was essentially a *ius ad bellum* mechanism. Similarly to the Ethiopia-Eritrea Commission it was limited to IAC. Individual claims under *ius in bello* raise different issues.

The environmental footprint of ISAF was also brought up. While Afghan protection offices and laws were good due to the work of UNEP, there was a lack of capacity to follow-up. The lack

of transparency and inability of national authorities to scrutinize clearly represents a political and reputational risk to NATO. A notable problem is that member states do not respect their obligations. In post-war situations building the rule of law is a major undertaking, and criminal law may not always be the best way to address environmental concerns. Environmental concerns often get marginalized in these periods; budgets are small and environmental ministries extremely weak. It was asked whether environmental conventions and human rights treaties might be possible entry points to address these challenges.

The willingness of certain non-state armed groups to follow rules should not be underestimated. Caring for the environment can be a key aspect of gaining legitimacy, in addition to self-interest in sustainable management for non-state armed groups. Several non-legal tools could be used to guide the regulation of non-state armed groups and to increase the attention and capacity of non-state armed groups to environmental issues, notably through training, capacity building and increased expectations of environmental considerations by ‘responsible’ non-state armed groups.

It was emphasized that the military offers an opportunity of implementation as including the protection of the environment in military frameworks can have huge reverberating effects into the system without a lot of costs. The time is ripe to work on the military and the cultural norms. One possible concrete measure may be to add a negative for all World Heritage sites into targeting databases.

3. Conclusions and Recommendations

The session was chaired by Satu Suikkari-Kleven and Annette Bjorseth, summarising the main messages delivered during the preceding sessions.

3.1 Session I. Armed Conflict and Environmental Consequences.

Message 1. The environment is affected by armed conflict in a range of ways. It may be directly affected by hostilities, indirectly affected by the derived effects of armed conflict and it may be harmed by derived humanitarian effects, which again exposes the environment to added strain.

Message 2. The effects vary significantly between different types of conflicts.

In particular, there is a difference between IAC and NIAC taking into account the different means and methods of warfare utilized and the different types of parties. For instance, IAC often involves massive use of force and advanced military technology. However, hostilities are often over quickly, and institutions tend to remain intact and able to implement national regulations and international obligations pertaining to the protection of the environment. NIACs on the contrary tend to be more protracted in nature, often weakening national institutions and structures, preventing authorities from reaching important parts of the territory for the protection of the environment. Location and duration of the conflict are also important.

Message 3. In both IAC and NIAC areas of major ecological importance were often damaged.

The need to further regulate and protect these areas was highlighted.

Message 4. We must take into account different contexts and complex settings. A multifaceted approach must be adopted when addressing these challenges. In this regard, it is important to consider the following: What damage are we trying to address? Whose behaviour are we trying to regulate? What is the capacity and political will of national institutions to implement international law?

Message 5. There is a need to work on institutional framework and the strengthening of governance. The issue of fragmentation of regulatory frameworks should also be addressed.

Points added during the discussion.

There was a call for realism. Challenges discussed included how to clarify rules of IHL in NIAC, limits to UNEPs current mandate (voluntary and only immediate assessments, more constrained than SCOs), and the sensitivity of compensation mechanisms.

In order to have effect, environmental protection must be integrated in the planning of a military operation, there must be base-line studies, and environmental concerns need to extend during the entire operation. Sweden has an intelligence project incorporated in military operations that includes environmental considerations.

The importance of framing the topic in an attractive way was emphasised. To certain people, the environment is merely another resource. To others, it may hold the key to solving disputes. It was noted that a specific definition of the environment would probably create more problems than it solves.

Monitoring efforts should be increased. It provides knowledge, increases public pressure, including funding. The need for baseline studies was repeatedly underlined, including the need for continuous monitoring and assessment of damage. Knowing where the national parks and marine areas are is important even before you go into a country. Information should therefore be collected in advance, identifying fragile areas. Baseline studies would provide indications of harm caused by the conflict, and could also serve to provide evidence in court cases.

3.2 Session II. Existing Law and Legal Challenges Related to the Protection of the Environment in Relation to Armed Conflict.

Message 1. Important rules of IHL protect the natural environment in armed conflict. It is important to continue the efforts to enhance the respect for these rules by the parties to a conflict, and to disseminate these rules. Furthermore, there is a need to clarify certain dimensions of existing rules of IHL in order to determine how these apply in practice to the natural environment. Finally, although it is perhaps not feasible to negotiate new legally binding instruments at the moment, the importance of continuing to develop IHL in order to improve protection of the natural environment was highlighted.

Message 2. Other areas of international law provide important obligations for the protection of the environment also during armed conflict. This in particular includes international environmental law and human rights law. The need to further clarify the scope of these obligations in situations of armed conflict was underlined. The United Nations International Law Commission is conducting very important work in this regard. Notwithstanding, it is challenging to establish in a concrete manner how the obligations stemming from these principles apply. International environmental law can inform the application of IHL.

Points added during the discussion.

It was underlined that not only IHL but also human rights framework and their mechanisms must be considered as tools. When UNEP has highlighted an environmental problem, there are human rights mechanisms that can be used.

There was a call for creativity and bravery. The possible construction of post-conflict mechanisms should be looked into. They could monitor damage, link monitoring to environmental litigation, offer funding options, and a permanent international review body could make findings that would inform future measures.

Both sessions 1 and 2 identified protected zones as a topic in need of attention. It was underlined that this is an area where measures can be taken and will have an impact.

3.3 Session III Current Implementation of the Law, and Improving Implementation and Respect for the Law

Message 1. People tend to know best the rules and regulations closest to their activities.

Compliance with rules increases with ownership. People know national laws better than international obligations.

