

# A galaxy of norms: UN peace operations and protection of the environment in relation to armed conflict

Mara Tignino<sup>1\*</sup> and Tadesse Kebebew<sup>2</sup>

<sup>1</sup>Lead Legal Specialist, Geneva Water Hub, Switzerland

<sup>2</sup>Postdoctoral Researcher, University of Geneva, Platform for International Water Law, Geneva Water Hub, Switzerland

\*Corresponding author email: [Mara.Tignino@unige.ch](mailto:Mara.Tignino@unige.ch)

## Abstract

*Given the increasing size and functions of United Nations (UN) peace operations (POs) and the fact that they often operate in contexts where natural resources are degraded, POs have repercussions on the environment. Yet, there is not much literature on their obligations regarding the protection of the environment in relation to armed conflicts. This article provides insights into the obligations of POs in relation to armed conflict. First, it highlights POs' customary international environmental law obligations. Second, it delves into their environmental obligations under the UN's internal rules and the host State's laws. Third, it explores obligations that arise from their mandates. In each of these sections, the article highlights the relevance and application of these obligations in armed conflicts. The last section examines the obligations of POs to protect the natural environment under international humanitarian law.*

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## Peace operations and the environment: Setting the scene

Maintaining international peace and security and promoting higher standards of living and socio-economic development are among the core functions of the United Nations (UN). The UN has been using peace operations (POs)<sup>1</sup> as part of its broader efforts to achieve these objectives and sustain peace worldwide.<sup>2</sup> This article focuses on the environmental obligations of POs in relation to armed conflict. POs are often deployed in areas affected by armed conflict that has resulted in environmental degradation and illegal exploitation of natural resources, and in areas undergoing the adverse effects of climate change.<sup>3</sup> Following the end of the Cold War era, the roles of POs have also evolved from simply monitoring ceasefires and controlling buffer zones (e.g. the UN Truce Supervision Organization and UN Military Observer Group in India and Pakistan) to addressing non-traditional security challenges such as illegal exploitation of natural resources as part of broader peace efforts.<sup>4</sup> The size of POs and their greater involvement in multidimensional operations might have unintended negative environmental consequences. POs construct bases, extract water, generate electrical power and operate vehicles in their deployment areas; these activities create resource competition, produce waste and hazardous materials, and emit greenhouse gases.<sup>5</sup> Being conscious of this, the International Law Commission (ILC) Principles on Protection of the Environment in Relation to Armed Conflicts (PERAC Principles) include a principle that requires POs established in relation to armed conflicts to consider their environmental impact

- 1 In this article, the term “peace operations” is used in its broadest sense and covers all forms of military and civilian operations established by the UN in relation to armed conflicts. See UNSC Res. 2594, 9 September 2021, Preamble (POs as peacekeeping operations and special political missions).
- 2 UN General Assembly, *Report of the High-Level Panel on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility*, UN Doc. A/59/565, 2 December 2004, paras 22, 84.
- 3 See UN Environment Programme (UNEP), UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and UN Office of the Special Envoy for the Great Lakes, *Experts’ Background Report on Illegal Exploitation and Trade in Natural Resources Benefitting Organized Criminal Groups and Recommendations on MONUSCO’s Role in Fostering Stability and Peace in Eastern DR Congo*, Final Report, 15 April 2015; Agathe Sarfati, *Toward an Environmental and Climate-Sensitive Approach to Protection in UN Peacekeeping Operations*, International Peace Institute, 2022, pp. 6–7; Farah Hegazi, Florian Krampe and Elizabeth Smith, *Climate-Related Security Risks and Peacebuilding in Mali*, Stockholm International Peace Research Institute (SIPRI), 2021, pp. 1–2.
- 4 See Oli Brown, *Peace Operations and the Challenges of Environmental Degradation and Resource Scarcity*, SIPRI Background Paper, 2021, pp. 4–17; Sophie Ravier, Anne-Cecile Vialle, Russ Doran and John Stokes, “Environmental Experiences and Developments in United Nations Peacekeeping Operations”, in Carl Bruch, Carroll Muffett and Sandra Nichols (eds), *Governance, Natural Resources and Post-Conflict Peacebuilding*, Routledge, Abingdon, 2016, pp. 195–197.
- 5 See UN Department of Operational Support (DOS), “Environment”, available at: <https://operationalsupport.un.org/en/environment> (all internet references were accessed in August 2023); Lucile Maertens and Malkit Shoshan, *Greening Peacekeeping: The Environmental Impact of UN Peace Operations*, International Peace Institute, 2018, pp. 4–7.

and to “take, as appropriate, measures to prevent, mitigate and remediate the harm to the environment resulting from [their] operations”.<sup>6</sup>

This article argues that UN POs established in relation to armed conflicts have the obligation to prevent, mitigate and remediate the environmental harm that results from their operations.<sup>7</sup> The UN acknowledges the need to comprehensively address the environmental impacts of POs.<sup>8</sup> Examples of such recognition include adopting the 2009 Environmental Policy for UN Field Missions (2009 Environmental Policy), covering key areas such as waste, energy, water, hazardous substances, and cultural and historical resources management.<sup>9</sup> The UN Secretary-General started considering the environmental footprint of POs<sup>10</sup> and, in 2007, launched the “Greening of the Blue” initiative.<sup>11</sup> In 2015, the High-level Independent Panel on Peace Operations (HIPPO) affirmed the concept of “responsible presence” of POs, recognizing the need to minimize their environmental impacts, and emphasized the need to implement the 2009 Environmental Policy effectively.<sup>12</sup> The General Assembly’s Special Committee on Peacekeeping Operations (C-34) has further underscored the cruciality of sound environmental management and environmentally responsible solutions.<sup>13</sup> In line with this, in 2016, the UN Department of Operational Support (DOS) initiated a multi-year strategy to build “responsible missions” that operate at

6 ILC, *Principles on Protection of the Environment in Relation to Armed Conflicts, with Commentaries*, UN Doc. A/77/10, 2022 (PERAC Principles), Principle 7.

7 See *ibid.*, Principle 7; UN Department of Peace Operations/Department of Operational Support (DPO/DOS), *United Nations Environmental Management Handbook for Military Commanders in UN Peace Operations*, 1st ed., March 2021 (Environmental Management Handbook), p. 7. See also Florian Krampe, *Why United Nations Peace Operations Cannot Ignore Climate Change*, SIPRI, 22 February 2021; Annica Waleij, “Environmental Considerations in Peace Operations”, *Journal of the Institution of Environmental Sciences*, Vol. 29, No. 2, 2020; Mathilde Leloup and Lucile Maertens, “The Material Impact of Peace Operations on the Environment and Cultural Heritage”, in Han Dorussen (ed.), *Handbook on Peacekeeping and International Relations*, Edward Elgar, Cheltenham, 2022, pp. 271–275.

8 See e.g. UN Security Council, “Security Council Press Statement on Environmental Management of Peacekeeping Operations”, SC/13134-ENV/DEV/1830-PKO/700, 21 December 2017; *Report of the Secretary-General: Implementation of the Recommendations of the Special Committee on Peacekeeping Operations*, UN Doc. A/76/505, 2 November 2021, para. 9.

9 See UN Department of Peacekeeping Operations/Department of Field Support (UN DPKO/DFS), *Environmental Policy for UN Field Missions*, Ref. 2009.6, 1 June 2009 (2009 Environmental Policy); UN Secretary-General, *Secretary-General’s Bulletin on the Environmental Policy for the United Nations Secretariat*, ST/SGB/2019/7, 4 September 2019; UN DPO/DFS, *Waste Management Policy for UN Field Missions*, 2018.14, November 2019; UN DOS, *Environment Strategy for Field Missions*, October 2019 (2019 Environment Strategy); Environmental Management Handbook, above note 7.

10 UN General Assembly, *Report of the Secretary-General: Third Annual Progress Report on the Implementation of the Global Field Support Strategy*, UN Doc. A/67/633, 12 December 2012, para. 17.

11 See Greening the Blue, “History of Greening the UN”, available at: [www.greeningtheblue.org/history-greening-un](http://www.greeningtheblue.org/history-greening-un); M. Leloup and L. Maertens, above note 7, p. 271.

12 UN General Assembly and UN Security Council, *Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People*, UN Doc. A/70/95-S/2015/446, 17 June 2015 (HIPPO), paras 292–294.

13 UN General Assembly, *Report of the Special Committee on Peacekeeping Operations*, UN Doc. A/75/19, 17 March 2021, para. 44. See also Declaration of Shared Commitments on the Action for Peacekeeping (A4P) Initiative, March 2018, para. 23.

minimum risk to people and ecosystems.<sup>14</sup> Moreover, some POs have established environmental units that develop and implement mission-specific environmental policies and oversee compliance.<sup>15</sup> The UN Office of Internal Oversight Services (OIOS) has also started conducting assessments of the adequacy and effectiveness of environmental action plans and systems to ensure the efficient use of natural resources and reduce environmental risks linked to the activities of POs.<sup>16</sup>

Against this backdrop, the present article examines the potential sources of environmental obligations of POs that are established in relation to armed conflict. First, the article highlights the customary principles of international environmental law (IEL) that POs deployed in relation to armed conflict must follow. Second, it delves into POs' environmental obligations under the UN's internal rules and the host State's laws. Third, it examines the environmental obligations of POs as enshrined in their mandates. These three sections highlight the relevance and application of these obligations in armed conflict. Lastly, the article addresses the obligations of POs to protect the natural environment under international humanitarian law (IHL). There are other customary law rules, such as those relating to responsibility for internationally wrongful acts, as well as a range of human rights provisions, that are relevant to POs and the protection of the environment;<sup>17</sup> this article does not, however, discuss in detail the international responsibility or human rights obligations of POs.

