



Report: The United Kingdom's practice on the protection of the environment in relation to armed conflicts

October 2019

Executive summary

This report outlines the UK's practice on the protection of the environment in relation to armed conflicts, or PERAC. Underpinning our analysis are the 28 draft principles on this topic that have recently been adopted on first reading by the UN's International Law Commission (ILC). The report's aim is threefold: firstly, to identify the UK's position regarding each draft principle; secondly, to trace potential discrepancies between the UK's positions and the draft principles; and thirdly, to provide recommendations that will enhance environmental protection throughout the conflict cycle. The report follows the temporal approach that is utilised by the ILC, considering practice before, during, and after armed conflicts, and in situations of occupation.

To our knowledge, this is the first time that any state's practice has been independently assessed against the ILC's draft principles. Because of the broad scope of the principles, we have had to rely on a wide range of sources in an effort to interpret UK policy and practice. And because the UK does not currently report its own practice with respect to the ILC's draft principles, some of these sources can only provide an indicative view on practice. As a result, some of the findings of this report should be viewed as preliminary and subject to change as the UK's position becomes clearer. The table below summarises the findings of our analysis.

Conflict phase	Implementation status	Observations
Practice before armed conflicts	Insufficient evidence of alignment.	UK pre-conflict PERAC practice requires clarification. The PERAC principles have highlighted a number of opportunities for enhancing protection.
Practice during armed conflicts	Some evidence of alignment.	The UK does not accept the civilian character of the natural environment and views nuclear weapons as exempt from international humanitarian law's core environmental provisions.
Practice in situations of occupation	Some evidence of alignment.	Current UK practice could be interpreted as endorsing a progressive approach that is protective of the environment and human health but clarification is needed.
Practice after armed conflicts	Reasonable evidence of alignment.	UK post-conflict practice appears to be broadly aligned with the PERAC principles but clearer documentation and reporting is needed.

Conflict and Environment Observatory (CEOBS)

CEOBS is a UK charity that monitors and raises awareness of the environmental dimensions of armed conflicts and military activities, and scrutinises developments in policy that can help reduce harm to people and ecosystems. This publication has been funded with the support of the Joseph Rowntree Charitable Trust and the Royal Norwegian Ministry of Foreign Affairs.

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1. Introduction

The topic *Protection of the environment in relation to armed conflicts* (PERAC) has recently gained momentum on the agenda of the international community, as evidenced by the adoption on first reading of 28 draft principles by the UN International Law Commission (ILC) during its 2019 session.¹ In the same vein, in early 2020 the International Committee of the Red Cross (ICRC) is expected to publish a revised version of its 1994 Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict,² while the Geneva List of Principles on the Protection of Water Infrastructure was launched in August 2019.³ In the coming months, these instruments will also be joined by principles outlining standards for victim assistance for those affected by toxic remnants of war.⁴

The aim of this report is to map out the UK's practice in relation to PERAC by delving into a wide range of material, such as the UK's statements before international fora, official documents issued by UK organs which reflect national policy, and certain instances of material acts, including on the battlefield. The objective is to gauge the UK's views and practice against the benchmark of the ILC's draft principles on PERAC. Where discrepancies are observed, recommendations are proposed.

The approach employed in the present report is inspired by the temporal approach adopted by the ILC in its PERAC study. In essence, the report is divided into four sections reflecting the different phases of the cycle of conflicts: the first part corresponds to the pre-armed conflict phase, which includes weapons reviews; the second to practice during armed conflicts; the third section is devoted to the occupation stage, and the last part deals with the post-armed conflict period.

It should be noted that the UK has consistently opposed the idea of a new convention on PERAC, instead favouring the adoption of non-binding guidelines that are not intended 'to modify the law of armed conflict'.⁵ Whilst modification of the law is not within ILC's authority, its mandate does cover 'the codification and the progressive development of international law'. Nevertheless, in 2016, the UK government supported a UN Environment Assembly resolution that urged all states 'to take all appropriate measures to ensure compliance with the relevant international obligations under international

1. ILC, 'Protection of the environment in relation to armed conflicts: Text and titles of the draft principles provisionally adopted by the Drafting Committee on first reading', 6 June 2019, available at <http://legal.un.org/docs/?symbol=A/CN.4/L.937>

2. ICRC Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict, annexed to UNGA, *The United Nations Decade of International Law*, A/49/323, 19 August 1994.

3. Geneva List of Principles on the Protection of Water Infrastructure, available at https://www.genevawaterhub.org/sites/default/files/atoms/files/gva_list_of_principles_protection_water_infra_20190826low_o.pdf

4. Currently under development by Harvard Law School's International Human Rights Clinic and the Conflict and Environment Observatory.

5. UK, Statement at the UNGA Sixth Committee, 4-6 November 2013; UK, Statement at the UNGA Sixth Committee, 3-5 November 2014; UK, Statement at the UNGA Sixth Committee, 9-11 November 2015; UK, Statement at the UNGA Sixth Committee, 5 November 2019.

humanitarian law in relation to the protection of the environment in times of armed conflict’; and to ‘implement applicable international law related to the protection of the environment in situations of armed conflict, including in their domestic legislation as appropriate ... , and to consider expressing consent to be bound by relevant international agreements to which they are not yet parties.’⁶

Moreover in 2019 the UK issued its first ‘Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level’. This step is to be praised, not least because states are generally reluctant to report on their performance regarding the implementation of international humanitarian law (IHL). It hopefully indicates a willingness to also give due consideration to the measures proposed by the ILC and others that are intended to enhance the protection of the environment, and those who depend on it, from the consequences of armed conflicts.

2. Pre-armed conflict

Principle 1: Scope

The present draft principles apply to the protection of the environment before, during or after an armed conflict.

Principle 2: Purpose

The present draft principles are aimed at enhancing the protection of the environment in relation to armed conflict, including through preventive measures for minimizing damage to the environment during armed conflict and through remedial measures.

Principle 3: Measures to enhance the protection of the environment

1. States shall, pursuant to their obligations under international law, take effective legislative, administrative, judicial and other measures to enhance the protection of the environment in relation to armed conflict.

2. In addition, States should take further measures, as appropriate, to enhance the protection of the environment in relation to armed conflict.

The **first of the ILC’s draft principles** affirms that the principles are intended to apply to the protection of the environment before, during or after an armed conflict. While there is an understandable focus on the environmental conduct of states during armed conflicts, there are steps that can be taken in peacetime that can help reduce harm to the environment in the event of conflict arising. These actions may be driven by norms, obligations and regulations under both domestic and international environmental law, even where states may seek exemptions for their militaries. To this end, **draft principle 3(1)** stipulates that ‘States shall, pursuant to their obligations under international law, take effective legislative, administrative, judicial and other measures to enhance the protection of the environment in relation to armed conflict’.

The interactions between various legal regimes and the environmental risks linked to armed conflicts and military activities can be complex. They are also typically influenced by factors beyond environmental concerns alone. For example, it could be argued that UK practice aligned with draft principle 3 during efforts to safely destroy chemical weapon precursors from Syria in 2014. As the UK noted in its communication to the ILC:

‘... the UK also received some chemical waste pre-cursors from Syria in 2014. No bilateral agreement was entered into because the UK applied an exemption set out in the EU Regulation implementing the Convention. In practice, the receipt of the waste was handled in the usual way, but with the UK Ministry of Defence rather than Syrian authorities completing the documentation. The imperative was to safely destroy the chemicals, but in a way that would protect the environment. Given the difficulties for the Syrian authorities to comply, the UK found a way to comply with the notification regime

6. Resolution 2/15, United Nations Environment Assembly, ‘Protection of the Environment in Areas Affected by Armed Conflict’ (4 August 2016) UNEP/EA.2/Res.15, para 4.

controlling transboundary movements of hazardous waste. Once the chemical waste was here, the UK of course made sure that proper environmental controls were applied.’⁷

As with other states, the UK has publicised its efforts to reduce the environmental footprint of its armed forces, during training, peace operations and conflicts.⁸ The UK Ministry of Defence (MoD) has put in place a Project Orientated Environmental Management System (POEMS) ‘that has the ability to identify, monitor and manage any environmental aspects and impacts related to the use of defence equipment’. As its POEMS ‘is based on two well-known international standards’, ISO 14001 and ISO 14040, the MoD has argued that ‘regulatory bodies can be assured that MoD environmental management aims to achieve the highest standards’.⁹ While these assurances are welcome, the management system is not certified by an independent body, as per the standard ISO process.