Message 2. Several practical measures can be taken to strengthen implementation of the law.

Within the defence/military establishment many different measures can be taken to ensure that environmental considerations are taken into account during military operations. Environmental principles must be reflected in the core documents (doctrines, SOFAs, RoE etc.). The responsibility for following up on the principles must be clear, and the leadership needs to emphasize the importance of the issue. Training and practical measures are the key to implementation, and there must be emphasis on military planning in early phases. The gender dimension must be taken into account.

Message 3. Non-state armed groups must be included in efforts to improve implementation, taking their particular nature into account.

Non-state armed groups are not always bound by the same rules as states. IHL applies to them if they are parties to the conflict. Measures aimed at changing their behaviour must take this into account. Although certain non-state armed groups have no interest or incentive to respect rules, many non-state armed groups have showed a willingness to respect and comply with their obligations under international law.

Points added during the discussion.

There is a need to include PMSCs in these efforts. The potential role of domestic courts should be examined. International corporations were not discussed, and it was noted that the dubious benefit they may garner from the lack of rule of law should be addressed. Corporate responsibility under domestic law in countries where companies hail from was suggested as an avenue, although it was warned that the structure of many such companies may complicate this approach.

The issue of compensation was presented as a very sensitive issue. It was suggested that in the current phase, effort on remediation funds or risk-reduction funds may be more appropriate.

Baseline studies, monitoring during operations, post-conflict assessments and follow-up mechanisms should be increased. To maximize effects, they should be seen as separate parts of an integrated scheme. Various methods for monitoring could be used to increase monitoring efforts. It was emphasised that it is important to incorporate the information from baseline studies into preparations for military operations.

4. The Way Forward

The final session was chaired by Satu Suikkari-Kleven and Annette Bjorseth, and concentrated on the way forward within relevant frameworks. The following points resulted from the discussion among participants to the expert workshop.

1. International Law Commission (ILC)

- The UN General Assembly will debate the ILC report in November 2015, which provides an opportunity for the States to enter into dialogue with the Special Rapporteur. The third and final report of the current Special Rapporteur, to be published in 2016, will focus on the post-conflict phase. What is still needed is data and knowledge on formal and informal practices, legal practice and cases.
- The conclusions of the current rapporteur's work will be finalized in 2016, with a full set of principles. It is important that the principles are then widely disseminated and implemented by all those concerned.
- The ILC has recognised the applicability of other areas of international law relevant to environmental protection during armed conflict. This must be followed up.

2. ICRC Guidelines

- The ICRC guidelines on protection of the environment are being updated. They represent restatement of existing law. The aim of these guidelines is to facilitate implementation, enabling education – improving the training of armed forces in relation to natural environment, and more broadly dissemination of IHL. The updated guidelines incorporate new developments in treaty and customary law. An explanatory document will be attached to the guidelines, giving them more depth. They will not develop the law further. It will be important to disseminate and implement the guidelines.
- National authorities should take the new guidelines into account, incorporate them into military guidelines (national legislation, manuals, ROEs) and train armed force according to these guidelines.
- Dissemination and educational efforts should view the guidelines as soft instruments that guide the implementation of legally binding norms.
- It will be useful to inform the ICRC about experience in applying these principles (what is considered war-sustaining, how foreseeable effects are taken into account, what is excessive, reverberating effects etc.)
- It is a complex field of legal norms. Awareness should be raised on the issue and application of norms should be subject to conscious decisions about which rules are applied when taking part in crisis management situations (national law, NATO rules, contractual obligations with locals etc.).
- The NATO – ICRC staff talks will provide a good forum for discussing the guidelines.
- NATO's environmental protection group engages in environmental training and should incorporate the ICRC guidelines. AU, EU and ECOWAS (regional organisations dealing with armed forces) should also be encouraged to incorporate these guidelines.

3. UNEP

- UNEP was mandated to conduct post-conflict environmental assessments by its Governing Council through decision 22/1/IV from 2005, offering member states the ability of a UN entity to offer impartial environmental assessments of wartime damage. However, it was not matched with a dedicated funding mechanism or a systematic process for deployment. To date, each of the 23 post-conflict environmental assessments have been conducted by UNEP in an ad hoc manner, based on a request from a member states and on the availability of bi-lateral funding. Efforts should be made to strengthening the UNEP mandate. In order to strengthen this mechanism, a decision would need to be taken at the next UNEA in May 2016 to extend the existing UNEP mandate (22/1/IV from 2005). The pros and cons of such a decision could be discussed at the upcoming Nordic consultations in Nairobi in November 2015.
- In 2006, UNEP's work in addressing the environmental dimensions of conflicts and disasters was elevated from a branch to an institution-wide priority. Known as the Disasters and Conflicts programme, UNEP was mandated to assess and addresses the environmental causes and consequences of conflicts and disasters. However, despite this elevation, dedicating funding to conduct post-conflict environmental assessments was not provided. The question of funding ought to be addressed.
- In 2008, UNEP established the Environmental Cooperation for Peacebuilding (ECP) programme⁵ to strengthen the capacity of countries, regional organizations, UN entities and civil society to understand and respond to the conflict risks and peacebuilding opportunities presented by natural resources and environment. The ECP programme has produced a range of important policy and field work⁶, including the flagship publication "Protecting the Environment. During Armed Conflict. An Inventory and Analysis of International Law (2009)". Many of the findings and recommendation made by this key 2009 report remain valid. Only two of the 12 recommendations from the report have been implemented in a systematic manner. In terms of the ones that have not, there is a need for concerted efforts to train legal practitioners and the judiciary, incorporate the norms into national legislation, increase domestic capacity building, discuss an international body to monitor compliance, and work to improve protection of fragile/protected areas.
- While the ECP programme has made excellent progress towards integrating natural resource and environmental issues within the UN peace and security architecture at the global and field levels, one of the key challenges for UNEP continues to remain in its own governing body. In particular, few of the member states that compose the UN Environmental Assembly (UNEA) are willing to place the environmental dimensions of conflicts and disasters above other key "traditional" environmental priority issues, such as