## Customary international environmental law and peace operations

With distinct will and “immediate submission” to the international legal order, the UN has international legal personality.<sup>18</sup> As an entity with a legal personality, the UN has

- 14 See UN Peacekeeping, “Environmental Risk and Performance Management”, available at: <https://peacekeeping.un.org/en/environmental-risk-and-performance-management>; UNGA Res. 76/274, 29 June 2022, paras 83, 84; 2019 Environment Strategy, above note 9; UN DPO/DFS, *Environmental Policy for Peacekeeping Operations and Field-Based Special Political Missions*, Ref. DOS/2022.01, 1 April 2022 (2022 Environmental Policy), para. 11.
- 15 UN General Assembly and UN Security Council, *The Future of United Nations Peace Operations: Implementation of the Recommendations of the High-Level Independent Panel on Peace Operations: Report of the Secretary-General*, UN Doc. A/70/357–S/2015/682, 2 September 2015, para. 129; 2009 Environmental Policy, above note 9, p. 7.
- 16 See OIOS, *Audit of Implementation of the Environmental Action Plan in the United Nations Mission in the Republic of South Sudan*, 2019/079, 27 August 2019, pp. 5–6; OIOS, *Audit of Implementation of Environmental Action Plan in the United Nations Organizational Stabilization Mission in the Democratic Republic of the Congo*, 2019/075, 22 August 2019, pp. 5–6.
- 17 See Pierre-Marie Dupuy, Ginevra Le Moli and Jorge E. Viñuales, “Customary International Law and the Environment”, in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law*, Oxford University Press, Oxford, 2021, p. 393; UNEP, *Protecting the Environment during Armed Conflict: An Inventory and Analysis of International Law*, Nairobi, 2009, p. 40; Mara Tignino and Öykü Irmakkesen, “Water in Peace Operations: The Case of Haiti”, *Review of European, Comparative and International Environmental Law*, Vol. 20, No. 1, 2020, p. 33. See also UN Human Rights Council (HRC), *Human Rights and Access to Safe Drinking Water and Sanitation*, UN Doc. A/HRC/RES/15/9, 6 October 2010; HRC, *The Human Right to a Clean, Healthy and Sustainable Environment*, UN Doc. A/HRC/RES/48/13, 8 October 2021.
- 18 See Giovanni Distefano, *Fundamentals of Public International Law: A Sketch of the International Legal Order*, Brill Nijhoff, Leiden, 2019, pp. 54–57.

rights and obligations under international law. Oppenheim opined that international responsibility is a consequence of international legal capacity or personality.<sup>19</sup> As asserted by the International Law Association, “power entails accountability that is the duty to account for its exercise”.<sup>20</sup> In the *Reparation for Injuries* case, the International Court of Justice (ICJ) introduced the notions of functions developed in practice to determine the scope of rights and obligations.<sup>21</sup> It follows that in addition to what is indicated in its constitutive instrument, the scope of the UN’s obligations is determined by its functions as they have evolved over time through practice.<sup>22</sup>

Under international law, the principle of speciality governs international organizations (IOs) – i.e., “they are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them”.<sup>23</sup> This principle, however, does not help to precisely determine which customary principles of international law apply to IOs.<sup>24</sup> The problem is compounded by the absence of a complete theory of international law sources for IOs, as international law instruments do not usually address IOs as their subjects. Nevertheless, it is generally accepted that the UN is bound by a complex mix of customary international law, international agreements, mandates, internal rules, directives and regulations, and universally accepted standards.<sup>25</sup> As a subsidiary body of the UN, POs are required to respect the relevant obligations emanating from these sources.

The protection of the environment is governed by a growing body of law that includes treaties, customary law, general principles of law, national legislation and judicial precedents.<sup>26</sup> The UN and its POs are bound by

- 19 See Lassa Oppenheim, *International Law: A Treatise*, Vol. 1: *Peace*, 8th ed., ed. Hersch Lauterpacht, Longmans, Green & Co., London, 1955, pp. 261–262.
- 20 International Law Association (ILA), *Final Report of the Committee on the Accountability of International Organizations*, Berlin Conference, 2004.
- 21 ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *ICJ Reports* 1949, pp. 178–182.
- 22 See Carla Ferstman, *International Organizations and the Fight for Accountability: The Remedies and Reparations Gap*, Oxford University Press, Oxford, 2017, p. 42; and see Terry D. Gill, Dieter Fleck, William H. Boothby and Alfons Vanheusden (eds), *Leuven Manual on the International Law Applicable to Peace Operations*, Cambridge University Press, Cambridge, 2017 (Leuven Manual), p. 37.
- 23 ICJ, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, *ICJ Reports* 1996, para. 25.
- 24 See Scott Sheeran, “A Constitutional Moment? United Nations Peacekeeping in the Democratic Republic of Congo”, *International Organizations Law Review*, Vol. 8, No. 1, 2011, p. 115; Jan Klabbers, “Sources of International Organizations’ Law: Reflections on Accountability”, in Samantha Besson and Jean d’Aspremont (eds), *The Oxford Handbook of the Sources of International Law*, Vol. 1, Oxford University Press, Oxford, 2018, p. 988.
- 25 See ICJ, *Reparation for Injuries*, above note 21, p. 179; ICJ, *Interpretation of the Agreement of March 1951 between the WHO and Egypt*, Advisory Opinion, *ICJ Reports* 1980, para. 37; ILA, above note 20, pp. 18–25; Dieter Fleck, “The Law Applicable to Peace Operations”, in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict*, Vol. 1, Oxford University Press, Oxford, 2014; Kristina Daugirdas, “How and Why International Law Binds International Organizations”, *Harvard International Law Journal*, Vol. 57, No. 2, 2016, p. 327.
- 26 For an overview of such sources, see UNEP, above note 17, pp. 34–43; see also ILC, *Preliminary Report on the Protection of the Environment in Relation to Armed Conflicts*, UN Doc. A/CN.4/674, 30 May 2014, paras 117–156. On existing IHL obligations relating to the protection of the natural environment in armed conflict, see International Committee of the Red Cross (ICRC), *Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations Relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary*, Geneva, 2020 (ICRC Guidelines).

customary principles of IEL, internal rules and other relevant obligations emanating from host State legislation. While there may be ongoing discussions regarding the status of certain principles of IEL, the principles of precaution, prevention and sustainability have already achieved customary law status.<sup>27</sup> The precautionary and prevention principles have been included in several treaties and are recognized in case law and soft-law instruments.<sup>28</sup> These principles require conducting an environmental impact assessment aimed at assessing the risk of environmental harm in order to stop and/or mitigate such harm.<sup>29</sup> The prevention principle is described as “the fundamental tenet on which international environmental law rests”.<sup>30</sup> The principle of precautions supplements the preventive principle; it denotes that whenever there is a threat of serious or irreversible damage, lack of scientific certainty shall not justify failure to take measures to prevent environmental degradation.<sup>31</sup> According to the International Committee of the Red Cross’s (ICRC) on Customary Law Study, the lack of scientific certainty regarding the effects of certain military operations on the environment does not absolve warring parties from taking proper precautionary measures to prevent undue damage as required by IHL. The environmental law precautionary principle is particularly relevant for the protection of the natural environment during the planning of an attack, as there is likely to be some uncertainty regarding environmental impacts.<sup>32</sup> The significance of this principle lies in the fact that it enables regulating some measures that could significantly harm the environment in the long term, even if there is currently no scientific certainty about their effects. The environmental law principle of sustainability requires taking into account social, economic and environmental factors and incorporating a multi-generational standard of care in order to address current needs, while enhancing the ability of future generations to meet their needs.<sup>33</sup> It feeds into the overarching theme of protecting the environment and requires considering both the short- and long-term consequences of actions.

These customary IEL principles hold significance for POs in regulating their environmental footprint and their broader endeavours to safeguard the

27 See UNEP, above note 17, p. 40; ILC, above note 26, paras 150–156. See also Kirsten Stefanik, “The Environment and Armed Conflict: Employing General Principles to Protect the Environment”, in Carsten Stahn, Jens Iverson and Jennifer S. Easterday (eds), *Environmental Protection and Transitions from Conflict to Peace*, Oxford University Press, Oxford, 2017, pp. 93–118; P. Dupuy, G. Le Moli and J. Viñuales, above note 17, pp. 385–401.

28 For a reference to such sources, see Mara Tignino and Tadesse Kebebew, “The Legal Protection of Freshwater Resources and Related Installations during Warfare”, *Journal of International Criminal Justice*, Vol. 20, No. 5, 2022, p. 1200.

