Conflict and Environment Observatory

Input on the Montevideo IV Mapping Report on Programme Area D - Environment and military activities 13th September 2018

About us

The Conflict and Environment Observatory (CEOBS) is a UK charity that monitors environmental harm in conflicts and uses that data to inform efforts to enhance legal protection for the environment from the impact of conflicts and military activities.

Our predecessor, the Toxic Remnants of War Project and its partners were instrumental in the passage of UNEA resolutions 2/15 and 3/1, and we have monitored, and wherever possible supported, the ongoing study by the International Law Commission (ILC) into the *Protection of the environment in relation to armed conflicts* (PERAC) since its inception. For more information on our work on the legal framework please visit: **www.ceobs.org/topics/law-and-policy**

Developments during the Montevideo IV period

When Montevideo IV was published in 2008, debate on the state of legal protection for the environment was underdeveloped. In spite of early efforts to draw attention to and enhance protection during conflicts, for example UN General Assembly resolution 47/32 in 1992,[1] or the ICRC's environmental guidelines for militaries in 1994,[2] states had demonstrated little appetite for measures that would constrain their activities or place new obligations on conflict parties. Initiatives following the 1990s, and prior to 2008, had mainly focused on natural resource management as a tool for peacebuilding.

In 2009, UNEP's publication of a report analysing the state of legal protection, which found fragmentation, and but also the potential offered by the integration of environmental and human rights law with the existing provisions of international humanitarian law, helped catalyse a number of initiatives.[3] The topic was placed on the agenda

1. UNGA (1992) A/RES/47/37, Protection of the environment in times of conflict: https://undocs.org/A/RES/47/37
2. ICRC (2011) Strengthening legal protection of victims of armed conflicts: https://ceobs.org/wp-content/uploads/2018/03/31-int-conference-5-1-1-report-strength-ihl-en.pdf
3. UNEP/ICRC/ELI (2009) Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law: http://postconflict.unep.ch/publications/int_law.pdf

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of the 31st Conference of the ICRC in 2011,[4] and UNEP proposed to the ILC that it adopt the topic with a view to the legal framework's progressive development, the final outcome of which would be *"... either a Draft Framework Convention or a Statement of Principles and Rules on the Protection of the Environment in Times of Armed Conflict."*[5]

The ILC has now proposed 20 draft principles on PERAC, with its fourth report in 2018 addressing environmental protection in situations of occupation.[6] A fifth and final report will be published in 2019. The ILC's *Special Rapporteurs* have benefitted from the technical input of affected states, UNEP, legal experts and civil society, and it appears likely that Montevideo V will coincide with the conclusion of its study. The ILC's work is widely viewed as the most significant legal development on the topic since Additional Protocol I and the ENMOD Convention in the 1970s but questions remain over what impact the draft principles will have without effective measures to disseminate and promote them.

A delayed project by the ICRC to update its 1994 guidelines for militaries is expected to be completed this year. As the earlier guidelines received a lukewarm reception from states, it will be incumbent on the ICRC, UNEP and civil society to help promote their implementation. This process will also continue into the period covered by Montevideo V.

Thanks to the efforts of states, UNEP and civil society, and the growth in understanding over the environmental causes and consequences of conflicts, the potential for progressive measures for enhancing the legal framework protecting the environment in relation to armed conflicts is far greater than it was in 2008. The UNEA resolutions 2/15 and 3/1 are examples of the topic's rising profile and were the result of effective partnerships between states affected by conflict, and civil society. The proposed Global Pact for the Environment also contains a draft article on PERAC, which if retained, would complement the outputs of the ILC's study.[7]

The extent to which Montevideo IV has influenced these processes is unclear. When our predecessor organisation launched in 2011, we were aware of the programme but have subsequently seen few if any efforts to link the programme to these processes. Nevertheless, there is potential for Montevideo V to help build on the momentum that

4. ICRC (1994) Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict: https://www.icrc.org/eng/resources/documents/article/other/57jn38.htm
5. ILC (2011) A/66/10, Report of the International Law Commission, Sixty-third session, Annex E http://legal.un.org/docs/?path=../ilc/reports/2011/english/annex.pdf&lang=EFSRAC
6. ILC, Analytical Guide to the Work of the International Law Commission, Protection of the environment in relation to armed conflicts: http://legal.un.org/ilc/guide/8_7.shtml#mandate
7. CEOBS (2018) The Global Pact for the Environment and the protection of the environment in relation to armed conflicts: https://ceobs.org/the-global-pact-for-the-environment-and-the-protection-of-the-environment-in-relation-to-armed-conflicts

has been developed and to support the realisation of the outcomes of these important initiatives. In some respects the Montevideo IV strategy of collaborating: *"...with Governments in developing and promoting compliance with environmental protection norms, standards and procedures relating to military activities so as to avoid and mitigate environmental damage,"* could be a more appropriate focus for Montevideo V. This is because the Montevideo IV period focused on the progressive development of norms, rather than on matters of implementation or compliance. However it is framed in Montevideo V, as UNEP played a key role in catalysing these processes, it should continue to support them to their conclusion - a function that will require deeper engagement with all stakeholders involved.

Recommendations for Montevideo V's work on the protection of the environment in relation to armed conflicts

1. Outcome of the International Law Commission's study on PERAC

UNEP should continue to provide technical support to the International Law Commission for its ongoing study on the *Protection of the environment in relation to armed conflicts*. Montevideo V should also include measures to promote and disseminate the outputs from the study and to encourage their implementation.

2. Revised International Committee of the Red Cross guidelines for military manuals

Montevideo V should include measures to help disseminate the new environmental guidelines for military manuals, including expert meetings with militaries, in order to support their implementation. Options to monitor compliance, in partnership with stakeholders, should also be explored.

3. Supporting expertise on PERAC

Montevideo V should use UNEP's convening power to establish an expert working group of legal and civil society experts to identify and promote measures to further enhance the legal framework protecting the environment in relation to armed conflicts. The field is developing quickly, and a working group would have the ability to respond quickly to new developments.

4. Legal capacity-building in states affected by conflict

The collapse of environmental governance during conflicts remains a serious barrier to the development and effective implementation of environmental law. Montevideo V should include measures to provide focused legal capacity-building for states affected by or recovering from conflicts.