⁵ See <http://www.unep.org/ecp> for more information

⁶ See http://postconflict.unep.ch/publications/ECP/ECP_progress_report_2015.pdf

climate change, chemicals, biodiversity etc. Only a selected few of the member states are willing to channel core funds into the Disasters and Conflicts programme and even fewer are willing to use their political clout to ensure UNEP has the resources to conduct post-conflict environmental assessments on a regular basis with predictable financing. The Nordic countries could make an important difference at this level.

- Efforts should be dedicated to increasing the systematic attention to follow-up measures after environmental assessments in terms of addressing acute environmental risks, preventing further humanitarian impacts, and providing compensation as needed. Assessments should also be more comparative in nature.
- On a broader UN level, the 6th of November is the International Day for Preventing the Exploitation of the Environment in War and Armed Conflict. On this day, the UN Secretary General (SG) makes a statement and tries to bring attention to key thematic issues linked to environment, conflict and peacebuilding. UNEP works in close cooperation with the office of the SG in planning the day and highlighting issues.

4. NATO and National Militaries

- Many different measures can be taken within the military to ensure that environmental considerations are taken into account during military operations.
- It is important to integrate of environmental principles into core documents (doctrines, SOFAs, RoE etc.) and into military planning from early stages.
- People must be made to realize that it is their responsibility to follow up on the principles. Leadership must show the way in terms of emphasizing the importance of the issue.
- The importance of training and practical measures was emphasized. It is important to mainstream the gender dimension in all activities.
- Addressing the capacity challenges of host nations is important.
- In terms of data collection on training, there may be scarce data on training efforts at the NATO level. The main collection is found and should be sought at the national levels. Joint exercises may provide more adequate data.
- The agenda of the rules for NATO peace keeping/stand-by operations is in the making. It should be assessed whether these discussions and rules take the environment sufficiently into account.

5. Mainstreaming the issue into other processes

- Human rights mechanisms could be more frequently used to address compliance with relevant human rights obligations.
- These issues should be brought up in the context of implementation of soft-law instruments (e.g. the Montreux document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict).
- Continue to coordinate these different strands and to gain more momentum. There is momentum, but donor recession at the same time. Core funding of international organisations (UNEP and selected NGOs) should be maintained.
- Work to strengthen and clarifying the legal framework should engage with environmental experts and military experts with adequate and specific knowledge about environmental damage and proportionality assessments respectively.
- Highlight these issues in the 1st Committee of the UN General Assembly.

6. Civil society organizations and the academia

More contribution from academia is needed.

- The Swedish FFI has very good empirical evidence on the environmental effects of military exercises. This information must be used to inform targeting processes.
- Collecting environmental data is expensive. Examination of how data is collected and development of new low-cost techniques to improve the ability of data collection.
- Create relevant forum, an informal working group consisting of practitioners, lawyers, and state authorities.
- A Red Cross Society could act as a focal point for the Movement on the protection of the environment.
- A state sponsor is needed for the Environmental Network launch at the UNGA 1st Committee.
- Focus on documentation of environmental damage, such as the case is in Syria by the Dutch organization Pax.
 - Raising the subject on the political agenda /in international for a.
 - Monitoring of damage on the ground, creating partnership with national actors, reaching out to states, IOs, CSOs.
 - Seizing on organisational capacity of NGOs to better monitor the environmental damage.
- Contacts with states before 6th Committee debate.
 - Advocate on applicability of legal regimes, human rights and public health. Expand organizational capacities on this point.

Annexes

Annex 1. Nordic Pledge to the 31st International Conference of the Red Cross and Red Crescent

During the 31 International Conference of the Red Cross and Red Crescent in 2011, the Governments of Denmark, Finland, Norway and Sweden, and the National Red Cross Societies of the same states, undertook the following:

- On the basis of recent armed conflicts, to undertake and support a concerted study highlighting the relevance of the existing legal framework for the protection of the natural environment in contemporary armed conflicts, and identifying any gaps in that context.
- To co-ordinate and host a meeting of experts, and on this basis prepare a report, to propose, if appropriate, areas in which the legal protection of the natural environment may be clarified and, if necessary, reinforced.

Annex 2. List of Participants, Helsinki Expert Workshop, 14. and 15. September 2015.

First name	Surname	Organization / Institution
Marie	Jacobsson	Swedish MfA, Member of the United Nations International Law Commission
Tuomas	Kuokkanen	Ministry of the Environment
Preben S	Hansen	Danish Red Cross
Doug	Weir	ICBUW
Mara	Tignino	Faculty of Law, University of Geneva
Karen	Hulme	University of Essex
Jani	Leino	Finnish Red Cross
Britta	Sjoestedt	Lund University
Margit	Tveiten	Ministry of Foreign Affairs - Oslo
Marie-Louise	Thomsen	Ministry of Foreign Affairs of Denmark, Department of International Law
Helen	Obregon	ICRC
Päivi	Kaukoranta	MFA Finland
Anna	Esko	MFA
Matias	Warsta	MoD Finland
Mads	Harlem	Norwegian Red Cross
Maria	Pohjanpalo	Ministry For Foreign Affairs of Finland
Timo	Nyyssönen	Finnish Defence Forces / Defence Command
Antti-Pekka	Manninen	Ministry for Foreign Affairs of Finland
Cecilie	Hellestveit	ILPI
David	Jensen	UNEP
Kjersti	Nes	Norwegian Ministry of Foreign Affairs
Steven	Hill	NATO
Preben	Marcussen	Norwegian Red Cross
Annette	Bjørseth	Norwegian Ministry of Foreign Affairs
Espen Persønn	Flagstad	Norwegian Red Cross
Kari	Takamaa	National Defence University
Eriikka	Viisteensaari	National Defence University
Marja	Lehto	MFA
Pernilla	Nilsson	MFA Sweden
	Suikkari-	
Satu	Kleven	MFA Finland
Elina	Pirjatanniemi	Åbo Akademi
Kaavi	Susanna	Finnish Red Cross