29 See ILC, above note 26, paras 150–153; P. Dupuy, G. Le Moli and J. Viñuales, above note 17, pp. 396–398.

30 ILC, above note 26, para. 133.

31 Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26, 12 August 1992 (Rio Declaration), Principle 15. For a discussion on the content and legal status of the principle, see K. Stefanik, above note 27, pp. 107–113; Jacqueline Peel, “Precaution”, in L. Rajamani and J. Peel (eds), above note 17, pp. 302–318.

32 ICRC Guidelines, above note 26, para. 124.

33 See ILC, above note 26, paras 125–132; K. Stefanik, above note 27, pp. 104–106; M. Tignino and T. Kebebew, above note 28, p. 1208.

environment. Principles, standards and mechanisms in soft-law instruments related to IEL that do not reach the level of customary law remain relevant in informing the “interpretation and application of international law”.<sup>34</sup> While it is generally accepted that principles of IEL must be considered in situations of armed conflict, there is an ongoing debate about the extent to which they apply in conjunction with IHL.<sup>35</sup> In this regard, the ILC takes the position that both treaty and customary IEL continue to apply during armed conflict as long as they are not incompatible with IHL.<sup>36</sup> For instance, PERAC Principle 13 stipulates that “the environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict”. Similarly, Principle 3, dealing with “Measures to Enhance the Protection of the Environment”, covers obligations “under international law”, including “relevant treaty-based or customary obligations related to the protection of the environment before, during, or after an armed conflict”, regardless of whether they derive from IEL or other branches of international law.<sup>37</sup> Given these developments, POs must observe at least those principles of IEL that have attained customary law status during armed conflicts.

## Environmental obligations under “internal rules” of the UN and host State laws

Under the UN Charter, maintaining international peace and security, promoting human rights and higher standards of living and ensuring socio-economic development are among the core objectives of the UN. These overarching themes guide the activities of POs; in addition, internal rules and regulations form essential sources of obligations for the UN and POs. In its Draft Articles on the Responsibility of International Organizations (DARIO), the ILC stated that most obligations incumbent on IOs arise from the “rules of the organization”.<sup>38</sup>

34 Michael Bothe, Carl Bruch, Jordan Diamond and David Jense, “International Law Protecting the Environment during Armed Conflict: Gaps and Opportunities”, *International Review of the Red Cross*, Vol. 92, No. 879, 2010, p. 584.

35 See ICRC Guidelines, above note 26, paras 30–36; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 44, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>; M. Bothe *et al.*, above note 34, pp. 584–586, 588–589; Michael Bothe, “Precaution in International Environmental Law and Precautions in the Law of Armed Conflict”, *Göttingen Journal of International Law*, Vol. 10, No. 1, 2020.

36 See PERAC Principles, above note 6, Principle 13, para. 4.

37 *Ibid.*, Principle 3, para. 4.

38 ILC, *Draft Articles on the Responsibility of International Organizations, with Commentaries*, UN Doc. A/66/10, 2011 (DARIO), Art. 2(b). “Rules of the organization” means, “in particular, the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization”.

However, the ILC did not clarify the legal nature of such rules.<sup>39</sup> This issue is not yet settled, and the fact that the C-34 once requested “clarification” on the legal status of the 1999 UN *Secretary-General’s Bulletin on the Observance by UN Forces of International Humanitarian Law* (1999 Secretary-General’s Bulletin) epitomizes this.<sup>40</sup> Nevertheless, from the readings of some provisions of the DARIO, one can infer that the ILC considers the “rules of the organisation” as sources of obligations. For example, Article 6(2) of the DARIO states that the “rules of the organization apply in the determination of the functions of its organs and agents”, while Article 10(2) refers to “the breach of any international obligation that may arise for an international organization towards its members under the rules of the organization”. Similarly, the *Leuven Manual on the International Law Applicable to Peace Operations* (Leuven Manual) indicates that “POs shall be conducted in accordance with the UN Charter, their internal rules and procedures, and other rules of international law applicable to them”.<sup>41</sup> Moreover, an expert from the UN’s Office of Legal Affairs once pointed out that “instructions” promulgated by the UN Secretary-General are binding because they reflect customary law.<sup>42</sup> Furthermore, the internal rules established in accordance with accepted procedures of IOs have also been considered as “unilateral acts” comparable to binding unilateral acts of States.<sup>43</sup>

Regarding the protection of the environment, the *UN Environmental Management Handbook for Military Commanders in UN Peace Operations* (Environmental Management Handbook) indicates that “environmental management standards and obligations are set out in a range of UN mandates, rules, policies, procedures and guidelines, as well as national (host country) laws and regulations”.<sup>44</sup> One such instrument is the 1999 Secretary-General’s Bulletin, which restates a few emblematic IHL norms into “the UN peacekeeping law”<sup>45</sup> and prohibits, for instance, UN forces from employing methods of warfare “which are intended, or may be expected to cause, widespread, long-term and

39 See *ibid.*, Art. 5, commentary para. 2, and Art. 10, commentary para. 7; International Law Discussion Group, *Legal Responsibility of International Organisations in International Law: Summary of the International Law Discussion Group Meeting*, Chatham House, London, 10 February 2011, p. 3.

40 UN General Assembly, *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects: Report of the Special Committee on Peacekeeping Operations*, UN Doc. A/54/839, 20 March 2000, paras 29, 82.

41 Leuven Manual, above note 22, p. 35. See also Henry Schermers and Niels Blokker, *International Institutional Law*, 6th ed., Brill Nijhoff, Leiden, 2018, pp. 758–759 (UN adopts broad rules governing POs that are “similar to national laws on armed forces”).

42 See Larry Maybee and Benarji Chakka (eds), *Custom as a Source of International Humanitarian Law: Proceedings of the Conference to Mark the Publication of the ICRC Study “Customary International Humanitarian Law”*, ICRC, New Delhi, 2005, pp. 246–248.

43 See Marten Zwanenburg, “United Nations and International Humanitarian Law”, *Max Planck Encyclopedia of Public International Law*, October 2015, para. 12. Cf. ILC, *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto*, UN Doc. A/61/10, 2006, para. 177.

44 Environmental Management Handbook, above note 7, p. 14.

45 See Nigel White, “Peacekeeping Doctrine: An Autonomous Legal Order?”, *Nordic Journal of International Law* Vol. 88, No. 1, 2019, p. 107.



severe damage to the natural environment”.<sup>46</sup> Though some scholars indicate that “the Bulletin has the status of a statement of policy”,<sup>47</sup> most agree that the Bulletin is binding because it represents either a unilateral act or an administrative issuance with legal effect on UN forces, or the restatement of customary IHL.<sup>48</sup> In addition, the Code of Personal Conduct for Blue Helmets also includes a commitment to “[s]how respect for and promote the environment ... of the host country”.<sup>49</sup> Such internal regulations, along with the Environmental Policy for Peacekeeping Operations and Field-Based Special Political Missions (2022 Environmental Policy) and its related guidelines, must be upheld by POs.<sup>50</sup>

The rights and duties of POs are primarily determined at the international level, including through mandates and internal procedures and guidelines. However, this does not exclude the applicability of domestic legislation of host and sending States. In fact, POs are required to respect obligations emanating from the laws of the host State and sending States.<sup>51</sup> The UN Model Status of Forces Agreement (SOFA) confirms the obligation to respect the host State’s laws, which include environmental laws.<sup>52</sup> Besides, in a resolution adopted by the UN General Assembly, POs are asked to reduce their environmental footprint “through the implementation of environmentally responsible waste management and power generation systems, also working towards a potential positive legacy for host communities, in full compliance with the relevant regulations and rules”.<sup>53</sup>

POs are subject to the host State’s laws – provided that they are compatible with international law and the SOFA – while present or carrying out activities within its territory.<sup>54</sup> They shall “act in conformity with all relevant and applicable rules of international law and [shall] respect host State law in so far as it is compatible with international law and with the mandate”.<sup>55</sup> Correspondingly, the *United Nations Environmental Management Handbook for Military*

46 UN Secretary-General, *Secretary-General’s Bulletin: Observance by United Nations Forces of International Humanitarian Law*, ST/SGB/1999/13, 1999 (1999 Secretary-General’s Bulletin), section 6.3.

47 See Leuven Manual, above note 22, p. 153.

48 See Daphna Shraga, “The Secretary-General’s Bulletin on the Observance by the United Nations Forces of International Humanitarian Law: A Decade Later”, *Israel Yearbook on Human Rights*, Vol. 39, 2009, p. 360; M. Zwanenburg, above note 43; Ray Murphy and Siobhán Wills, “United Nations Peacekeeping Operations”, in Andre Nollkaemper, Ilias Plakokefalos and Jessica Schechinger (eds), *The Practice of Shared Responsibility in International Law*, Cambridge University Press, Cambridge, 2018, p. 591.

49 United Nations, *Code of Personal Conduct for Blue Helmets*, 1999, Rules 1, 8.

50 See 2022 Environmental Policy, above note 14; O. Brown, above note 4; L. Maertens and M. Shoshan, above note 5.

51 See Leuven Manual, above note 22, pp. 84, 130–138.

52 UN General Assembly, *Model Status-of-Forces Agreement for Peacekeeping Operations: Report of the Secretary-General*, UN Doc. A/45/594, 9 October 1990, para. 6.