Principle 4: Designation of protected zones

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

Principle 5: Protection of the environment of indigenous peoples

1. States should take appropriate measures, in the event of an armed conflict, to protect the environment of the territories that indigenous peoples inhabit.
2. After an armed conflict that has adversely affected the environment of the territories that indigenous peoples inhabit, States should undertake effective consultations and cooperation with the indigenous peoples concerned, through appropriate procedures and in particular through their own representative institutions, for the purpose of taking remedial measures.

Principle 6: Agreements concerning the presence of military forces in relation to armed conflict

States and international organizations should, as appropriate, include provisions on environmental protection in agreements concerning the presence of military forces in relation to armed conflict. Such provisions may include preventive measures, impact assessments, restoration and clean-up measures.

On **draft principle 4** on the **Designation of protected zones**, the UK has expressed its doubts over its legal basis, as well as over its concomitant application during armed conflict.¹⁰ The UK also objected to the ILC addressing general issues relating to the protection of cultural heritage and areas of cultural importance within the draft principles.¹¹

The UK’s potential objection to ILC **draft principle 5** entitled **Protection of the environment of indigenous peoples** could be inferred by an excerpt of its 2014 statement at the UN General Assembly’s (UNGA) Sixth Committee, where the UK expressed its scepticism over the ILC addressing ‘undecided and often controversial questions of international environmental law, human rights law, or *the rights of indigenous peoples*’ within the PERAC study.¹²

Draft principle 6 on **Agreements concerning the presence of military forces in relation to armed conflict** aims to address the environmental footprint of overseas military facilities. Although a unilateral and generalised statement, rather than a so-called *Status of Forces Agreement*, which typically outlines specific national responsibilities and obligations on military forces hosted overseas, information regarding the MoD’s approach can be sought from a policy statement dated 20 June 2018. This states that:

‘We minimise work-related fatalities, injuries, ill-health and

7. UK, Comments on Requests for Information from the International Law Commission Contained in Chapter III of Its Report of Its 67th Session (A/70/10), March 2016, available at http://legal.un.org/docs/?path=../ilc/sessions/68/pdfs/english/poe_uk.pdf&lang=E

8. MoD, *Global Strategic Trends: The Future Starts Today*, 6th edn, 2018, p. 56.

9. Erick Galante, Tracey Temple, Melissa Ladyman, and Philip P. Gill, ‘The UK Ministry of Defence Project Orientated Environmental Management System (POEMS)’, (2017) 42(1) *Propellants, Explosives, Pyrotechnics* 36, 42.

10. UK, Statement at the UNGA Sixth Committee, 3-5 November 2014; UK, Statement at the UNGA Sixth Committee, 9-11 November 2015.

11. UK, Statement at the UNGA Sixth Committee, 3-5 November 2014; UK, Statement at the UNGA Sixth Committee, 9-11 November 2015.

12. UK, Statement at the UNGA Sixth Committee, 4-6 November 2013; UK, Statement at the UNGA Sixth Committee, 3-5 November 2014 [emphasis added].

*adverse effects on the environment, and we reduce health and safety risks so that they are as low as reasonably practicable... Overseas we apply our UK standards and arrangements where reasonably practicable and, in addition, respond to host nations' relevant HS&EP [health and safety and environmental protection] expectations ... Where Defence has exemptions, derogations or dis-applications from HS&EP legislation, we maintain Departmental arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by UK legislation ... We take reasonable care of the health and safety of ourselves and others who may be affected by our acts or omissions at work, we protect the environment and we co-operate with arrangements that are in place to enable us to discharge the duties placed on us.'*¹³

In essence, the UK MoD argues that UK troops operating abroad will, with caveats, protect the environment in line with UK legal standards. Independent scrutiny of UK troops' environmental performance abroad would help increase confidence in these policies, particularly where the UK operates in states with weak regulatory frameworks and limited capacity to assess the environmental impact of MoD activities.

Principle 7: Peace operations

States and international organizations involved in peace operations in relation to armed conflict shall consider the impact of such operations on the environment and take appropriate measures to prevent, mitigate and remediate the negative environmental consequences thereof.

Following on from draft principle 6, **draft principle 7** entitled **Peace operations** addresses the need to integrate environmental themes into peace operations. The UK military is employed in a number of countries as part of both NATO and UN-led missions.¹⁴ Isolating the UK MoD's environmental policies and practice from those of these entities – and beyond the policies cited above under draft principle 6 - is difficult. In recent years measures have been taken to mainstream environmental protection in UN peacekeeping operations, although much remains to be done.¹⁵ Similarly NATO's Allied Doctrine includes a range of measures to mitigate the environmental impact of operations:

'Effective environmental protection enhances force health protection, supports operations by building positive relationships with the HN [host nation] and saves money and lives by reducing the logistic burden. Factors to be considered include pollution prevention, waste management, chemical,

13, MoD, Health, Safety and Environmental Protection in Defence: Policy Statement by the Secretary of State for Defence, 20 June 2018, paras 2(a), 2(c), 2(d), and 2(f) [emphases added]. See also JSP 418 Management of Environmental Protection in Defence: Part 1 Directive, JSP 418 Pt.1 (V1.0 Dec 14), at p. 9 ('When on Operations personnel should apply UK standards where reasonably practicable and, in addition, apply the Host Nation's standards for Health and Safety, including EP. Whilst it is fully understood that total compliance with UK legislation is not always possible within the operational environment, Operational Commanders have a duty of care to ensure, as far as reasonably practicable, that the approach to EP, as part of Op Safety is proportionate with the understanding that it may not be possible to fully meet legislative and policy standards expected in the UK. Where this is the case, decisions shall be supported by a robust risk assessment process').

14. For a detailed interactive map of UK troops' participation in operations abroad, see <https://bit.ly/znKLqCt>

15. See Lucile Maertens and Malkit Shoshan, 'Greening Peacekeeping: The Environmental Impact of UN Peace Operations' (New York: International Peace Institute, April 2018), available at https://www.ipinst.org/wp-content/uploads/2018/04/1804_Greening-Peacekeeping.pdf

biological, radiological and nuclear (CBRN) risk management (prevention, protection and recovery of deliberate, accidental or natural CBRN incidents), cultural property protection and protection of flora and fauna.’¹⁶

Principle 8: Human displacement

States, international organizations and other relevant actors should take appropriate measures to prevent and mitigate environmental degradation in areas where persons displaced by armed conflict are located, while providing relief and assistance for such persons and local communities.

UK practice relating to **draft principle 8** on **Human displacement** can potentially be inferred from the policies of the UK’s Department for International Development (DfID). As a leading donor for humanitarian response DfID has a potentially influential role in promoting environmental standards in situations of displacement linked to armed conflicts. At present, potential recipients of UK aid are required to identify how environmental risks have been minimised in projects, explain whether mitigation actions have been planned, and clarify whether opportunities for environmental improvement have been exploited.¹⁷ However, other leading state donors take a more pro-active stance on environmental themes in humanitarian response and it is our understanding that DfID’s policy is currently under development.