Annex 3. Background document for the Expert Workshop

EXPERT WORKSHOP ON PROTECTION OF THE ENVIRONMENT IN ARMED CONFLICT

Helsinki, Finland 14-15th September 2015

Background document and guiding questions

Background

There is a growing international concern about the current state of international law's protection in armed conflict of the natural environment, often referred to as its "silent victim".

The environment is affected by armed conflict in a range of ways. It may be directly affected by hostilities, indirectly affected by the derived effects of armed conflict, and additionally it may be affected by derived humanitarian effects, which again exposes the environment to added strain. In sum, the effects of armed conflict on the environment are devastating, often with irreversible damage. Further, degradation of the environment as a consequence of armed conflict often has long term and severe effects for civilians. Environmental damage is moreover not conducive for a swift restoration of peace. All these direct and indirect effects of environmental damage resulting from armed conflict are becoming increasingly apparent.

There is also a growing scientific evidence of extensive impact of armed conflict on the natural environment. The Gulf War in 1991 brought environmental effects of armed conflict to the forefront, and attempts were made to identify and address gaps in the legal protection under IHL. However, the lack of firm baseline studies of the environment, the lack of scientific evidence addressing the actual scope of damage, did complicate the effort.

This situation has changed. In addition to a growing amount of research proving the damage caused to the environment during armed conflict, there are increasing monitoring mechanisms, baseline studies and environmental reviews that provide a much more solid ground for understanding what type of danger the environment is exposed to during armed conflict (produced by entities such as UNEP etc.). Climate change in particular is causing enhanced expectations among the general public about what political and legal measures must be taken to ensure protection of the environment. There is a palpable receptiveness in political circles for (non-costly) measures that will increase protection of the environment.

In 2009, UNEP published the [Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law](#) – report. The report sought to identify gaps and weaknesses in the protection of the environment by examining four bodies of international law (international humanitarian law, international criminal law, international environmental law, and international human rights law). The report included ten key findings, and twelve concrete recommendations on ways to strengthen the legal framework and its enforcement.

In 2010, the ICRC looked at the current state of international humanitarian law by evaluating 36 different areas of the law. In its 2011 [Strengthening Legal Protection for Victims of Armed Conflict](#) –report, the ICRC drew the conclusion that humanitarian law needs to be reinforced in order to protect the natural environment. The ICRC concluded that the extensive development of international environmental law in recent decades is not matched by a similar development in international humanitarian law, and that the clarification and development of international humanitarian law for the protection of the environment has lagged behind. The report identified that destruction and degradation of the natural environment threatens the well-being, health and survival of entire populations. In line with the 2009 UNEP report, it recognized that special protection of the environment as provided for in articles 35 and 55 of the Additional Protocol I to the 1949 Geneva Conventions establishes “a high and yet imprecise threshold”. Due to the cumulative nature of the criteria, special protection is only provided “against exceptionally catastrophic events – what may be called ‘ecocide’”. The report also highlighted, that in cases of non-international armed conflict, there is no specific requirement for parties to a conflict to protect and preserve the environment. It is also unclear to what extent environmental considerations should be taken into account when parties to a conflict adopt precautions in the conduct of hostilities. The 2011 ICRC report also noted that there is lack of mechanisms to address the consequences of damage to the environment. There is a need to monitor the nature and extent of damage to the environment, investigate alleged violations and to make decisions on appropriate forms of reparation. According to the report, in order to enhance protection of the environment, it might be prudent that such mechanisms could also assess environmental damage from *lawful* activities, not only unlawful activities. The ICRC report also indicated that it would be desirable to develop norms on international assistance and co-operation, to address complex environmental damage and hazards. As a model, the report identified provisions and mechanisms created in the international treaties on landmines and other explosive remnants of war. Finally, the report indicated that since armed hostilities can have particularly disastrous consequences for zones of major ecological importance, such areas should be made off-limits to any form of military activity.

As international environmental law has developed substantially in recent years, the continued application of it in times of armed conflict also raises questions of interaction between environmental law and IHL. For this reason, the UN International Law Commission (ILC) decided in 2013 to include the topic “Protection of the environment in relation to armed conflicts” on their agenda. In her work, the appointed Special Rapporteur on the issue, Dr. Marie Jacobsson, is looking at how different areas of international law protect the environment in relation to armed conflicts. The Special Rapporteur has adopted a temporal, three-phased approach, looking at international protection of the environment before, during and after conflict. This was chosen as an alternative to an approach that would have looked at the issue from the perspective of particular regimes of international law. The Special Rapporteur has intended that her work seek to clarify the rules and principles of international environmental law applicable in relation to armed conflicts, rather than modify the law on armed conflict. The Special Rapporteur has emphasized, that a separate decision by the ILC is needed if there is a need to continue her work with enhanced progressive development or codification of the law.