53 See UNGA Res. 76/274, 29 June 2022, para. 83.

54 See UN DPKO/DFS, *United Nations Peacekeeping Operations: Principles and Guidelines*, 2008 (Capstone Doctrine), pp. 81–82; Leuven Manual, above note 22, pp. 130–134; Andrés B. Muñoz Mosquera, “Respect for the Law of the Receiving State”, in Dieter Fleck (ed.), *The Handbook of the Law of Visiting Forces*, 2nd ed., Oxford University Press, Oxford, 2018.

55 Leuven Manual, above note 22, p. 31.

*Commanders in UN Peace Operations* (Environmental Management Handbook) provides “practical guidance for commanders when planning and implementing environmental management actions” in POs throughout the mission lifecycle, and “highlights the environmental degradation preventive measures which should be integrated into the planning and execution of any military operation”. As such, the Handbook, which is also relevant during armed conflicts, specifies that UN forces shall

respect the environment and relevant environmental laws of the host country and comply with United Nations environmental and waste management policies and procedures, including Mission environmental standards, policies and SOPs [Standard Operating Procedures] on waste management, water and wastewater management, energy management, pollution prevention, and other environmental aspects.<sup>56</sup>

This indicates that POs shall respect environmental and human rights laws incorporated under such legislation, such as the rights to life, food, water, health and the environment. As reflected in the document *UN Peacekeeping Operations: Principles and Guidelines* (Capstone Doctrine), human rights law is a crucial part of the UN POs framework.<sup>57</sup> For instance, as the African Charter on Human and Peoples’ Rights recognizes the right to the environment as a human right and obliges member States to respect, protect and fulfil it, POs deployed in Africa cannot ignore at least the obligations to respect and protect the environment if these obligations are incorporated into the domestic framework of the States hosting them.<sup>58</sup> The UN may also be held responsible for violations of its environmental obligations.

The internal rules dealing with different aspects of the environmental obligations of POs do not explicitly exclude their applicability during armed conflicts. The 1999 UN Secretary-General’s Bulletin confirms specific environmental obligations of POs under IHL. As regards the laws of States hosting POs, non-international armed conflicts (NIACs) do not, in principle, affect the continued applicability of international law obligations of States, including environmental obligations.<sup>59</sup> Thus, as POs are usually deployed in the context of NIACs, they must continue to respect obligations enshrined under the law of States hosting them during armed conflicts.

Moreover, the laws of sending States may become relevant in POs, particularly in the fields of human rights and environmental protection.<sup>60</sup> This includes minimizing environmental footprint, avoiding activities that could cause environmental harm, and taking appropriate measures to control pollution, waste

56 Environmental Management Handbook, above note 7, p. 28.

57 Capstone Doctrine, above note 54, p. 14.

58 African Charter on Human and Peoples’ Rights, CAB/LEG/67/3 rev. 5, 21 ILM 58, 27 June 1981, Art. 24.

59 In relation to the continued application of IEL treaties during NIACs, see M. Bothe *et al.*, above note 34, p. 581.

60 See Leuven Manual, above note 22, pp. 135–136; Dieter Fleck, “Legal Protection of the Environment”, in C. Stahn, J. Iverson and J. S. Easterday (eds), above note 27, p. 217.

and hazardous substances.<sup>61</sup> Doing so is also fundamental to earning the trust and support of local communities.

## The protection of the environment in the mandates of peace operations

POs are commonly deployed upon receiving a mandate from the UN Security Council outlining the specific tasks that they are expected to carry out. The mandate serves as the legal basis for a PO and “defines the objectives and legal and operational parameters that govern the operation”.<sup>62</sup> Despite mounting doubts regarding the efficacy of multidimensional mandates, the scope of tasks entrusted to POs has expanded to encompass a range of cross-cutting and thematic issues.<sup>63</sup> The content of each mandate varies depending on the nature of the agreement reached by the conflicting parties as well as the challenges present in the deployment area. The Capstone Doctrine highlights that while each PO is unique, there is a significant degree of consistency in the types of mandated tasks.<sup>64</sup>

There is acknowledgement of the importance of comprehensively addressing the effects of environmental degradation to guarantee long-term peace.<sup>65</sup> In this context, as the UN Environment Programme (UNEP) indicates, POs have an “evolving and fundamental role”.<sup>66</sup> At the Security Council level, there is an emerging recognition of the “inextricable link between the protection of the environment and the protection of civilians” as environmental degradation directly impacts the security and livelihood of civilians, possibly leading to displacement and violence.<sup>67</sup> In light of this, one can argue that protecting the environment is protecting the civilian population, and that the two dimensions therefore go hand in hand.

The Security Council has long recognized the critical importance of assessing and mitigating the environmental impact of POs.<sup>68</sup> It has started inserting environment- and climate-related language (e.g. natural resources,

61 See UN General Assembly, *Manual on Policies and Procedures Concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions*, UN Doc. A/C.5/69/18, 20 January 2015, pp. 193–194.

62 Leuven Manual, above note 22, p. 27.

63 Capstone Doctrine, above note 54, pp. 23–24.

64 *Ibid.*, p. 16.

65 See UNSC Res. 1625, 14 September 2005, Preamble (addressing the Security Council’s role in conflict prevention, particularly in Africa); UNSC Res. 2349, 31 March 2017, paras 22–28; UNSC Res. 2463, 29 March 2019, paras 3, 15; UNSC Res. 2666, 20 December 2022, para. 3; UN Security Council, above note 8; UN General Assembly, above note 13, para. 79.

66 See UNEP, *Greening the Blue Helmets: Environment, Natural Resources and UN Peacekeeping Operations*, Nairobi, 2012. See also Thomas Vervisch, Emery Mudinga and Godefroid Muzalia, *MONUSCO’s Mandate and the Climate Security Nexus*, Policy Brief, available at: [www.gicnetwork.be/policy-brief-monuscocs-mandate-and-the-climate-security-nexus/](http://www.gicnetwork.be/policy-brief-monuscocs-mandate-and-the-climate-security-nexus/).

67 A. Sarfati, above note 3, p. 6. See also UN Security Council, *Protection of Civilians in Armed Conflict: Report of the Secretary-General*, UN Doc. S/2021/423, 3 May 2021; UN Security Council, *Protection of Civilians in Armed Conflict: Report of the Secretary-General*, UN Doc. S/2022/381, 10 May 2022.

68 For the list of the relevant resolutions, see UN Security Council, above note 8.

climate change, protection of cultural heritage sites and sustainable development) in the mandates of POs, requiring them to seriously consider the environmental impacts of their operations.<sup>69</sup> For example, the Security Council has requested the Secretary-General to examine the environmental impacts of the Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) and to encourage the mission to operate mindfully in the vicinity of cultural and historical sites – from which the natural environment benefits.<sup>70</sup> MINUSMA was requested to consider the environmental impacts of its operations in accordance with applicable and relevant General Assembly resolutions and UN rules and regulations, and to implement the UN DOS’s Environment Strategy (Phase II).<sup>71</sup>

In addition to addressing their own environmental footprint, some POs are mandated to support host States in ensuring proper administration and tackling illegal exploitation of natural resources.<sup>72</sup> The UNSC explicitly requires some POs to conduct environmental risk assessments and address the potential impact of climate change and other ecological factors in the mandate areas.<sup>73</sup> For instance, the United Nations Mission in South Sudan (UNMISS) was requested to assess the impacts of climate change.<sup>74</sup> As part of its broader peacebuilding efforts, the UNSC mandates POs to assist host States in responsibly and sustainably managing natural resources and addressing root causes of conflict, such as environmental degradation.<sup>75</sup> The 2022 Environmental Policy provides that “when mandated to do so, police components shall provide operational support and/or capacity building and development assistance to host-Government counterparts in enforcing local, national, regional and international law and

69 See e.g. UNSC Res. 2612, 20 December 2021, para. 45; UNSC Res. 2640, 29 June 2022, paras 53–54; UNSC Res. 2347, 24 March 2017, para.19. See also A. Sarfati, above note 3, pp. 11–15; UN DOS, “DOS Environment Strategy for Peace Operations”, available at: [https://operationalsupport.un.org/sites/default/files/dos\\_environment\\_strategy\\_execsum\\_phase\\_two.pdf](https://operationalsupport.un.org/sites/default/files/dos_environment_strategy_execsum_phase_two.pdf); 2022 Environmental Policy, above note 14, para. 41.

70 UNSC Res. 2100, 25 April 2013, paras 16, 32 (support for preservation of cultural and historical sites).

71 See UNSC Res. 2640, 29 June 2022, paras 53, 54.

72 UNSC Res. 2666, 20 December 2022, para. 24(j); UNSC Res. 2217, 28 April 2015, paras 33(c), 34(c); UNSC Res. 2211, 26 March 2015, paras 15(g), 23; UNSC Res. 1509, 19 September 2003, para. 3(r). See also UN Security Council, “Maintenance of International Peace and Security: Natural Resources and Conflict: Statement by the President of the Security Council”, UN Doc. S/PRST/2007/22, 25 June 2007; UNEP, *Environmental Cooperation for Peacebuilding Programme*, Nairobi, 2016, pp. 20–35; UNEP, above note 66, pp. 9–10.