On the other hand, in its 2019 statement at the UNGA Sixth Committee, the UK, having proclaimed that the ILC’s PERAC work ‘should not broaden in scope to examine how other legal fields, such as human rights, interrelate with it’, offered the controversial and bewildering proposition that ‘human health does not fall within the parameters of a study on the protection of the environment.’¹⁸

Principle 9: State responsibility

1. An internationally wrongful act of a State, in relation to an armed conflict, that causes damage to the environment entails the international responsibility of that State, which is under an obligation to make full reparation for such damage, including damage to the environment in and of itself.

2. The present draft principles are without prejudice to the rules on the responsibility of States for internationally wrongful acts.

The first paragraph of **draft principle 9** on **State responsibility** adjusts the general framework of the law on state responsibility to the circumstances of a violation of international law that causes wartime environmental damage. This includes providing for pure environmental damage to be addressed by reparations. This principle was established by the United Nations Compensation Commission, itself established by the Security Council after the 1991 Gulf War with the support of the UK,¹⁹ and used in a peacetime context by the International Court of Justice in its 2018 compensation judgement in the case between Costa Rica and Nicaragua.²⁰ At the time of writing the UK has not provided a specific view on draft principle 9. However, as it comprises a restatement of international law, adjusted to environmental damage caused during

16. NATO Standard AJP-3 Allied Joint Doctrine for the Conduct of Operations, Edition C Version 1, February 2019, 1-15(h).

17. See for example, DfID, ‘Guidelines for NGOs applying for CHASE Humanitarian Response Funding’, updated June 2019, at p. 22, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819843/Guidelines-NGOs-applying-CHASE-Humanitarian-Response-Funding-June_2019.pdf

18. UK, Statement at the UNGA Sixth Committee, 5 November 2019.

19. See Cymie R. Payne, ‘Developments in the Law of Environmental Reparations: A Case Study of the UN Compensation Commission’ in Carsten Stahn, Jennifer S Easterday and Jens Iverson (eds), *Environmental Protection and Transitions from Conflict to Peace* (OUP 2017) 329, 355-6. It is noteworthy that the UNCC found that claims from six states (Australia, Canada, Germany, the Netherlands, the United Kingdom, and the United States) for the costs they had borne in assisting the Gulf states to abate and prevent environmental damage were also reimbursable.

20. See *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica, Judgment of 2 February 2018, para 42, available at <https://www.icj-cij.org/files/case-related/150/150-20180202-JUD-01-00-EN.pdf> (last accessed 20 September 2019).

armed conflict, it is hoped that it will be accepted by the UK.

Principle 10: Corporate due diligence

States should take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories exercise due diligence with respect to the protection of the environment, including in relation to human health, when acting in an area of armed conflict or in a post-armed conflict situation. Such measures include those aimed at ensuring that natural resources are purchased or obtained in an environmentally sustainable manner.

Principle 11: Corporate liability

States should take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories can be held liable for harm caused by them to the environment, including in relation to human health, in an area of armed conflict or in a post-armed conflict situation. Such measures should, as appropriate, include those aimed at ensuring that a corporation or other business enterprise can be held liable to the extent that such harm is caused by its subsidiary acting under its de facto control. To this end, as appropriate, States should provide adequate and effective procedures and remedies, in particular for the victims of such harm.

The ILC has sought to reflect the important role that private companies play in causing or facilitating harm to the environment in areas affected by conflicts with **draft principle 10 on Corporate due diligence**, and **draft principle 11 on Corporate liability**. At the time of writing the UK has not provided its views on either principle but it does currently participate in processes that mirror the obligations found in draft principle 10.

The Kimberley Process Certification Scheme (KPCS) imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as ‘conflict-free’, and prevent conflict diamonds from entering the legitimate trade. Participants can only legally trade with other participants who have also met the minimum requirements of the scheme.

Since August 2013, the KPCS has had 55 participants, representing 82 countries, with the European Union and its 28 Member States counting as a single participant, represented by the European Commission. KPCS members account for approximately 99.8% of the global production of rough diamonds.²¹ In practical terms, and as far as ‘conflict diamonds’ are concerned, the UK is required to ensure that corporations and other business enterprises operating in or from its territory exercise due diligence with respect to the protection of the environment, in line with the requirements of draft principle 10.

Further indications of how the UK government may approach corporate due diligence may be inferred from its participation in processes aimed at curbing the trade in products that come from conflict-affected areas, namely timber, via the EU Timber Regulation;²² ‘conflict minerals’, via the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;²³ and other products including oil and gas, via the Extractive Industry

21. See <https://www.kimberleyprocess.com/en/participants>

22. EU Regulation No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance, OJ L 295, 12.11.2010, 23–34 (EU Timber Regulation). According to recital (3) of the EU Timber Regulation illegal logging can be linked to armed conflict. Moreover, under Article 6(1)(b), ‘operator’s due diligence systems must incorporate relevant risk assessment criteria to analyse and evaluate the risk of illegally harvested timber being placed on the EU market, including consideration of the prevalence of armed conflict and the presence of sanctions imposed by the UN security council or the Council of the European Union on timber imports or exports.’ Guidance Document for the EU Timber Regulation: Consideration of Prevalence of Armed Conflict and Sanctions in Due Diligence Systems, available at https://ec.europa.eu/environment/forests/pdf/Guidance%20conflict%20timber_EG%20Agreed.pdf

23. OECD, ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’ (OECD Publishing, 3rd edition, 2016), available at <http://dx.doi.org/10.1787/9789264252479-en>. The OECD Due Diligence Guidance contains ‘recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. This Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas. The OECD Guidance is global in scope, and applies to all mineral supply chains.’ See <https://www.oecd.org/corporate/mne/mining.htm>

Transparency Initiative.²⁴

On the question of corporate liability, and in the absence of a clear statement from the UK on the ILC's draft principle, a key question will be the importance of the extent of the control exercised by the parent company over its subsidiary. This was made clear by the UK Supreme Court in the *Vedanta v. Lungowe* case, which considered the possible liability of the British multinational group Vedanta Resources for the release of toxic substances into a watercourse in Zambia by its subsidiary: 'Everything depends on the extent to which, and the way in which, the parent availed itself of the opportunity to take over, intervene in, control, supervise or advise the management of the relevant operations (including land use) of the subsidiary.'²⁵

Weapon reviews

The ILC purposefully chose not to address particular weapons and their environmental effects separately.²⁶ However, as reviewing the potential impact of new weapons often takes place in the pre-conflict phase, examining how the UK approaches environmental concerns in weapons development can provide insights into how the UK prioritises the environment in its wider defence policies.

IHL obliges the UK to undertake reviews into new or modified weapons. Article 36 of Additional Protocol I to the 1949 Geneva Conventions, to which the UK is party, provides for the following:

'In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party [e.g. the UK] 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.'²⁷

Accordingly, states party to Additional Protocol I have to review new weapons to ensure they will not violate fundamental principles of IHL, such as the principle of distinction between civilians and combatants, or other applicable rules of international law.

The MoD Development, Concepts and Doctrine Centre held the first

24. 2019 EITI Standard, 17 June 2019, available at https://eiti.org/sites/default/files/documents/eiti_standard2019_a4_en.pdf

25. *Vedanta Resources PLC and another v Lungowe and others*, Judgment, 10 April 2019, Hilary Term [2019] UKSC 20, On appeal from [2017] EWCA Civ 1528, para 49, cited in ILC, 'Report of the International Law Commission on the Work of its 71st Session' (29 April-7 June and 8 July-9 August 2019) UN Doc. A/74/10, Chapter VI 'Protection of the environment in relation to armed conflicts', 244, para 3.