The preliminary report of the Special Rapporteur on this issue was presented in August 2014 ([A/CN.4/674](#)), and it dealt with legal obligations prior to armed conflict. The second report was submitted in May 2015 ([A/CN.4/685](#)), and dealt with obligations under international law during armed conflict directly relevant to the protection of the environment. The report looked at the law applicable during both international and non-international armed conflict, and contained both an analysis of any existing rules of armed conflict considered relevant to the topic, as well as their relationship to the relevant law applicable during peacetime. The report included a brief study of specially regulated areas (nuclear-weapon-free zones and natural heritage zones) in response to suggestions made by States and members of the ILC. Based on an analysis of the law looked at in the report, the Special Rapporteur proposed a set of five draft principles. Subsequently, the Drafting Committee provisionally adopted introductory provisions and draft principles ([A/CN.4/L.870](#)) under the following headings: Designation of protected zones; General protection of the [natural] environment; Application of the law of armed conflict to the environment; environmental considerations; prohibition of reprisals; and protected zones. In her third report, the Special Rapporteur will make proposals for post-conflict measures, look at the law applicable after an armed conflict, situations of occupation and make an overall analysis of the three different phases addressed in her three reports.

In response to the 2011 ICRC Strengthening report, the Governments and the National Red Cross Societies of Norway, Finland, Sweden and Denmark made [a pledge to the 31st International Conference of the Red Cross and Red Crescent](#) in 2011, to highlight the relevance of the existing legal framework for the protection of the natural environment in contemporary armed conflict. The pledge was deemed necessary in order to continue work around an issue the ICRC had identified as significant, and requiring further development. Based on State consultations, the protection of the environment was not included in the major consultation processes aimed at strengthening international humanitarian law that followed the 2011 report and International Conference (these consultations focused instead on: detention in non-international armed conflict; and on strengthening compliance with international humanitarian law generally). The aim of the pledge is to bring added value to the work already done around the issue.

As a result of the pledge, an empirical study was commissioned, the aim of which was to provide an overview of the adverse consequences on the natural environment caused in armed conflict situations, based on a selection of contemporary armed conflicts. [This report](#) was published by ILPI in December 2014, and it indicated various direct and derived effects caused by armed conflict on the environment. The report reviewed four contemporary armed conflicts, and outlined the different environmental consequences resulting from these conflicts. The cases examined showed that there are significant variations with respect to the nature and origins of environmental damage. Detrimental environmental consequences were in some instances direct, while in others indirect, derived effects of the armed conflict. Some consequences were clearly intentional, while in others incidental. Furthermore, environmental consequences had both short-term and long-term effects, depending on the context. The report also examined specific regulatory frameworks for military operations that were relevant in the case studies, and in particular, how they took the natural environment into account.

The ILPI report forms a basis of discussions for the international expert meeting. The meeting is intended to also focus on questions related to the adequacy of existing international law with regard to the protection of the environment in situations of armed conflict. An important general question to be discussed and addressed at the expert meeting will be, whether the extensive damage caused to the natural environment in situations of armed conflicts is primarily a result of a lack of clear legal obligations to protect the natural environment, or if it may be due to a lack of effective implementation of the already existing obligations, or a combination of the two. Building on this general approach, the meeting will also seek to look at how to improve the protection of the natural environment in situations of armed conflict.

In order to build on the work mentioned above, the expert meeting will seek to bring together legal and non-legal experts with a relevant background on the subject matter. Based on short interventions on different subject matters, the intention is to engage in comprehensive discussions between the expert participants. The organizers are hoping to be able to draw conclusions as to what kind of action is needed, and what is realistic, in order to better enhance the protection of the environment in armed conflicts in the future. The intention is to present findings and possible recommendations identified at the meeting, in Geneva in December 2015, in connection with the 32nd International Conference of the Red Cross and Red Crescent.

Structure and Content of the Expert Meeting

As can be seen from the agenda, the expert meeting is divided into three main sessions. Overall, the intention is to approach the subject matter of protection of the environment by looking at what has happened in armed conflicts, and what could be done in practical terms to protect the environment (Session 1), how does international law protect the environment and how it could possibly be developed (Session 2), and finally, how can existing international law be better implemented, and what kind of international and domestic tools and sanctions could be used and developed to enhance respect for the protection of the environment in armed conflicts (Session 3). Each of the sessions will include a number of interventions, which in turn will be followed by an extensive discussions session.

The expert meeting will conclude with a session on the way forward, drawing together conclusions made in the three sessions, and discussing options for how different actors and processes could look at the protection of the environment in the future.

As the intention is to bring together international experts to exchange views and build on work already done on the protection of the environment in armed conflicts, it is hoped that participants actively engage in discussions throughout the two-day expert meeting. To facilitate fruitful discussions, each of the sessions is summarized below. The summaries also include guiding questions for each session. Participants are encouraged to acquaint themselves with the questions in advance, so as to ensure that the discussions during the different sessions is focused, informed, in-depth and thought-out. The guiding questions are intended to frame the overall discussion. Thus, not all of them will necessarily be addressed individually in the discussion part of the individual sessions.

Session 1 - Armed Conflict and Environmental Consequences

This session will focus on practical effects of armed conflicts to the environment, and on practical measures that could be taken for the protection of the environment (what needs to be done to prevent and redress detrimental environmental effects brought about by armed conflicts).

Interventions:

ILPI's Conclusions on the environmental consequences of armed conflict

Cecilie Hellestveit, Senior Advisor / Researcher ILPI

The intervention by ILPI will present conclusions from the empirical study. The most significant points will focus on how high intensity conflicts with extensive use of aerial and artillery bombardment differ in consequences from protracted armed conflicts of medium to low intensity, that are extensive in temporal scope, and involve both governments and various organized armed groups. The intervention will highlight that in some cases environmental consequences are immediate and substantial, and in others, conflicts lead to serious derived effects on the environment, but in nature they are more long term and sometimes more severe. The presentation will also look at the notable common element in all case studies, namely the risks and damages suffered in zones of particular ecological interest or protection, such as natural parks and reserves.