73 OIOS, *Audit of Implementation of the Environmental Action Plan in the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic*, 2019/053, 25 June 2019; UN General Assembly, *Manual on Policies and Procedures Concerning the Reimbursement and Control of Contingent-Owned Equipment of Troop/Police Contributors Participating in Peacekeeping Missions*, UN Doc. A/75/121, 2020, pp. 4, 10, 46. See also L. Maertens and M. Shoshan, above note 5, p. 13; UN Security Council, *The UN Security Council and Climate Change: Tracking the Agenda after the 2021 Veto*, Research Report No. 4, 30 December 2022, pp. 5–6; Daniel Forti and Emmanuelle Cousin, *Contingent-Owned Equipment and Environmental Considerations in UN Peacekeeping Operations*, Issue Brief, International Peace Institute, 2022.

74 UNSC Res. 2625, 15 March 2022, para. 3(b) and Preamble.

75 See e.g. UNSC Res. 2640, 29 June 2022, Preamble, paras 18, 26(b)(i), 54; UNSC Res. 2659, 14 November 2022, Preamble, para. 35(b)(v). See also UN Security Council, above note 73, p. 3; UNEP, *Environmental Cooperation*, above note 72, pp. 20–29.

regulations pertaining to the protection of the environment”.<sup>76</sup> This includes, for example, facilitating dialogue between communities to promote equitable use of resources, managing resettlement operations, building national capacity to address environmental challenges, and promoting environmentally friendly projects.

Regarding the question of whether environmental obligations under the mandates of POs continue to apply during armed conflict, including when a PO becomes a party to an armed conflict, the ILC seems to answer it affirmatively by underscoring that “the environmental impact of a peace operation may stretch from the planning phase through its operational part, to the post-operation phase”.<sup>77</sup> The requirements to “consider the impact” and “take, as appropriate, measures” are meant to apply throughout this time. However, the ILC simultaneously indicates that “measures to be taken may differ depending on the context of the operation” – i.e., “whether such measures relate to the pre-, in-, or post-armed conflict phase, and what measures are feasible under the circumstances”.<sup>78</sup>

Generally, the Security Council recognizes the role of tackling natural resources, climate-related and environmental challenges in the preservation of peace and security. Given the importance of protecting the environment, consistent and systematic integration of climate security issues into the mandates of POs is critical to translating environmental concerns into action on the ground. For instance, the Security Council mandated the UN Special Political Mission in Somalia to carry out a climate risk assessment to evaluate the risks of drought and scarcity of water as part of its efforts to address the complexities of the climate–peace–security nexus.<sup>79</sup>

The preceding sections have addressed the environmental obligations of POs under customary IEL, as well as under the internal rules of the UN, the laws of the host State, and mandates from the Security Council, including during armed conflicts. The following section covers the obligation of POs to protect the natural environment stemming from IHL.

## Environmental obligations of POs under IHL

Consent, impartiality and non-use of force are the three core principles underpinning POs, but POs may relate to armed conflict in multiple ways. Sometimes, POs are mandated to use varying degrees of force to neutralize armed groups and operate alongside State forces, to support State authority, to establish the rule of law, and to prevent attacks on themselves and those they are

76 2022 Environmental Policy, above note 14, para. 41.

77 PERAC Principles, above note 6, Principle 7, para. 5.

78 *Ibid.*

79 See UNSC Res. 2461, 27 March 2019, Preamble, para. 21. For a discussion on the role of POs in Somalia, see Jenna Russo, *The UN Environmental and Climate Adviser in Somalia*, International Peace Institute, 2022.

mandated to protect.<sup>80</sup> In situations where POs are involved in an armed conflict, they may become parties to the conflict if the classic conditions for the application of IHL are met.<sup>81</sup> While the application of IHL to UN forces may be the subject of legal and political debate,<sup>82</sup> it is evident that the UN recognizes its responsibilities under IHL. In addition, on numerous occasions the UN has accepted its due diligence obligation to ensure respect for IHL by parties to armed conflicts, including armed non-State actors.<sup>83</sup> This section examines the obligation to protect the natural environment, both when POs are involved in an armed conflict and when they are not. Generally, the extent of the environmental law obligations of POs depend on the specific circumstances in which they operate, the types of functions entrusted to them and whether they are a party to an armed conflict or not.

### When a PO is a party to an armed conflict

POs could be involved in hostilities that can trigger the application of IHL.<sup>84</sup> In such cases, as indicated under the 1999 UN Secretary-General's Bulletin, the Capstone Doctrine and the UN Convention on the Safety of United Nations and Associated Personnel, UN forces must observe the principles and rules of IHL.<sup>85</sup> Commentators also agree that POs can engage in activities that could make them a party to an armed conflict,<sup>86</sup> and, when involved in an armed conflict, POs

80 See Alexander Gilder, "The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations", *Netherlands International Law Review*, Vol. 66, No. 1, 2019, p. 47.

81 See Arts 2 and 3 common to the four Geneva Conventions.

82 For a summary of the relevant positions and arguments, including those of the United Nations, see Daphna Shraga, "The United Nations as an Actor Bound by International Humanitarian Law", *International Peacekeeping*, Vol. 5, No. 2, 1998; Tristan Ferraro, "The Applicability and Application of International Humanitarian Law to Multinational Forces", *International Review of the Red Cross*, Vol. 95, No. 891–892, 2013; Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar, Cheltenham, 2019, pp. 468–475.

83 See Nigel White, "In Search of Due Diligence Obligations in UN Peacekeeping Operations: Identifying Standards for Accountability", *Journal of International Peacekeeping*, Vol. 23, No. 3–4, 2020, pp. 220–221; Haidi Willmot and Scott Sheeran, "The Protection of Civilians Mandate in UN Peacekeeping Operations: Reconciling Protection Concepts and Practices", *International Review of the Red Cross*, Vol. 95, No. 891–892, 2013, pp. 527–528.

84 See ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2<sup>nd</sup> ed., Geneva, 2020 (ICRC Commentary on GC III), Art. 2, paras 278–89, 367–375, and Art. 3, paras 445–447.

85 1999 Secretary-General's Bulletin, above note 46; Capstone Doctrine, above note 54, p. 15; Convention on the Safety of United Nations and Associated Personnel, 2051 UNTS 363, 9 December 1994 (entered into force 15 January 1999), Art. 2(2).

86 See T. Ferraro, above note 82; Daphna Shraga, "UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage", *American Journal of International Law*, Vol. 94, No. 2, 2000; Katarina Grenfell, "Perspective on the Applicability and Application of International Humanitarian Law: The UN Context", *International Review of the Red Cross*, Vol. 95, No. 891–892, 2013; Devon Whittle, "Peacekeeping in Conflict: The Intervention Brigade, MONUSCO, and the Application of International Humanitarian Law to United Nations Forces", *Georgetown Journal of International Law*, Vol. 46, No. 3, 2015, p. 848; Michael Bothe and Thomas Dorschel, "The UN Peacekeeping Experience", in Dieter Fleck (ed.), *The Handbook of the Law of Visiting Forces*, 1st ed., Oxford University Press, New York, 2001.

must respect and ensure respect for IHL.<sup>87</sup> The UN admits that its forces must observe IHL, though, at times, it claims that it cannot be considered a “party to an armed conflict”, “enemy forces” or an “Occupying Power”.<sup>88</sup> Such an argument is mainly based on *jus ad bellum* and other policy considerations.<sup>89</sup> Nevertheless, in 1961, during the UN Operation in the Congo, the UN Secretary-General stated that the UN could become a party to an armed conflict (when engaging in hostilities against armed non-State actors).<sup>90</sup> Likewise, Patricia O’Brien, Undersecretary-General for Legal Affairs and Legal Counsel of the UN at the time, confirmed this view.<sup>91</sup> The HIPPO report addressed to the UN Secretary-General equally accepted that UN forces could become a party to an armed conflict.<sup>92</sup>

Whether or not the UN can and should be considered a party to an armed conflict is a topic of some discussion. The ICRC indicates that “depending on the circumstances, the Party or Parties to the conflict may be the troop-contributing countries, the international organization under whose command and control the multinational forces operate, or both”.<sup>93</sup> As the POs are subsidiary organs of the UN and are usually under its command and control,<sup>94</sup> in principle, it is the UN (not the troop-contributing countries) that becomes a party to armed conflict. In line with this, the Geneva Academy’s Rule of Law in Armed Conflict platform, which qualifies situations of armed conflict using IHL standards, considers the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), MINUSMA and the UN Multidimensional Integrated Stabilization Mission in the Central African Republic as parties to NIAC.<sup>95</sup>

There is also disagreement among scholars on whether or not the involvement of UN forces automatically “internationalizes” the conflict.<sup>96</sup>

87 See Office of the United Nations High Commissioner for Human Rights, *International Legal Protection of Human Rights in Armed Conflict*, HR/PUB/11/01, New York and Geneva, 2011, pp. 28–30; ICRC Customary Law Study, above note 35, Rule 139; 1999 Secretary-General’s Bulletin, above note 46; PERAC Principles, above note 6, Principle 7, para. 3.

88 See Leuven Manual, above note 22, p. 97; Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice*, Cambridge University Press, Cambridge, 2009, p. 215; M. Sassòli, above note 82, p. 470.