26. On the grounds that 'the effect of specific weapons should not be addressed as a separate issue since the law of armed conflict deals with all weapons on the same legal basis', as former ILC Special Rapporteur, Marie Jacobsson, noted. ILC, 'Report of the International Law Commission on the Work of its 66th Session (5 May-6 June and 7 July-8 August 2014) UN Doc. A/69/10, Chapter XI 'Protection of the environment in relation to armed conflicts', 254, para 215.

27. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I), art 36.

ever international Weapons Review Forum in autumn 2015. A second forum was organised in 2016. Interestingly, the MoD's guidance on UK weapon reviews acknowledges that environmental effects comprise a subject that has received particular attention of late, but at the same time makes clear that '[w]eapon reviews inherently deal with classified material relating to the performance and use of weapons. Accordingly, any trend towards openness will always be bounded by important concerns of national security'.²⁸ This is a conflict that can potentially hinder efforts to independently assess the extent to which the environment is prioritised in the review process.

The ICRC Guide to conducting article 36 reviews stipulates that 'the reviewing authority will have to take into account a wide range of 'military, technical, health and *environmental* factors'.²⁹ To this end, the UK weapon reviews address the specific question of whether the weapon, means or method of warfare is intended, or might be expected, to cause widespread, long-term and severe damage to the natural environment.³⁰ This cumulative threshold for unacceptable harm has been widely criticised for being unrealistically high and poorly defined.³¹

Principle 12: Martens Clause with respect to the protection of the environment in relation to armed conflict

In cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

The Martens clause is often invoked in the analysis of the legality of new weapons,³² this requires that where there is no explicit protection for civilians and combatants under international law, protection exists as derived from "established custom, from the principles of humanity and from the dictates of public conscience."³³ UK weapon reviews, unlike those of many other states, reportedly take the Martens clause into consideration.³⁴ The ILC has interpreted the Martens clause to include protection of the environment, as articulated by **draft principle 12**, but it is not yet clear whether the UK endorses this position. The MoD should therefore consider integrating the ILC's proposed formulation into its review process.

The foregoing highlights some of the tensions present in UK PERAC policy. Environmental standards can be viewed as limiting the freedom of militaries to act. External scrutiny of actions and policies may often

28. UK Weapon Reviews, Development, Concepts and Doctrine Centre, Ministry of Defence, March 2016.

29. ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare Measures to Implement Article 36 of Additional Protocol I of 1977* (ICRC, 2006) 17 [emphasis added].

30. See James Farrant and Christopher M. Ford, 'Autonomous Weapons and Weapon Reviews: The UK Second International Weapon Review Forum' (2017) 93(1) *International Law Studies* 389, 408.

31. Elizabeth Mrema, Carl Bruch, and Jordan Diamond, 'Protecting the environment during armed conflict: an inventory and analysis of international law' (UNEP/Earthprint, 2009) 51.

32. The Martens clause was introduced in the preamble of the 1899 Hague Convention II on the initiative of the Russian jurist Fyodor Fyodorovich Martens, in order to overcome the diplomatic impasse that the Hague Conference had reached. See Antonio Cassese, 'The Martens Clause: Half a Loaf or Simply Pie in the Sky?' (2000) 11 *European Journal of International Law* 187, 193-8. Since then, it has been repeatedly stipulated or reformulated in subsequent IHL treaties.

33. Art 1(2), Additional Protocol I.

34. James Farrant and Christopher M. Ford, 'Autonomous Weapons and Weapon Reviews: The UK Second International Weapon Review Forum' (n 29) 409.

be constrained by security considerations, while actions related to environmental protection may be limited to complying only with the letter of the law, rather than exceeding it. For example, beyond specific weapons and weapon systems, the UK has also argued that ‘it does not think it appropriate for States to be obliged to prepare environmental impact assessments as part of military planning’.³⁵

3. During armed conflict

The UK is one of a group of states that has urged the ILC to confirm that the law of armed conflict is *lex specialis* in the context of its PERAC study,³⁶ i.e. that IHL prevails over other fields of international law in times of armed conflict. Other regimes of law, such as international human rights law or international environmental law, have been traditionally thought to impose more burdensome obligations on armed forces during armed conflicts. It should be noted that the UK has not ruled out ‘the proposal to produce guidelines with examples of rules of international law that may be suitable for continued application during armed conflict.’³⁷ However, the proposal for alternative ‘guidelines’, as supported by the UK, should be considered as *lex ferenda*, that is, non-binding guidelines, or soft law.

Alongside statements delivered by the UK in the context of the ILC’s work on PERAC, the primary source for the UK’s practice during conflicts is the UK Manual on the Law of Armed Conflict (LOAC Manual), which provides guidance for military conduct during hostilities.

Draft principle 12 on the Martens clause as applied to the environment: see ‘Weapons review’, above.

Principle 13: General protection of the natural environment during armed conflict

1. The natural environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict.
2. Care shall be taken to protect the natural environment against widespread, long-term and severe damage.
3. No part of the natural environment may be attacked, unless it has become a military objective.

In relation to paragraph 1 of **draft principle 13** entitled **General protection of the natural environment during armed conflict**, the UK, in a statement at the UNGA, has taken the position that ‘there is no basis for treating all the natural environment as a civilian object for the purposes of the laws of armed conflict’ and thus it would not benefit from the protection afforded to civilian objects under IHL.³⁸ This could be seen as regressive, or at least as not in keeping with current normative trends.

With respect to paragraph 2 of draft principle 13, the UK LOAC Manual provides that: ‘*Regard* must be had to the natural environment in the conduct of all military operations’,³⁹ instead of employing the language of ‘care’, drawn from article 55(1) of Additional Protocol I. Importantly, this statement also covers military operations within the context of non-international armed conflicts, even though the ‘care’ obligation, as enshrined in Additional Protocol I, applies only to international armed

35. UK, Statement at the UNGA Sixth Committee, 4-6 November 2013; UK, Statement at the UNGA Sixth Committee, 3-5 November 2014.

36. UK, Statement at the UNGA Sixth Committee, 31 October-1 November 2017.

37. UK, Statement at the UNGA Sixth Committee, 3-5 November 2014; UK, Statement at the UNGA Sixth Committee, 9-11 November 2015.

38. UK, Statement at the UNGA Sixth Committee, 9-11 November 2015.

39. UK, *Manual of the Law of Armed Conflict*, Ministry of Defence, 1 July 2004, at p.

394, 15.20, [emphasis added] http://gov.uk/government/uploads/system/uploads/attachment_data/file/27874/JSP3832004Edition.pdf (UK LOAC Manual).

conflicts. Elsewhere, the LOAC Manual ordains that: ‘Methods and means of warfare should be employed with due regard for the natural environment, taking into account the relevant rules of international law.’⁴⁰

Under the 2001 UK International Criminal Court Act, it is a punishable offence to commit a war crime as defined in Article 8(2)(b)(iv) of the 1998 International Criminal Court Statute,⁴¹ to which the UK is party. The following conduct, if committed in the context of an international armed conflict, qualifies as a war crime:

‘Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or 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.’⁴²

The inclusion of the natural environment was unprecedented at the time, however it is generally considered that the threshold of environmental harm enshrined in the above provision is so high that it is unlikely to ever be applied in practice.