UNEP's work and conclusions on the environmental consequences of armed conflict

David Jensen, Head of Environmental Cooperation for Peacebuilding Programme of the UN Environment Programme (UNEP)

The United Nations Environment Programme has for years engaged in the environmental dimensions of post-conflict situations. Since 1999 UNEP has been conducting science-based environmental assessments of post-conflict situations, in over 40 conflict-affected countries and regions. As indicated above, in 2009 UNEP also published an inventory and analysis of international law on the protection of the environment. Against this background the intervention of UNEP will present conclusions from its work, focusing on the distinction between direct and indirect impacts of armed conflicts. Direct impacts include: direct targeting of natural resources / scorched earth war tactics; collateral environmental damage from targeting of infrastructure or industrial sites; environmental impacts from weapons / military operations; and looting by armed groups to finance conflict. Indirect impacts on the other hand include: impacts from human displacement and livelihood survival strategies; breakdown of good resource governance and management capacity; looting to finance criminal groups / illegal livelihoods; impact of humanitarian and peacekeeping operations; and poorly planned reconstruction (based on natural resources). Each of these examples will be looked at through a specific UNEP case. The presentation will also review which legal instruments address these various impacts and identify the key gaps going forward. The intervention will conclude with a summary of UNEP lessons learned from its work.

Guiding questions for session 1

- How to define “protecting the environment?” In particular, does the environment include ecosystems as well as renewable and non-renewable natural resources?
- To what extent and how does destruction and degradation of the environment threaten the well-being, health and survival of entire populations? How do detrimental environmental effects increase the vulnerability of affected populations?
- Are the effects of non-international armed conflicts different from international (interstate) armed conflicts?
- What best practices can be identified to prevent, assess and address environmental damage caused by armed conflict?
 - Are there examples of practical and legal measures by civilian authorities taken during peacetime to prevent or limit the harm caused to the environment? What role could such measures play?
 - On a practical level, what kind of national and international measures could have been and could be taken in order to minimize the impact of armed conflict on zones of particular ecological interest or protection?
- How can States cooperate and share reliable information and best practices on the protection of the environment in armed conflicts?
- What kind of international mechanisms / actors (e.g. UNEP / UN appointed fact finding missions etc.) could be set up / used, in order to prevent and minimize the impact of armed conflict on the environment (both in ongoing conflicts as well as in anticipation of future armed conflicts)?
 - Which actors / agencies should be involved?
 - What range of expertise would be essential for such international action?
- Post-conflict, what needs to be done practically and politically, in order to ensure that detrimental environmental consequences of the conflict are successfully addressed?

Session 2 - Existing Law and Legal Challenges Related to the Protection of the Environment in Relation to Armed Conflict

This session will focus on current international law, existing gaps, as well as means to develop the law in order to enhance protection of the environment in armed conflicts. The session will also focus on the interaction between different international legal regimes, and how they possibly can complement each other in the protection of the environment in armed conflicts. One aim is to look at if (and if so how) there is room for development of international law, in order to enhance legal protection for the environment in armed conflicts. Issues addressed in this Session are closely linked with key contemporary issues of international law, such as the question of fragmentation of international law and the effects of armed conflicts on treaties.

Interventions:

Protection of the environment in relation to armed conflict: existing IHL rules and contemporary challenges

Helen Obregón Gieseken, Legal Adviser, International Committee of the Red Cross

The ICRC intervention will provide an overview of the existing rules of international humanitarian law (IHL) applicable to the protection of the natural environment in armed conflict, including the general and specific rules affording protection. In addition to recognizing the importance of improving the implementation of existing IHL, the intervention will also address contemporary challenges in the legal protection of the natural environment. It will focus on some of the areas in which the ICRC considers that there is a need to clarify and expand existing obligations to better protect the natural environment during armed conflict.

The work of the ILC on the protection of the environment in relation to armed conflict

Marie Jacobsson, Member of the International Law Commission, Special Rapporteur on the Protection of the environment in relation to armed conflicts

The intervention by the ILC Special Rapporteur on the protection of the environment in relation to armed conflicts will include a presentation on her work up until now and reflections on the response it has received from other members of the ILC, as well as States. The intervention is expected to include a presentation of the approach chosen, as well as the main aims of the work as it stands today (please see above the background section for a summary of the work of the Special Rapporteur).

Intervention: Legal opportunities and practical measures: Applying the World Heritage Convention in the Democratic Republic of the Congo

Britta Sjöstedt, Faculty of Law, Lund University

The intervention will focus on how international environmental law pertains during and after armed conflict. Environmental treaties operate in a different manner than the law of armed conflict treaties and may therefore offer new mechanisms to address environmental damage during armed conflict. Environmental treaties often consist of framework conventions with

flexible open-ended provisions that may be regarded as unable to provide any enforceable content. However, the provisions are further developed into more specified context based obligations by the treaty bodies established under the treaties. The treaty bodies have far-reaching mandates to act to fulfill the treaty objective. For instance, they may initiate cooperation with other States, international organizations, non-governmental organizations, private sector etc. and they may be able to fund various activities to advance the treaty objective. More specifically, the intervention will look at the application of the UNESCO World Heritage Convention in relation to the armed conflicts taking place in the Democratic Republic of the Congo (DRC). Despite the deficiencies in the governmental control over the sites, the World Heritage Convention has remained in force and the protection work of the sites have continued to be carried out also during the hostilities, largely because the measures and initiatives undertaken by the treaty bodies under the World Heritage Convention. Thus, the environmental treaties may have the ability to fill an institutional and a legal gap in an armed conflict, as well as in a post-conflict context, which is a time frequently characterized of institutional collapse and break down of the rule of law.

