

Briefing note: Developing a State Friends of PERAC group.

Nov 2022

Summary

This note outlines the important role that a State Friends of PERAC group could play in supporting the universalisation, implementation and effectiveness of the UN's International Law Commission's (ILC) principles on the Protection of the environment in relation to armed conflicts (PERAC).¹ It concludes by inviting expressions of interest from States wishing to explore this further.

Key messages

- The thematic and temporal scope of the PERAC principles make them the most valuable suite of norms currently available for enhancing the protection of the environment, and by extension civilians, before, during and after armed conflicts, and in situations of occupation.
- The PERAC process, and the debates it has generated, has also been extremely valuable in engaging States and other stakeholders on the state of the legal framework, and the importance of enhancing it.
- Lacking a custodian, and absent the focused support of States and other stakeholders, the PERAC principles are unlikely to achieve their intended impact.
- A State Friends of PERAC group would be an important component of any ongoing effort to promote the principles.
- The activities of such a group would be determined by its members but could include: work towards domestic implementation, sharing best practice on implementation with other States, engagement with a range of non-State stakeholders, and promoting PERAC and its objectives in relevant international processes and fora.
- A State Friends of PERAC group would be supported by civil society and academic experts.

Context

Damage to the environment during and after armed conflicts harms the lives and livelihoods of vulnerable people, degrades critical ecosystems and undermines sustainable development. The norms and laws intended to minimise and remedy this damage are weak and ill-defined, and compliance is poor. In spite of the clear link between environmental damage and human suffering, the environmental consequences of armed conflicts remain under-prioritised in policies and practice.

For nearly a decade, the ILC has been identifying, codifying, progressively developing and re-interpreting the legal framework protecting the environment in relation to armed conflicts. The PERAC process, and the principles it has created, are the most significant advance in the legal framework since the late 1970s.

1. ILC, Analytical Guide to the Work of the International Law Commission, *Protection of the environment in relation to armed conflicts*: https://legal.un.org/ilc/guide/8_7.shtml

The PERAC process was initiated in response to growing understanding and concern over the environmental and derived humanitarian consequences of armed conflicts, throughout their lifecycle. These concerns are growing ever more acute in the face of the climate, biodiversity and pollution crises. Its outcome is a set of 27 principles outlining how the environment should be protected before, during and after armed conflicts, and in situations of occupation, and in both international and non-international armed conflicts.² They vary in strength from non-binding guidance, to reflecting binding international law. [See our PERAC FAQs: www.ceobs.org/perac-principles-frequently-asked-questions]

The PERAC principles uniquely bring together already binding rules of international law with best practices. As such, the principles have the potential to be a vital normative framework that establishes a *minimum standard* of environmental conduct across the cycles of armed conflict. However, they will only achieve this goal if they are endorsed, promoted and implemented by States and a range of non-State stakeholders. Unlike International Humanitarian Law, the PERAC principles will have no dedicated custodian to champion their implementation. Several States and ourselves encouraged the ILC to include an implementation mechanism in the principles, but in concluding her work in 2022, the Special Rapporteur noted that:

“At the same time, it is not clear that the Commission is in the best position to take the initiative for the establishment of such a follow-up mechanism, in particular in the case of a final outcome that is not presented as a basis for treaty negotiations ... The Special Rapporteur believes that the possible follow-up to the draft principles is best left to States, international organizations and other relevant actors to consider.”³

State Friends of PERAC

The primary goal of a State Friends of PERAC group would be to ensure that the considerable momentum generated over the last decade is not lost, and that a conversation about implementation is initiated. CEOBS examined a number of implementation models in a 2020 feasibility study,⁴ we found that an engaged group of governments committed to furthering the objectives of the PERAC principles was vital. The activities of such a group would be determined by its members, and it would be supported by a growing number of civil society organisations and academic experts. Potential areas for consideration include the role of the UN General Assembly in promoting the principles, as well as domestic implementation; our reviews of existing national practice provide an indication of the scope of this.⁵ The sharing of best practice on implementation between States would be a valuable role, as would engagement with the non-State stakeholders addressed by the principles, such as business enterprises and international organisations. One important and straightforward task would be promoting the principles in relevant international processes and fora.

The Conflict and Environment Observatory is inviting expressions of interest from States wishing to explore the opportunities that a State Friends of PERAC could create. To discuss this further please contact Doug Weir, Research and Policy Director: doug@ceobs.org

2. ILC, A/77/10, Chapter V, *Protection of the environment in relation to armed conflicts*: <https://legal.un.org/docs/?path=../ilc/reports/2022/english/chp5.pdf&lang=EFSRAC>

3. ILC (2022) A/CN.4/750, *Third report on protection of the environment in relation to armed conflicts*, by Marja Lehto, Special Rapporteur: <https://legal.un.org/docs/?symbol=A/CN.4/750>

4. CEOBS (2020) *Feasibility study: an implementation vehicle for the ILC's draft principles on the protection of the environment in relation to armed conflicts*: https://ceobs.org/wp-content/uploads/2021/01/CEOBS_feasibility_study-PERAC_implementation_vehicle.pdf

5. CEOBS (2019) *The UK's PERAC practice*: <https://ceobs.org/report-the-united-kingdoms-practice-on-the-protection-of-the-environment-in-relation-to-armed-conflicts>; CEOBS (2021) *Canada's PERAC practice*: <https://ceobs.org/canadas-practice-on-the-protection-of-the-environment-in-relation-to-armed-conflicts>