Draft principle 14 on the Application of the law of armed conflict to the natural environment and draft principle 15 on Environmental considerations should be read in concert. In relation to the application of the proportionality principle under IHL, the UK LOAC Manual provides that:

‘... “collateral casualties” or “collateral damage” means the loss of life of, or injury to, civilians or other protected persons, and *damage to or the destruction of the natural environment* or objects that are not in themselves military objectives’.⁴³

With respect to the rules on military necessity, the Manual also mentions that: ‘Damage to or destruction of the natural environment not justified by military necessity and carried out wantonly is prohibited’.⁴⁴ Consequently, the UK evidently supports the application of the fundamental principles of IHL, and of the rules on military necessity to the natural environment. This can also be inferred by its public statements in relation to particular attacks. For example, the UK MoD’s reference to the targeting of ‘carefully selected elements of the oilfield infrastructure’ in Iraq and Syria during December 2015, in order to undermine ‘Daesh’s ability to extract the oil to fund their terrorism’.⁴⁵ In this instance, it was subsequently reported that MoD specialists analysed airborne hazards, fires and spills and environmental hazards

Principle 14: Application of the law of armed conflict to the natural environment

The law of armed conflict, including the principles and rules on distinction, proportionality, military necessity and precautions in attack, shall be applied to the natural environment, with a view to its protection.

Principle 15: Environmental considerations

Environmental considerations shall be taken into account when applying the principle of proportionality and the rules on military necessity.

40. Ibid, at p. 316, 12.24.

41. 2001 UK ICC Act, section 50(1).

42. Art 8(2)(b)(iv), Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3.

43. UK LOAC Manual, at p. 349, 13.45 [citation omitted, emphasis added].

44. Ibid, at p. 316, 12.24 [citation omitted].

45. See <https://www.gov.uk/government/publications/british-forces-air-strikes-in-iraq-monthly-list/raf-air-strikes-in-iraq-and-syria-december-2015>

related to gas-oil separation plants in the planning of the attacks.⁴⁶ Nevertheless, the specific criteria for determining the environmental acceptability, or otherwise, of the attacks are not available.

Principle 16: Prohibition of reprisals

Attacks against the natural environment by way of reprisals are prohibited.

Draft principle 16 on the **Prohibition of reprisals** reproduces *verbatim* the treaty text of article 55(2) of Additional Protocol I (to which the UK is a Party), which is also contained in the UK's LOAC Manual.⁴⁷ Unsurprisingly, and in line with its reservation attached to articles 51-55 of Additional Protocol I, the UK rejects a blanket prohibition of belligerent reprisals against the natural environment, as it claims that the treaty provision does not reflect existing customary international law.⁴⁸ The UK justifies this on the basis of its understanding that Additional Protocol I does not cover nuclear weapons, instead dealing only with conventional weapons.⁴⁹

The right to use nuclear weapons in reprisal against the environment of a foe is an unwavering position for the UK, with earlier examples found in its written statement submitted to the International Court of Justice in the context of the proceedings on the Advisory Opinion on the *Legality of Use or Threat of Nuclear Weapons*,⁵⁰ and in the UK's LOAC Manual.⁵¹ The UK's views on the legality of the use of nuclear weapons have been rejected by the Treaty on the Prohibition of Nuclear Weapons, as its preamble confirms that their use 'would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law'.⁵² As noted above, the ILC decided not to deal separately with the environmental effects of specific weapons, and in its commentaries there are references to objections from nuclear states, including the UK, about the applicability of some IHL rules to the use of nuclear weapons, including the one enshrined in draft principle 16.

Principle 17: 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 17 on **Protected zones**, which should be read with **draft principle 4**, could enhance environmental protection during armed conflict, and even bring into play the continued application of international environmental treaties and the concomitant place-based protection afforded to ecologically sensitive areas. After all, area-based protection does not form uncharted territory within the corpus of IHL, as indicated, for example, by the concept of demilitarised zones.

46. See Lieutenant Colonel Marko Bulmer, 'Environmental Degradation in the Battlespace' (2019) *British Army Review*, 49, available at https://www.army.mod.uk/media/6862/bar_special_culture_conflict_web.pdf

47. UK LOAC Manual, at p. 75, 5.29.

48. UK, Statement at the UNGA Sixth Committee, 9-11 November 2015; UK, Statement at the UNGA Sixth Committee, 28 October-2 November 2016; UK, Statement at the UNGA Sixth Committee, 5 November 2019.

49. See United Kingdom, Reservations and Declarations upon Ratification of Additional Protocol I, 28 January 1998, Re: Article 51-55, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Notification.xsp?action=openDocument&documentId=0A9E03FoF2EE757CC1256402003FB6D2>

50. UK, Written statement submitted to the International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, sections 3.47, 3.76, 3.81.

51. UK LOAC Manual, at p. 76, 5.29.3.

52. Treaty on the Prohibition of Nuclear Weapons (adopted 7 July 2017, not yet in force) available at https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch_XXVI_9.pdf, preambular paragraph 10. It should be made clear that the treaty is not yet in force nor has the UK signed it.

Principle 18: Prohibition of pillage

Pillage of natural resources is prohibited.

Draft principle 18 on the **Prohibition of pillage** reflects a well-established rule of IHL and it is one that could equally apply to parts of the environment, to the extent that natural resources could be categorised as ‘property’. It remains to be seen whether this will be accepted by the UK, but a statement found in the LOAC Manual points to that direction: ‘Exploitation of the economy of the occupied territory and private enrichment are forbidden.’⁵³ In spite of this, during the development of the draft principles, the UK argued that the exploitation of natural resources should be excluded from the scope of the ILC’s work.⁵⁴ Until the UK makes a statement on the proposed principle its position will remain unclear.

Principle 19: Environmental modification techniques

In accordance with their international obligations, States shall not engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State.

Draft Principle 19 on **Environmental modification techniques** was added during the 2019 session of the ILC, and its text is inspired by the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD),⁵⁵ which was ratified by the UK on 16 May 1978. As with the IHL prohibition on reprisals against the environment, the UK actively sought to exclude nuclear weapons from the scope of ENMOD. In its written statement submitted to the ICJ in the Nuclear Weapons case in 1995, the UK stated:

‘While the use of a nuclear weapon may have considerable effects on the environment, it is unlikely that it would be used for the deliberate manipulation of natural processes. The effect on the environment would normally be a side-effect of the use of a nuclear weapon, just as it would in the case of use of other weapons.’⁵⁶

4. Situations of occupation

Principle 20: General obligations of an Occupying Power

1. An Occupying Power shall respect and protect the environment of the occupied territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory.

2. An Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory that is likely to prejudice the health and well-being of the population of the occupied territory.

3. An Occupying Power shall respect the law and institutions of the occupied territory concerning the protection of the environment and may only introduce changes within the limits provided by the law of armed conflict.

The UK’s general position on the ILC’s PERAC study, which was also reflected in its 2018 statement at the UNGA Sixth Committee, was that the ILC ‘should not seek to modify the law of armed conflict, or the law of occupation.’⁵⁷ And, in line with its consideration of the law of armed conflict as *lex specialis*, the UK opposed the extension of the topic’s scope to analyse how other subfields of international law, and especially human rights law, interacted with the law of armed conflict in times of occupation.

With respect to the three ILC draft principles (**draft principles 20-22**), which apply in situations of occupation, two paragraphs of the UK LOAC Manual are of relevance:

‘Land and buildings that belong to the state but that are

53. UK LOAC Manual, at p. 302, 11.83.2.

54. UK, Statement at the UNGA Sixth Committee, 3-5 November 2014; UK, Statement at the UNGA Sixth Committee, 9-11 November 2015.

55. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (adopted 10 December 1976, entered into force 5 October 1978) 1108 UNTS 152 (ENMOD Convention).

56. UK, Written statement submitted to the International Court of Justice, Legality of the Threat or Use of Nuclear Weapons, section 3.75.

57. UK, Statement at the UNGA Sixth Committee, 26-31 October 2018; UK, Statement at the UNGA Sixth Committee, 5 November 2019.

Principle 21: Sustainable use of natural resources

To the extent that an Occupying Power is permitted to administer and use the natural resources in an occupied territory, for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict, it shall do so in a way that ensures their sustainable use and minimizes environmental harm.