Guiding questions for session 2

- How does IHL interact with general and specific international law relating to environmental protection?
- What is the content/threshold of “widespread, long-term and severe damage to the environment” [API article 35(3)] (specific protection of the environment)?
- How do general rules of IHL protect the natural environment?
 - What are the criteria for protection of the environment on account of its importance to civilians [API article 55]?
 - What are the criteria for the environment to become a military objective?
 - How do considerations of military necessity / utility affect the protections afforded to the environment? Can the anticipated military advantage gained diminish the level of protection afforded to the environment, or, is the protection of the environment similar to the protection afforded to civilians and civilian objects, meaning that they can never be directly targeted unless they themselves become military objectives (through direct participation and/or use), and that only incidental effects of hostilities are permitted within the realm of the proportionality principle?
 - How does the environment count in the (IHL) proportionality assessment?
 - What precautions in attack (or defense) apply to the natural environment?

- Is there a duty to choose the weapon at disposal that will cause the least damage to the natural environment (ref. unnecessary suffering, i.e. protection against superfluous injury or damage to the military objective)?
- How could and should the legal protection provided to the environment be taken into consideration when conducting legal review of weapons on a national level in accordance with article 36 of I Additional Protocol?⁷ (This question could also be addressed in Session 3)
 - What rules of international law related to the protection of the environment would be particularly relevant?
- Do environmental treaties apply differently in international and non-international armed conflicts?
- Legally and politically, is it realistic that the international legal protection afforded to the environment during armed conflict would be the same in international and non-international armed conflicts?
- Would it be realistic to develop special treaty regimes for the special protection of critical natural resources and areas of ecological importance during armed conflict? What kind of obligations and prohibitions would / should such treaty regimes contain?
- How can States designate, by agreement or otherwise, areas of major environmental and cultural importance as protected zones so as to ensure that such areas are protected from attacks? (*See Draft principle 1-(x) and Draft principle II-5 in the 2015 ILC Report (Chapter IX)*)^[1]

⁷ Article 36 New weapons

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

^[1] Draft principle II-5 Protected zones

An area of major environmental and cultural importance designated by agreement as a protected zone shall be protected against any attack, as long as it does not contain a military objective.

Draft principle I-(x) Designation of protected zones

States should designate, by agreement or otherwise, areas of major environmental and cultural importance as protected zones.

- Are ad-hoc agreements between parties to a conflict (including non-state armed groups) on the protection of particular areas of ecological significance a realistic option?
- There appears to be possibilities to use the already existing mechanisms under environmental treaties during armed conflict, but how can the mandate of these treaties be further clarified and enforced during armed conflict?
- Is there a need for progressive development of international law on the protection of the environment in armed conflicts?
 - What area of international would be the best basis for such a progressive development (IHL / international environmental law / international criminal law, other?)
 - What kind of new international norms on assistance and co-operation could be foreseen to address detrimental effects to environment that have come about as a result of an armed conflict?
 - Do other international treaties such as those on the explosive remnants of war (CCW Protocol V), antipersonnel mines (Ottawa Convention) and cluster munitions (Oslo Convention) contain provisions on assistance and co-operation that could serve as models?
 - What would be the most advisable manner in which to proceed with such a development (ILC / ICRC and State led process / amendments to existing international treaties)?

Session 3 - Current Implementation of the Law, and Improving Implementation and Respect for the Law

This session will focus on implementation and respect of the law. In its work to enhance compliance with IHL by States, the ICRC speaks about the process of “integration” of the law. This is the process of transposing legal rules into concrete mechanisms or measures to ensure compliance and adopting the means required to achieve this end. Integration is a continuous process. It must address doctrine, education, training and equipment issues and be backed up by an effective system of sanctions.⁸ Session 3 will thus look at practical tools, as well as legal and other sanctions to enhance respect for the law and thus also the protection of the environment. One focus will be on the role that criminal law can have. The intention is to examine the issues both on an international as well as on a domestic level. A particular focus will be to see if (and how) good domestic practices / sanctions, enhancing respect for the law, could be used to develop international ones (e.g. “international environmental criminal liability”). The session will be to look at how different international mechanisms of liability could be used and/or might be needed, to sanction different actors responsible for environmental damage in armed conflicts. In addition to State armed forces, such actors can include non-state armed groups, private military and security companies, and in some cases, international corporations.

Interventions:

Some perspectives on challenges regarding current implementation of existing rules

Cecilie Hellestveit, Senior Advisor / Researcher ILPI

The ILPI empirical study included a chapter examining specific regulatory frameworks for military operations that were relevant in the conflicts case studies looked at in the report (Chapter 6). The study noted that there was not very much in concrete detailed provisions regulating and sanctioning behavior of parties to the conflict. What conclusions can be made

⁸ [ICRC, Integrating the Law, Geneva, 2007](#) pp. 1-2.

from the study on what is needed in order to ensure implementation of existing law, as well as effective protection of the environment in armed conflicts? Based on the events of the case studies, is it conceivable that detailed domestic regulations, or alternatively, international sanctions or mechanisms, could have contributed to a better protection of the environment?