89 See e.g. ICRC Commentary on GC III, above note 84, paras 278, 368; M. Sassòli, above note 82, pp. 468–475.

90 *Report of Secretary-General on Steps to Implement SC Res. S/4741 (1961)*, UN Doc. S/4752, 27 February 1961, Annex VII, p. 3.

91 Michel Veuthey and Gian Luca Beruto (eds), *Respecting International Humanitarian Law: Challenges and Responses*, International Institute of Humanitarian Law, FrancoAngeli, Milan, 2014, pp. 33–35.

92 HIPPO, above note 12, para. 122.

93 See ICRC Commentary on GC III, above note 84, para. 281.

94 See ILC, *Comments and Observations Received from International Organizations*, UN Doc. A/CN.4/637, February 2011, p. 150.

95 See Geneva Academy of International Humanitarian Law and Human Rights, *RULAC: Rule of Law in Armed Conflict*, available at: [www.rulac.org/classification/contemporary-challenges-for-classification](http://www.rulac.org/classification/contemporary-challenges-for-classification). See also Damian Lilly, “The United Nations as a Party to Armed Conflict: The Intervention Brigade of MONUSCO in the Democratic Republic of Congo (DRC)”, *Journal of International Peacekeeping*, Vol. 20, No. 3–4, 2016.

96 See Alexandre Faite and Jérémie Labbé Grenier (eds), *Expert Meeting on Multinational Peace Operations: Applicability of International Humanitarian Law and International Human Rights Law to UN Mandated Forces (Geneva, 11–12 December 2003): Report*, ICRC, Geneva, 2004, p. 62; Eric David and Ola Engdahl, “How Does the Involvement of a Multinational Peacekeeping Force Affect the Classification of a Situation?”, *International Review of the Red Cross*, Vol. 95, No. 891–892, 2013, pp. 664–665.

However, the ICRC indicates that the same criteria for determining the existence of an armed conflict enshrined in Articles 2 and 3 common to the four Geneva Conventions apply to armed conflicts involving POs.<sup>97</sup> It should also be noted that if a PO provides support to a party involved in a pre-existing NIAC that would directly impact the opposing party's ability to carry out military operations, then the PO will arguably become a party to the conflict.<sup>98</sup>

As a party to an armed conflict, whether IAC or NIAC, POs must respect and ensure respect for the applicable rules of IHL, including those that protect the natural environment.<sup>99</sup> As the UN is not a party to IHL treaties, a PO's environmental law obligations are mainly governed by customary IHL rules protecting the natural environment. In addition, SOFAs signed between the UN and States hosting POs typically require the UN to ensure that its operation is conducted with "full respect for the principles and rules of the international conventions applicable to the conduct of military personnel".<sup>100</sup> The 1999 Secretary-General's Bulletin also specifically affirms the applicability of certain fundamental principles and rules of IHL. Thus, POs must protect the environment in accordance with applicable law, including IHL.

The ICRC's updated *Guidelines on the Protection of the Natural Environment in Armed Conflict* (ICRC Guidelines) provide a comprehensive overview of existing IHL rules protecting the environment.<sup>101</sup> The ICRC Guidelines restate both general and specific protections under IHL and provide a commentary to clarify the source of these and aid interpretation. First, by virtue of its civilian character, the natural environment benefits from both direct and indirect general protection, including under the principles of distinction, proportionality and precaution.<sup>102</sup> In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the ICJ underscores the importance of considering environmental factors in implementing the principles and rules of the law applicable in armed conflict.<sup>103</sup> As restated in the ICRC Guidelines, these principles on the conduct of hostilities have attained customary law status

97 See ICRC Commentary on GC III, above note 84, paras 280, 447. See also Leuven Manual, above note 22, pp. 93–97; M. Sassòli, above note 82, pp. 471–472; T. Ferraro, above note 82, pp. 580–583.

98 See ICRC Commentary on GC III, above note 84, para. 480; Leuven Manual, above note 22, pp. 102–104; Tristan Ferraro, "The ICRC's Legal Position on the Notion of Armed Conflict Involving Foreign Intervention and on Determining the IHL Applicable to This Type of Conflict", *International Review of the Red Cross*, Vol. 97, No. 900, 2015, pp. 1230–1233; Ralph Mamiya and Tobias Vestner, "Revisiting the Law on UN Peace Operations' Support to Partner Forces", *Journal of Conflict and Security Law*, Vol. 27, No. 2, 2022.

99 See ICRC Guidelines, above note 26, para. 302; Philippe Antoine, "International Humanitarian Law and the Protection of the Environment in Time of Armed Conflict", *International Review of the Red Cross*, Vol. 32, No. 291, 1992.

100 See *The Status of Forces Agreement between the United Nations and the Government of the Republic of South Sudan Concerning the United Nations Mission in South Sudan*, Juba, 8 August 2011, paras 6(a)–(b). The ICRC indicates that this has been the practice since the mid-1990s: see ICRC Commentary on GC III, above note 84, fn. 248.

101 ICRC Guidelines, above note 26. However, it should be noted that whether and how certain IHL rules apply to the natural environment is the subject of some debate (see para. 23).

102 See *ibid.*, Rules 5–9; ICRC Customary Law Study, above note 35, Rule 43.

103 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports* 1996, para. 33.



applicable both in IACs and NIACs.<sup>104</sup> Some sources, including UNEP, consider that these principles of IHL “may not be sufficient to limit damage to the environment” in armed conflict.<sup>105</sup> Nevertheless, the ICRC Guidelines have clarified how these principles apply in practice and have noted the relevance of IEL principles to the extent that they are applicable in armed conflict, including considering the precautionary principle in the face of scientific certainty.<sup>106</sup>

The principle of distinction obliges parties to an armed conflict to distinguish between civilian objects and military objectives at all times; it thus entails that “no part of the natural environment may be attacked, unless it is a military objective”, and prohibits indiscriminate attacks against the natural environment.<sup>107</sup> The principle of proportionality prohibits attacks “which may be expected to cause incidental damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated”.<sup>108</sup> When conducting such assessments, parties to armed conflict must take into account damages that are “not only immediate and direct, but also long-term and indirect, as long as it is foreseeable”.<sup>109</sup>

The principle of precaution requires parties to armed conflict (both IAC and NIAC) to take constant care to spare civilian objects, including the environment, in the conduct of military operations. They must therefore take all feasible precautions to avoid or minimize environmental damage.<sup>110</sup> According to the ICRC Guidelines, the obligations under the precautionary principle (Rule 8) also operationalize the general standard of due regard to the protection and preservation of the natural environment.<sup>111</sup> The ICRC Guidelines also underscored that the lack of scientific certainty as to the effects on the natural environment of certain military operations does not absolve parties to the conflict from taking precautions.<sup>112</sup> The 2009 UNEP report on *Protecting the Environment during Armed Conflict* also notes that the ICRC emphasizes the significance of taking a precautionary approach even in the absence of scientific certainty about the likely effects of a particular weapon on the environment.<sup>113</sup> Regarding passive precautions, the ICRC indicates that “parties to the conflict must take all feasible precautions to protect civilian objects under their control,

104 ICRC Guidelines, above note 26, para. 95; ICRC Customary Law Study, above note 35, Rules 43–45.

105 See UNEP, above note 17, p. 52; M. Bothe *et al.*, above note 34, pp. 576–579.

106 See ICRC Guidelines, above note 26, Rule 8, para. 124; ICRC Customary Law Study, above note 35, Rule 44. See also Raphaël van Steenberghe, “The Interplay between International Humanitarian Law and International Environmental Law: Towards a Comprehensive Framework for a Better Protection of the Environment in Armed Conflict”, *Journal of International Criminal Justice*, Vol. 20, No. 5, 2022, pp. 1128–1131.

107 See ICRC Guidelines, above note 26, Rules 5–6; ICRC Customary Law Study, above note 35, Rule 43; PERAC Principles, above note 6, Principle 14, commentary para.3.

108 See ICRC Guidelines, above note 26, Rule 7; ICRC Customary Law Study, above note 35, Rule 43; PERAC Principles, above note 6, Principle 14, commentary paras 4–7.

109 See ICRC Guidelines, above note 26, paras 117–122; M. Bothe *et al.*, above note 34, pp. 577–578.

110 See ICRC Guidelines, above note 26, Rule 8; ICRC Customary Law Study, above note 35, Rule 44; PERAC Principles, above note 6, Principle 14, commentary para. 8.

111 See ICRC Guidelines, above note 26, Rule1, para. 44.

112 ICRC Customary Law Study, above note 35, Rule 44; ICRC Guidelines, above note 26, para. 124.

113 See UNEP, above note 17, p. 18.

including the natural environment, against the effects of attacks”, and that this obligation is a norm of customary law applicable in both IAC and NIAC.<sup>114</sup>

Accordingly, POs shall respect the principle of distinction and direct attacks only against military objectives. They are prohibited from launching attacks against military objectives that may be expected to cause incidental damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated. In addition, they must take constant care to spare the natural environment during military operations and must take all feasible precautions to avoid, and in any event to minimize, incidental damage to civilian property, including the natural environment.