Principle 22: Due diligence

An Occupying Power shall exercise due diligence to ensure that activities in the occupied territory do not cause significant harm to the environment of areas beyond the occupied territory.

essentially civilian or non-military in character, such as public buildings, land, *forests, parks, farms, and coal mines*, may not be damaged or destroyed unless that is imperatively necessitated by military operations. The occupying power is the administrator, user, and, in a sense, guardian of the property. It must not waste, neglect, or abusively exploit these assets so as to decrease their value. The occupying power has no right of disposal or sale but may let or use public land and buildings, *sell crops, cut and sell timber, and work mines*. It must not enter into commitments extending beyond the conclusion of the occupation and *the cutting or mining must not exceed what is necessary or usual.*⁵⁸

The latter part could be construed as endorsing the notion of the ‘sustainable use of natural resources’, as envisaged in **draft principle 21**, which is increasingly considered as the contemporary equivalent to usufruct for an occupying power. Nevertheless, until the UK reveals its position, any interpretation to this end is speculative.

The second relevant paragraph in the UK LOAC Manual is also of relevance to this question:

‘Extensive destruction not justified by military necessity, particularly of things indispensable to the survival of the civilian population (including food, agricultural areas, drinking water installations, irrigation works, *and the natural environment*) with a view to denying them to the civilian population or the adverse party is prohibited and may amount to a grave breach. The cumulative effect of this is to ban the type of general destruction known as a ‘scorched earth policy’ in occupied territory.’⁵⁹

5. Post-armed conflict

Principle 23: Peace processes

1. Parties to an armed conflict should, as part of the peace process, including where appropriate in peace agreements, address matters relating to the restoration and protection of the environment damaged by the conflict.

2. Relevant international organizations should, where appropriate, play a facilitating role in this regard.

The ILC’s draft principles relevant to the post-conflict phase draw more heavily on the practice of states and international organisations than on existing legal frameworks. This means that interpreting UK practice requires consideration of a wider range of sources.

The UK has only been a direct party to one peace process in the last few decades – which led to the Good Friday Agreement in Northern Ireland. This limits the interpretation of UK practice on **draft principle 23 on Peace processes**. UK development assistance to Colombia for the implementation of its peace agreement has been earmarked for projects intended to limit deforestation.⁶⁰ However, this is closely linked to wider security considerations and is provided in a context where sustainable development is viewed as a core component of the Colombian peace agreement.

The agreement reached in the multi-party negotiations over Northern

58. UK LOAC Manual, at p. 303, 11.86 [emphases added].

59. Ibid, at p. 305, 11.91 and 11.91.1 [emphasis added].

60. See UK FCO, ‘Colombia Peace and Stability’, available at <https://devtracker.dfid.gov.uk/projects/GB-GOV-3-CSSF-04-000002>

Ireland, which forms part of the Good Friday Agreement,⁶¹ contains two provisions relating to environmental protection. It required the British-Irish Council (BIC) to:

‘... exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant Administrations. Suitable issues for early discussion in the BIC could include transport links, agricultural issues, *environmental issues*, cultural issues, health issues, education issues and approaches to EU issues. Suitable arrangements to be made for practical co-operation on agreed policies.’⁶²

Moreover, the British government undertook, subject to the public consultation under way at the time of the treaty’s conclusion, to:

‘... make rapid progress with: (i) a new regional development strategy for Northern Ireland, for consideration in due course by the Assembly, tackling the problems of a divided society and social cohesion in urban, rural and border areas, *protecting and enhancing the environment*, producing new approaches to transport issues, strengthening the physical infrastructure of the region, developing the advantages and resources of rural areas and rejuvenating major urban centres’.⁶³

Although, strictly speaking, the arrangements detailed above did not concern themselves with ‘the restoration and protection of the environment damaged by the conflict’, as draft principle 23 instructs, they nevertheless brought environmental matters in the context of a peace process to the fore, approaching environmental protection as a catalyst for a sustainable peace.

Principle 24: Sharing and granting access to information

1. To facilitate remedial measures after an armed conflict, States and relevant international organizations shall share and grant access to relevant information in accordance with their obligations under international law.

2. Nothing in the present draft principle obliges a State or international organization to share or grant access to information vital to its national defence or security. Nevertheless, that State or international organization shall cooperate in good faith with a view to providing as much information as possible under the circumstances.

Access to information on environmental risks is crucial for reducing harm to people and ecosystems, and is a fundamental norm of international environmental law. For the purposes of **draft principle 24 on Sharing and granting access to information**, the ILC sought to balance this norm with military sensitivities.

There are instances where the UK MoD has been open about sharing information to help mitigate risks. For example, the UK MoD policy document on depleted uranium (DU) munitions and development notes that ‘[i]nformation has been provided to assist the civilian administration and international relief agencies in carrying out any monitoring they might wish to undertake.’⁶⁴ (See also draft principles 27 and 28 below.) However, there are doubtless many other examples whereby the UK has communicated environmental data to UN or NATO partners, or national authorities, without acknowledging this publicly.

61. Signed on 10 April 1998, entered into force on 2 December 1999, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf

62. Ibid, strand three ‘British-Irish Council’, para 5 [emphasis added].

63. Ibid, Rights, Safeguards and Equality of Opportunity: Economic, Social and Cultural Issues, para 2 [emphasis added].

64. UK MoD, depleted uranium (DU) munitions policy and development, 8 July 2013.

Whilst this might have occurred on a voluntary basis, the draft principle includes treaty obligations under disarmament instruments. The UK is party to some of these treaties (see Annex), such as the Chemical Weapons Convention.⁶⁵

Principle 25: Post-armed conflict environmental assessments and remedial measures

Cooperation among relevant actors, including international organizations, is encouraged with respect to post-armed conflict environmental assessments and remedial measures.

Since 1999, post-conflict environmental assessments have become the norm during recovery. These are typically implemented by international organisations such as UNEP, the UN Development Programme (UNDP) and the World Bank. The UK has contributed to many of these indirectly through its funding for these organisations but as these funds are not earmarked specifically for assessments it is difficult to precisely determine its financial contribution to the implementation of **draft principle 25 on Post-armed conflict environmental assessments and remedial measures**. One exception to this was the UK's cooperation with UNEP, through DfID, in the context of the post-armed conflict environmental assessment conducted in the Democratic Republic of Congo.⁶⁶

Principle 26: Relief and assistance

When, in relation to an armed conflict, the source of environmental damage is unidentified, or reparation is unavailable, States are encouraged to take appropriate measures so that the damage does not remain unrepaired or uncompensated, and may consider establishing special compensation funds or providing other forms of relief or assistance.

Draft principle 26 on Relief and assistance encourages states to take appropriate measures aimed at repairing and compensating environmental damage caused during armed conflict, where the source of environmental damage is unidentified or reparation is not available. Moreover, *ex gratia* payments, which deal with the 'remediation of harm to the environment', are not unusual 'for wartime injury and damage without acknowledging responsibility, and possibly also excluding further liability'.⁶⁷

Principle 27: Remnants of war

1. After an armed conflict, parties to the conflict shall seek to remove or render harmless toxic and hazardous remnants of war under their jurisdiction or control that are causing or risk causing damage to the environment. Such measures shall be taken subject to the applicable rules of international law.

In this context, the UK's MoD Common Law Claims & Policy Division is tasked with processing '[p]ublic liability claims arising from operations in Iraq and Afghanistan'.⁶⁸ The MoD received 1,460 claims arising from its Afghan operations in 2010, paying a total of more than £1.3m in compensation. It is notable that these included claims relating to environmental damage, such as the destruction of crops and trees, or the killing of livestock.⁶⁹

2. The parties shall also endeavour to reach agreement, among themselves and, where appropriate, with other States and with international organizations, on technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations to remove or render harmless such toxic and hazardous remnants of war.

3. Paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive ordnance and other devices.

65. See art 3(1)(a)(ii), Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) (adopted 3 September 1992, entered into force 29 April 1997) 1975 UNTS 45 ('Each State Party shall submit to the Organization, not later than 30 days after this Convention enters into force for it, the following declarations, in which it shall: (a) With respect to chemical weapons: (ii) Specify the precise location, aggregate quantity and detailed inventory of chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with Part IV (A), paragraphs 1 to 3, of the Verification Annex, except for those chemical weapons referred to in sub-subparagraph (iii)').

66. UNEP, The Democratic Republic of the Congo Post-Conflict Environmental Assessment: Synthesis for Policy Makers, 2011, 5.

67. ILC, 'Report of the International Law Commission on the Work of its 71st Session' (n 24) 290, para 2.

68. See '2.11 Types of claims', available at <https://www.gov.uk/government/publications/common-law-claims-policy-division/what-we-do-and-types-of-claims-we-handle#claims-policy>

69. Guardian, 'Afghanistan civilian compensation: the sums received from UK forces', available at <https://www.theguardian.com/world/datablog/2011/mar/28/afghanistan-civilian-compensation#data>. Between 2015 and 2017 compensation payouts declined from £23,000 to zero. MoD, 'Compensation Claims Financial Year 2016/17', 14 September 2017, at p. 5, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643841/20170908-

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2. The parties shall also endeavour to reach agreement, among themselves and, where appropriate, with other States and with international organizations, on technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations to remove or render harmless such toxic and hazardous remnants of war.

3. Paragraphs 1 and 2 are without prejudice to any rights or obligations under international law to clear, remove, destroy or maintain minefields, mined areas, mines, booby-traps, explosive ordnance and other devices.

Draft principle 27 on Remnants of war, and draft principle 28 on Remnants of war at sea reconnect to earlier holistic framings around war legacies that captured “material remnants of war” and which existed prior to more recent humanitarian-oriented framings that focus primarily on explosive remnants of war.⁷⁰ Of particular note is the ILC’s use of the term “toxic and hazardous remnants of war”, which seeks to capture remnants that may pose a threat to the environment or human health through non-explosive hazards.

As the first UK ‘Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level’ details, the UK has not ratified Protocol V on explosive remnants of war (ERW) of the Convention on Certain Conventional Weapons but has ‘provided considerable resources of personnel, equipment and funds to assist in clearing unexploded ordnance around the world to minimise its impact on civilians’.⁷¹

Beyond explosive weapon remnants, and as made clear in the Report of the Iraq Inquiry (known as the Chilcot report), the UK subscribes to the view that a nation that has fired DU in conflict is under no legal obligation *per se* to return to the region post-conflict to clear up DU remnants. The declassified MoD document goes on to add that ‘[t]he legality of this issue has developed through custom: there are no special policies or conventions which address clearance of DU residue’.⁷²

Nevertheless, the UK has taken measures in line with **draft principles 24, 25 and 27(2)**, even if they have been taken as a matter of policy rather than as a matter of legal obligation pursuant to the UK’s official position. Such measures are detailed in the Chilcot report and include the sharing of UK DU firing locations with UNEP, the clearance of surface-lying DU ammunition from the battlefield (para 13), along with explosive remnants of war (para 14); clean-up and disposal (para 15), warning Iraqi locals (para 16), and carrying out risk assessments on DU within urban areas (para 17). Similarly, and in the context of the NATO campaign in Kosovo in 1999, it was officially stated that ‘British forces had played their part—particularly in the clearance of unexploded ordnance (depleted uranium munitions)’.⁷³

The only areas mined with explosive ordnance under the UK’s jurisdiction or control are on the Falkland Islands in the South Atlantic,

[Claims_Annual_Report_bulletin_PUBLICATION_FY1617_FINAL.pdf](#)

70. For the civil-society-led process that has helped to reverse the historical decoupling of explosive remnants of war from other physical and toxic war remnants, see Doug Weir, ‘Reframing the Remnants of War: The Role of the International Law Commission, Governments, and Civil Society’ in Carsten Stahn, Jennifer S Easterday and Jens Iverson (eds), *Environmental Protection and Transitions from Conflict to Peace* (OUP 2017) 438.

71. FCO, Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level, 2019, at p. 41.

72. Iraq Inquiry, Declassified MoD document, Annex C: Current Policies and Activities Relating to Clearance of Unexploded Ordnance (UXO) and Depleted Uranium (DU) in Iraq, available at <https://webarchive.nationalarchives.gov.uk/20171123122643/http://www.iraqinquiry.org.uk/media/233440/2003-07-02-paper-mod-current-policies-and-activities-relating-to-clearance-of-unexploded-ordnance-and-depleted-uranium-in-iraq.pdf>, para 9.

73. Reply by the Secretary of State for Defence, vol 343 Hansard, 27 January 2000.

‘the result of an armed conflict with Argentina in 1982. As of March 2018, only 35 mined areas remained to be cleared, totalling 6.4 km².’⁷⁴ The UK is currently undertaking the fifth phase of its demining operations on the Falklands. The government has committed to spend more than £27 million on Phase 5(a) and (b) (covering 2016–2020), which covers the clearance of 79 mined areas totalling some 10.86 km².⁷⁵ Nevertheless, the UK has admitted that ‘the most challenging mine clearance task on the Falkland Islands, the very environmentally sensitive beach and sand dune area known as Yorke Bay’ will most likely be completed at a later stage.⁷⁶ The UK conducted an environmental impact assessment on the bay’s environmentally sensitive areas in 2017 – 35 years after the conflict – to foresee the challenges clearance may pose.⁷⁷

Principle 28: Remnants of war at sea

States and relevant international organizations should cooperate to ensure that remnants of war at sea do not constitute a danger to the environment.

In relation to draft principle 28, a relevant example of cooperation to mitigate environmental risks from shipwrecks was seen in Iraq in 2003/4.⁷⁸ After concerns were raised over the environmental hazards posed by wrecks off the Iraqi port of Um Qasr, the UNDP cooperated with the International Atomic Energy Agency and two French water pollution agencies on a survey of the wrecks. The project was funded by the UK and French governments and ‘...inspected 40 wrecks, identified 12 more by sonar, and collected 198 sediment samples for analysis.’ It was believed that 260 sunken ships were present in the area. The report found that: ‘Virtually all of these vessels are slowly leaking substances that are damaging to marine life and people alike. Even if the vessel was not carrying a hazardous cargo, the engine room will typically contain substances such as fuel oil, lubricating oil, battery acid, hydraulic fluid, and asbestos.’ In addition to technical survey work, the UNDP was also involved in salvage operations and in drawing up contingency plans for oil spills.

6. Conclusions and recommendations

On the basis of our analysis, it is evident that the standard of UK PERAC practice varies widely across the temporal phases of conflicts. With the ILC’s work due to be completed in 2021, it is our hope that the UK will welcome their adoption and that this paper will contribute towards the UK’s implementation of the PERAC principles.

In preparing this paper, one key observation has been the question of metrics by which to interpret and judge the UK’s practice, and this too will be of relevance for the UK government if, as hoped, it chooses

74. Information retrieved from <http://the-monitor.org/en-gb/reports/2019/united-kingdom/mine-action.aspx#ftnref1>, last updated 12 November 2018, available at <http://the-monitor.org/en-gb/reports/2019/united-kingdom/mine-action.aspx#ftnref1> [citations omitted].