Implementation and respect for the law on protection of the environment from a military perspective

Steven Hill, Legal Adviser and Director of the Office of Legal Affairs at NATO

This presentation will present a NATO perspective on what could be done (both legally and operationally) to minimize both direct and indirect impact of armed conflict on the environment. What are tools that could be used to have an effective and positive impact on the conduct of parties to a conflict, when it comes to the protection of the environment? What is realistic and what is unrealistic to expect from military operations / actors, when it comes to reconciling considerations of effective military operations, with aims of preserving and protecting the natural environment? What studies / evaluations has NATO done to look at how to minimize the impact of military operations on the environment? What tools could be used to enhance implementation and respect for the law protecting the environment?

Civil and Criminal liability as means to improve respect for the law

Elina Pirjatanniemi, Professor of Constitutional and International Law, Director of the Institute for Human Rights, Åbo Academy University

The intervention will include an overview of the role of criminal law generally in the protection of the environment. How can it be used to enhance protection and deter violations by individuals as well as legal entities? How does criminal liability for environmental crimes differ from traditional criminal law? The intervention will also look at the special features of international criminal law / crimes as opposed to “traditional” domestic criminal law. The intervention will conclude with an evaluation on the limitations in the use criminal law to enhance protection of the environment.

Guiding questions for session 3

- What best practices can be identified to improve respect for, and implementation of, existing international law in the context of armed conflicts generally, but in particular in relation to the protection of the environment?
- Is it possible to identify measures aimed at increasing respect for existing law, and/or strengthening the implementation of the protection of the environment by parties to armed conflicts (both states and non-state armed groups)?
- How and to which extent are existing international humanitarian law and other relevant legal obligations on the protection of the environment implemented by armed forces (and non-state armed groups) in situations of armed conflict?
- How to best ensure implementation and respect for the law by State armed forces?
 - What best practices exist to integrate international legal obligations on the protection of the environment into armed forces’
 - Doctrine
 - Education
 - Training (exercises)
 - Equipment (including choice of during military operations)
 - Sanctions and other means to maintain discipline (including command responsibility)
 - What is realistic and what is unrealistic to expect from military operations / actors, when it comes to reconciling considerations of effective military operations, with aims of preserving and protecting the natural environment?
- How could and should the 1994 ICRC [Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict](#) be revised and amended in order to enhance protection of the environment by armed forces?
- How can and should lessons learned by armed forces in armed conflicts / military operations be used to improve implementation and respect for the law and the protection of the environment in general?
- How to best ensure that private actors, such as private military and security companies and international corporations, respect the law and can be made liable for illegal action or other action detrimental to the environment during armed conflicts?
 - What role could national / international civil / corporate liability play in improving implementation and respect for the law?
 - What kind of jurisdictional issues need to be addressed to ensure effective reach of the law and courts to private actors?

- Are these issues different when private actors provide their services to or on behalf of State actors?
- How can environmental treaty obligations be enforced in a territory controlled by rebels?
- How to best curb illegal resource extraction during and after armed conflict, including by organized crime?
- Is there a national legal framework and/or mechanisms in place that permit preventing, assessing and addressing the harm caused to the natural environment as a result of armed conflict (harm stemming from violations of IHL as well as from acts that are not violations of IHL)?
 - If so, what are the existing national laws, regulations, mechanisms and/or measures, and how do they work to prevent, assess and address environmental harm (civil/criminal liability, compensation)?
 - Is the national legal framework to prevent, assess and address environmental harm effectively implemented/enforced? If not, what are the challenges?
- How can criminal law (both domestic and international) be used to enhance the protection of the environment and respect for existing obligations?
 - Could / how could domestic criminal law related to the environment be used to formulate “international environmental crimes”?
 - Is this a realistic option? If so, should criminal liability for “environmental crimes” differ from other crimes resulting in individual criminal liability?
- Is the law on State responsibility an effective way for improving implementation and respect for the law by parties to the conflict?
- What kind of tools (treaty law, soft law, guidelines, reporting obligations, international mechanisms etc.) would be most effective to improve implementation and respect for the law?

This background document was compiled by the Finnish Red Cross. It is heavily based on a concept note for the expert meeting that was drafted by ILPI and the Norwegian Red Cross and the Norwegian Ministry of Foreign Affairs. The Finnish Red Cross would like to thank all speakers of the expert meeting for their input to the background paper and the guiding questions.

Annex 4 Overview of direct and derived environmental effects in the ILPI Study

	DIRECT EFFECTS	DERIVED HUMANITARIAN EFFECTS
Gulf War (1991)	<ul style="list-style-type: none"> • Aerial contamination • Terrestrial contamination • Marine contamination • Wildlife degradation 	<ul style="list-style-type: none"> • Deteriorated human health • Reduction of livestock • Reduced livelihood
Iraqi Insurgency	<ul style="list-style-type: none"> • Marshland modification • Aerial modification • Marshland degradation • Extinction of species • Destruction of an ecologically fragile zone • Destruction of designated national park 	<ul style="list-style-type: none"> • Permanent loss of livelihood • Massive internal displacement • Destruction of ancient culture
Russo-Georgian War	<ul style="list-style-type: none"> • Deforestation • UXO proliferation • Degradation of designated national parks and reserves 	<ul style="list-style-type: none"> • Internal displacement • Reduced livelihood
Democratic Republic of Congo	<ul style="list-style-type: none"> • Deforestation • Wildlife degradation • Severe degradation of designated national parks 	<ul style="list-style-type: none"> • Massive displacement • Deteriorated human health • Proliferation of conflict resources • Food and water scarcity • Increased pressure on national parks
Colombian Civil War	<ul style="list-style-type: none"> • Deforestation • Wildlife degradation • Terrestrial contamination • Degradation of designated national parks 	<ul style="list-style-type: none"> • Reduced livelihood • Significant internal displacement • Deteriorated human health • Proliferation of organized crime • Increased pressure on national parks

Annex 3. Background paper for the Expert Workshop