The natural environment, or at least parts of it, further benefits from protections given to specially protected objects: objects indispensable to the survival of the civilian population, works and installations containing dangerous forces, and cultural property.<sup>115</sup> As civilian objects, parts of the natural environment are protected under IHL rules on enemy property. Likewise, parts of the natural environment may qualify as cultural property and benefit from additional protections granted to such property. The 1999 Secretary-General’s Bulletin recognizes the prohibitions against attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, the prohibition relating to installations containing dangerous forces, and the protection given to cultural objects.<sup>116</sup> The UN Environmental Management Handbook indicates that directions to this effect should be issued and incorporated into pre-deployment briefings.<sup>117</sup> The natural environment also benefits from protections under the rules on enemy property: the prohibition on destruction of the natural environment not justified by imperative military necessity, the prohibition on pillage, and rules on private and public property.<sup>118</sup> Similar to these prohibitions, the 1999 Secretary-General’s Bulletin recognized that POs have obligations in relation to the protection of cultural property and enemy property, including the prohibition on pillage and the misappropriation of the enemy’s properties.<sup>119</sup> Moreover, the ICRC Guidelines restate rules on specific weapons that afford protection to the natural environment,<sup>120</sup> and according to the 1999 Secretary-General’s Bulletin, UN forces shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of IHL.<sup>121</sup> These are obligations that IHL imposes on parties to an armed conflict, and when POs become a party to an armed conflict, they must observe such obligations.

114 See ICRC Guidelines, above note 26, Rule 9, para. 138.

115 See *ibid.*, Rules 10–12.

116 1999 Secretary-General’s Bulletin, above note 46, sections 6.7, 6.8, 6.6 respectively.

117 See Environmental Management Handbook, above note 7, p. 37.

118 See ICRC Guidelines, above note 26, Rules 13–15. See also 1999 Secretary-General’s Bulletin, above note 46, section 6.6; PERAC Principles, above note 6, Principle 16.

119 See 1999 Secretary-General’s Bulletin, above note 46, section 6.6.

120 See ICRC Guidelines, above note 26, Rules 19–25.

121 See 1999 Secretary-General’s Bulletin, above note 46, section 6.2.

There are few specific protections addressing the natural environment *as such*. The principal specific protection relates to the prohibition on the use of methods and means of warfare that may cause widespread, long-term and severe damage to the natural environment.<sup>122</sup> It is prevalently accepted that this rule forms part of customary IHL applicable in IACs, and also arguably in NIACs.<sup>123</sup> The 1999 Secretary-General's Bulletin provides that UN forces are "prohibited from employing methods of warfare ... which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment".<sup>124</sup> The threshold under IHL<sup>125</sup> and the Bulletin ("widespread, long-term *and* severe damage to the natural environment") is higher and more challenging to be met than the standards under IEL that prohibit causing "significant" or "serious" harm to the environment.<sup>126</sup> The other specific protection under customary law, as identified by the ICRC, provides that "methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment" and is also arguably applicable in NIACs.<sup>127</sup> Commentators have further argued that the customary IHL obligation of "due regard for the natural environment in military operations" is more "favourable for the environment and more flexible than the provisions of Additional Protocol I" as it specifically includes preservation of the natural environment.<sup>128</sup> Customary IHL further prohibits using the destruction of the natural environment as a weapon, and this prohibition is also arguably applicable in NIACs.<sup>129</sup> The right of UN forces to choose methods and means of combat is not unlimited, and they shall do so with due regard to the protection and preservation of the natural environment.<sup>130</sup>

In IAC, the natural environment can also benefit from the prohibition of reprisals against objects protected under the Geneva Conventions and the Hague Convention for the Protection of Cultural Property.<sup>131</sup> The prohibition on reprisal against objects protected under these instruments also forms part of customary IHL applicable in IACs.<sup>132</sup> Additional Protocol I (AP I) further prohibits reprisals in the conduct of hostilities against civilian objects, the natural environment, objects indispensable to the survival of the civilian population, and works and installations containing dangerous forces, namely dams, dykes and

122 See ICRC Customary Law Study, above note 35, Rule 45; ICRC Guidelines, above note 26, Rule 2.

123 ICRC Guidelines, above note 26, para. 47.

124 1999 Secretary-General's Bulletin, above note 46.

125 See ICRC Guidelines, above note 26, Rule 2, paras 49–72; PERAC Principles, above note 6, Principle 13, paras 5–9.

126 See Britta Sjøstedt, *The Role of Multilateral Environmental Agreements: A Reconciliatory Approach to Environmental Protection in Armed Conflict*, Hart, Oxford, London, New York, New Delhi and Sydney, 2021, p. 51; M. Tignino and T. Kebebew, above note 28, pp. 1210–1213.

127 See ICRC Guidelines, above note 26, Rule 1, para. 42; ICRC Customary Law Study, above note 35, Rule 44.

128 See M. Bothe *et al.*, above note 34, p. 575.

129 See ICRC Guidelines, above note 26, Rule 3, para. 76; ICRC Customary Law Study, above note 35, Rule 45.

130 See 1999 Secretary-General's Bulletin, above note 46, section 6.1.

131 See ICRC Guidelines, above note 26, Rule 4; ICRC Customary Law Study, above note 35, Rule 147; PERAC Principles, above note 6, Principle 15.

132 See ICRC Customary Law Study, above note 35, Rule 147; ICRC Guidelines, above note 26, para. 91.

nuclear electrical generating stations. As the ICRC Guidelines indicate, the prohibition on reprisals against such objects in the conduct of hostilities is not yet established as a rule of customary international law.<sup>133</sup> Regarding NIAC, neither common Article 3 nor Additional Protocol II includes the prohibition on reprisals. According to the ICRC Customary Law Study, “parties to such conflicts do not have the right to resort to belligerent reprisals”.<sup>134</sup> Scholars also argue that the very notion of reprisals is conceptually inconceivable in NIACs.<sup>135</sup> PERAC Principle 15 provides that “attacks against the environment by way of reprisals are prohibited”.<sup>136</sup> Under the commentary to Principle 15, it is pointed out that while the principle “reflects binding law in international armed conflicts for the wide majority of States, and seems to be consistent with *lex lata* in non-international armed conflicts, there is, at present, uncertainty concerning its customary status”.<sup>137</sup> The 1999 Secretary-General’s Bulletin specifies that UN forces “shall not engage in reprisals against ... civilian objects” and “shall not engage in reprisals against objects and installations”, including cultural objects, objects indispensable to the survival of the civilian population, and works and installations containing dangerous forces.<sup>138</sup> Accordingly, POs shall not engage in reprisals against these objects and installations, including when they are part of the natural environment.

In addition to their relevant IHL obligations under the SOFA and the 1999 Secretary-General’s Bulletin, POs must respect the aforementioned general and specific customary IHL protections for the natural environment. It is crucial to emphasize that the Secretary-General’s Bulletin does not differentiate between IAC and NIAC, and that therefore, UN forces must comply with all of the IHL prohibitions reiterated in the Bulletin in both scenarios.<sup>139</sup>

As discussed in the previous sections, POs also assume obligations under customary rules and principles of IEL, whether they are a party to an armed conflict or not, as these obligations usually continue to apply even during armed conflicts.<sup>140</sup> The PERAC Principles affirm that both treaty and customary IEL continue to apply during armed conflict as long as they are not incompatible with IHL and that POs shall take, as appropriate, measures to prevent, mitigate and remediate the harm to the environment resulting from their operations.<sup>141</sup> For situations of occupation, the PERAC Principles contain a general duty “to respect and protect the natural environment in accordance with *applicable international*

133 See ICRC Guidelines, above note 26, para. 93; ICRC Customary Law Study, above note 35, Rule 147; PERAC Principles, above note 6, Principle 15, paras 3, 10.

134 ICRC Customary Law Study, above note 35, Rule 148; ICRC Guidelines, above note 26, para. 94; PERAC Principles, above note 6, Principle 15, paras 7–8.

135 M. Sassòli, above note 82, p. 83.

136 PERAC Principles, above note 6, Principle 15.

137 *Ibid.*, Principle 15, para. 10.

138 See 1999 Secretary-General’s Bulletin, above note 46, sections 5.6, 6.9 respectively.

139 See D. Shrager, above note 48, pp. 372–373.

140 See ILC, *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries*, UN Doc. A/66/10, 2011, Annex, Article 7, para. 101; ICRC Guidelines, above note 26, paras 29–36; UNEP, above note 17, pp. 34–46; M. Bothe *et al.*, above note 34, pp. 588–589.