75. Ibid.

76. UK, Anti-Personnel Mine Ban Treaty Article 5 deadline Extension Request, 29 March 2018, para 2.1.4., available at https://www.apminebanconvention.org/fileadmin/APMBC/clearing-mined-areas/art5_extensions/countries/17MSP-UnitedKingdom-ExtRequest-Received-29Mar2018.pdf

77. Ibid, para 3.1.1.

78. The following is drawn from CEOBS and Al Haq, ‘Joint briefing paper: Strengthening the International Law Commission’s draft principles on environmental protection in situations of occupation’, October 2018, available at <https://ceobs.org/ceobs-al-haq-strengthening-the-international-law-commissions-draft-principles-on-environmental-protection-in-situations-of-occupation/#easy-footnote-29> [citations omitted].

to endorse the work of the ILC on PERAC and align its practice with PERAC's normative framework. While a broad suite of measures will be required to bring UK policy into alignment with the draft principles, the recommendations below identify priority areas that should be reviewed by the UK government.

The following observations summarise our findings over the four conflict phases, and recommendations are provided for measures that the UK should take to align itself with the ILC's PERAC principles.

General and pre-conflict measures

At the time of writing, the UK has not taken a clear public position on many of the general principles that apply before conflicts. The UK's position on draft principle 8, which ignores and downplays the linkage between human health and the protection of the environment, is clearly retrograde. Nevertheless, draft principle 9 on state responsibility is expected to be met with approval by the UK, as it merely adjusts the well-established international law of state responsibility to wartime environmental damage.

Recommendation

The UK should integrate the ILC's environmentally progressive formulation of the Martens clause into its article 36 weapons reviews. The designation of areas of major environmental and cultural importance as protected zones prior to conflicts holds great potential and the UK should adopt this progressive development of international law.

The UK should also take appropriate measures aimed at ensuring the environmentally sound conduct of corporations and other business enterprises in areas affected by conflict, as provided for in draft principles 10 and 11, notwithstanding the fact that the UK has already taken relevant measures in the context of a number of processes intended to improve the environmental conduct of corporations.

Measures applicable during armed conflict

The UK appears not to accept the civilian character of the natural environment as a whole, in spite of the fact that treating parts of the environment as *prima facie* civilian objects could afford significant protection for them. The position of the UK is that 'there is no basis for treating all the natural environment as a civilian object for the purposes of the laws of armed conflict'. In contrast, the ILC's position is that 'no part of the natural environment may be attacked, unless it has become a military objective', as stipulated in draft principle 13(3).

The UK has also traditionally maintained that the use of nuclear weapons is exempt from the scope of Additional Protocol I, including from its environmental provisions.

Recommendation

The UK should move beyond its conservative view that the natural

environment is not civilian in nature, because the legal protection afforded to the environment is higher when starting from the assumption that it is civilian in nature.

The UK should reconsider its objections to the co-applicability of human rights and environmental law with IHL during armed conflicts, because it holds the promise of enhancing the protection of civilians and the environment, and because co-applicability conceptually underpins the ILC's PERAC project.

Measures applicable in situations of occupation

UK military guidance appears to align with the draft principles proposed by the ILC, however, clarity is required from the UK on whether it will adopt them. The statements cited in this paper from the UK LOAC Manual might be construed as endorsing the ILC's approach, which is informed by the need for sustainable development and to protect the health and environmental rights of protected populations in occupied areas.

Recommendation

The UK should adopt draft principle 21 on the 'sustainable use of natural resources'. Similarly, draft principle 22 could be met with approval by the UK as the concept of 'due diligence' or the 'no harm principle' drawn from international environmental law is well-established under international law.

Measures applicable post-armed conflict

The UK has been willing to share environmental information and co-operate with international organisations on environmental problems following conflicts, even if relevant information is not always reported and the modalities of cooperation are not always clear. On the other hand, in spite of its leading role supporting humanitarian mine action, the UK is adamant that states using DU munitions are under no obligation to address DU contamination.

Recommendation

Broadly speaking, UK practice appears to be aligned with many of the recommendations found in the ILC's post-armed conflict draft principles. However, relevant UK practice is not well-reported. Improving reporting on integrating the environment into post-conflict activities would encourage more effective mainstreaming and the refinement of policies. Past UK practice on DU munitions should be developed further to inform obligations on toxic remnants of war intended to protect human health or the environment.

Annex: Significant IHL treaties to which the United Kingdom is a party

International Humanitarian Law Treaties	Signed	Ratified/ Acceded	Implementing legislation
Geneva Conventions I – IV 1949	08.12.1949	23.09.1957	Geneva Conventions Act 1957, Geneva Conventions (Amendment) Act 1995, Geneva Conventions and United Nations Personnel (Protocols) Act 2009, plus Orders in Council ¹
Additional Protocol I 1977	12.12.1977	28.01.1998	Geneva Conventions (Amendment) Act 1995
Additional Protocol II 1977	12.12.1977	28.01.1998	Geneva Conventions (Amendment) Act 1995
Additional Protocol III 2005	08.12.2005	23.10.2009	Geneva Conventions and United Nations Personnel (Protocols) Act 2009
Hague Convention (and Protocols) for the Protection of Cultural Property in the Event of Armed Conflict 1954	30.12.1954 ¹	12.09.2017	Cultural Property (Armed Conflicts) Act 2017
Biological Weapons Convention 1972	10.04.1972	26.03.1975	Biological Weapons Act 1974, Terrorism Act 2000, Anti-terrorism, Crime and Security Act 2001
Convention on Certain Conventional Weapons 1980 (CCW)	10.04.1981	13.02.1995	HMG took the view that implementing legislation was unnecessary to implement the obligations in this international agreement.
Protocol I to CCW on NonDetectable Fragments	10.04.1981	13.02.1995	HMG took the view that implementing legislation was unnecessary to implement the obligations in this international agreement.
Protocol II to CCW on Prohibitions or Restrictions on the Use of Mines, Booby- Traps and Other Devices (and Protocol II as amended)	10.04.1981	13.02.1995 (11.02.1999 for Protocol II as amended)	HMG took the view that implementing legislation was unnecessary to implement the obligations in this international agreement.
Protocol III to CCW on Prohibitions or Restrictions on the Use of Incendiary Weapons	10.04.1981	13.02.1995	HMG took the view that implementing legislation was unnecessary to implement the obligations in this international agreement.
Protocol IV to CCW on Blinding Laser Weapons		11.02.1999	HMG took the view that implementing legislation was unnecessary to implement the obligations in this international agreement.
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction 1993	13.01.1993	13.05.1996	Chemical Weapons Act 1996
Anti-Personnel Landmines Convention 1997	03.12.1997	31.07.1998	Landmines Act 1998
Rome Statute of the International Criminal Court 1998	30.11.1998	04.10.2001	International Criminal Court Act 2001, International Criminal Court (Scotland) Act 2001
Cluster Munitions Convention 2008	03.12.2008	04.05.2010	Cluster Munitions (Prohibitions) Act 2010
Arms Trade Treaty 2013	03.06.2013	02.04.2014	Primary legislation was not required for ratification but secondary legislation was amended and the United Kingdom's Consolidated Criteria, which are the basis upon which official decisions are made about whether to approve licence applications for arms exports, were updated.
ENMOD Convention²	18.05.1977	16.05.1978	

1. Where necessary, it is the practice of the United Kingdom to extend the provisions of IHL implementing legislation to Crown Dependencies and British Overseas Territories. Examples for the 1949 Geneva Conventions and Additional Protocols include the Geneva Conventions Act (Guernsey) Order 1966, Geneva Conventions Act (Jersey) Order 1966, Geneva Conventions Act (Isle of Man) Order 1970, Geneva Conventions Act (Colonial Territories) Order in Council 1959, Geneva Conventions (Amendment) Act (Overseas Territories) Order 2002, and Geneva Conventions (Overseas Territories) Order 2010.

2. No implementing legislation found.