141 See PERAC Principles, above note 6, p. 136, para. 4, and Principle 6.

law”.<sup>142</sup> The principles of environmental law, mainly the precautionary, preventive and sustainability principles, complement the protection of the natural environment under IHL.<sup>143</sup> The ICRC Guidelines affirm that “other rules within different branches of international law may, depending on the context, and in whole or in part, complement or inform the IHL rules protecting the natural environment in times of armed conflict”.<sup>144</sup>

These obligations may require POs to take measures to mitigate their environmental impact and promote sustainable practices, even in the midst of an armed conflict. For instance, under the internal rules of the UN, POs are obliged not to “discharge untreated wastewaters directly into streams, rivers, groundwater or other bodies of water” and are required to contribute to “the preservation and rehabilitation of ecosystems and cultural heritage”.<sup>145</sup> Besides this, the UN has already developed policies, guidelines and a code of conduct to ensure that POs comply with IHL. The mission’s Force Commander shall institute instructions and operating procedures and implement other necessary measures to meet the UN’s environmental mandates and obligations throughout the mission lifecycle, including IHL obligations outlined in the 1999 Secretary-General’s Bulletin during military operations.<sup>146</sup> Further, the Force Commander shall “appoint a Force advisor to serve as the focal point within the military component of the mission to liaise with the environmental officer and to deal with environmental issues within the military component”.<sup>147</sup> POs including MONUSCO and UNMISS have now designated environmental focal points in their civilian and uniformed components.<sup>148</sup>

## When a PO is not a party to an armed conflict

IHL does not regulate the conduct of POs deployed in the context of an armed conflict to which they do not become a party. The peacekeepers individually remain bound by the criminalized rules of IHL, such as the prohibitions against pillaging and employing poison or poisoned weapons.<sup>149</sup> Accordingly, when POs do not engage in armed conflict, the main starting point is the “duty to ensure respect” for IHL, which applies both during armed conflict and in peacetime as enshrined under common Article 1 of the Geneva Conventions and Article 1 of AP I. According to the ICJ, the duty to respect and ensure respect emanates from the general principles of IHL to which the Geneva Conventions merely give

142 *Ibid.*, Principle 19 (emphasis added).

143 See e.g. K. Stefanik, above note 27, pp. 113–115; R. van Steenberghe, above note 106.

144 ICRC Guidelines, above note 26, para. 26.

145 See 2022 Environmental Policy, above note 14, paras 35–40.

146 Environmental Management Handbook, above note 7, pp. 5, 10, 37, 68–70; 2022 Environmental Policy, above note 14, para. 104.

147 See Environmental Management Handbook, above note 7, p. 69; 2022 Environmental Policy, above note 14, para. 105.

148 See 2019 Environment Strategy, above note 9, pp. 3–4.

149 See M. Sassöli, above note 82, p. 470.

specific expression.<sup>150</sup> This overarching obligation to “ensure respect” for the entire body of IHL could broadly be seen as a logical extension of the general object and purpose of IHL.<sup>151</sup>

Based on this understanding, this section examines the obligation of POs to ensure respect for IHL, including the rules that protect the natural environment. The first step is to determine whether POs have the duty to ensure respect for IHL. The UN has acknowledged its obligation to ensure respect for IHL on various occasions:<sup>152</sup> for instance, under its Human Rights Due Diligence Policy of 2013,<sup>153</sup> the UN recognized its obligations towards non-UN forces and has been taking measures to prevent and respond to violations by third parties by accepting the applicability of human rights law and IHL.<sup>154</sup> The most important mandate of POs – the protection of civilians, as recognized under the 2019 UN policy on the protection of civilians – is also connected with respecting and ensuring respect for IHL.<sup>155</sup> It is also argued that this obligation would squarely fit into the notion of “fundamental principles and rules” enshrined in the 1999 Secretary-General’s Bulletin.<sup>156</sup> The International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Kupreskic* case underscored that most rules of IHL, due to their absolute character, lay down obligations for the international community, and that each and every member of that community has “a legal entitlement to demand respect for such obligations”.<sup>157</sup> Thus, as a member of the international community, the UN should also ensure respect for such IHL obligations, which arguably include environmental obligations.

Moreover, the Undersecretary-General for Legal Affairs and UN Legal Counsel, Miguel de Serpa Soares, has indicated that the UN has a general role in ensuring respect for IHL through different measures, such as establishing

150 ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *ICJ Reports* 1986, para. 220.

151 See Jean-Marie Henckaerts, “Common Article 1: A Lynchpin in the System to Ensure Respect for International Humanitarian Law”, *ILA Reporter*, 11 July 2016, available at: <https://ilareporter.org.au/2016/11/common-article-1-a-lynchpin-in-the-system-to-ensure-respect-for-international-humanitarian-law-jean-marie-henckaerts/>.

152 See UN General Assembly, *Report of the Secretary-General on the Work of the Organization*, UN Doc. A/51/1, 1996, para. 117.

153 UN General Assembly and UN Security Council, *Human Rights Due Diligence Policy on United Nations Support to Non-United Nations Security Forces*, UN Doc. A/67/775 S/2013/110, 5 March 2013.

154 See N. White, above note 83.

155 UN DPO, *The Protection of Civilians in United Nations Peacekeeping*, Ref. 2019.17, 1 November 2019, paras 27, 45, 50–62.

156 See Matthew Happold, “Comment – Obligations of States Contributing to UN Peacekeeping Missions under Common Article 1 of the Geneva Conventions”, in Heike Krieger (ed.), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, pp. 388–390; Leanne M. Smith, “The Obligation to Ensure Respect for IHL in the Peacekeeping Context: Progress, Lessons and Opportunities”, in Eve Massingham and Annabel McConnachie (eds), *Ensuring Respect for International Humanitarian Law*, Routledge, Abingdon, 2021, pp. 151–154.

157 See ICTY, *The Prosecutor v. Kupreskic et al.*, Case No. IT-95-16-T, Judgment (Trial Chamber), 14 January 2000, para. 519 (“with the consequence that each and every member of the international community has a ‘legal interest’ in their observance and consequently a legal entitlement to demand respect for such obligations”); ICTY, *The Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1-T, Judgment (Trial Chamber), 10 December 1998, para. 151.

commissions of inquiry to investigate alleged violations of IHL, requesting the Secretary-General to report on a specific armed conflict, mandating POs to monitor potential violations of IHL, providing pre-deployment training for peacekeepers, and imposing sanctions on perpetrators.<sup>158</sup> Furthermore, the UN's particular role in ensuring compliance in situations of serious violations of IHL is expressly recognized under Article 89 of AP I, and it is increasingly taking actions ranging from the condemnation of violations to the adoption of sanctions and the deployment of POs.<sup>159</sup> The deployment of POs may also be viewed as one of the measures that the UN takes to enforce IHL.<sup>160</sup>

As a subject of international law, the UN, regardless of whether it is a party to an armed conflict, has to ensure respect for IHL by others.<sup>161</sup> In a statement to the General Assembly, the ICRC has indicated that the UN is required to ensure that parties to a conflict comply with IHL and that to that end, it should take steps to bring parties to armed conflict back to an attitude of respect for the law using its influence.<sup>162</sup> Given the power and the influence that POs have on areas of their deployment against different parties, it can be argued that they have an even greater responsibility to ensure respect for IHL, including for those norms relating to the natural environment.<sup>163</sup> The UN can mandate POs to engage with parties to armed conflict and to monitor and report violations of IHL relating to the environment or establish fact-finding or inquiry commissions.

The next question is to assess the scope of the obligation to ensure respect for IHL. There are different practices and views concerning the scope of this obligation.<sup>164</sup> The internal dimension of the obligation – i.e., to respect and ensure respect for IHL by the State Party's own armed forces, by those whose acts or omissions are attributable to them and the whole population over which they establish authority or jurisdiction – is uncontested. For example, the UN provides training in IHL for its peacekeepers at the start of and during their deployment. What remains contentious is the external dimension of the obligation to ensure respect by other actors, its customary law status, and

158 See UN Security Council, *The Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security: International Humanitarian Law*, UN Doc. S/PV8596, 13 August 2019, p. 3.

159 See ICRC Commentary on GC III, above note 84, para. 215.

160 M. Sassòli, above note 82, p. 469; L. Smith, above note 156, p. 146 (Smith identifies collaboration between the UN and the ICRC as one way to implement the obligation to ensure respect for IHL).

161 See ICRC Commentary on GC III, above note 84, paras 171–175.

162 ICRC, "Peacekeeping Operations: ICRC Statement to the United Nations", *International Committee of the Red Cross*, 30 October 2017, available at: [www.icrc.org/en/document/peacekeeping-operations-icrc-statement- united-nations-2017](http://www.icrc.org/en/document/peacekeeping-operations-icrc-statement- united-nations-2017).

163 See Ola Engdahl, "Compliance with International Humanitarian Law in Multinational Peace Operations", *Nordic Journal of International Law*, Vol. 78, No. 4, 2009, p. 517; M. Happold, above note 156, pp. 383–384.

164 See ICRC Commentary on GC III, above note 84, paras 176–216; Knut Dörmann and Jose Serralvo, "Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations", *International Review of the Red Cross*, Vol. 96, No. 895–896, 2014; Théo Bouterche and Marco Sassòli, *Expert Opinion on Third States' Obligations vis-à-vis IHL Violations under International Law, with a Special Focus on Common Article 1 to the 1949 Geneva Conventions*, Norwegian Refugee Council, 8 November 2016.

whether common Article 1 imposes any obligation on third parties, including POs in the context of NIACs.<sup>165</sup> This external dimension has evolved over time and requires the efforts of third parties to bring parties to an armed conflict back to a position of respect for IHL by preventing potential breaches, encouraging compliance and investigating violations.<sup>166</sup> The prevalent view is that the obligation encompasses internal and external dimensions and applies to both IAC and NIAC.

As indicated in the ICRC Guidelines, “States may not encourage violations of international humanitarian law, including of the rules protecting the natural environment, by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law.”<sup>167</sup> Though this rule is addressed to “States”, the ICRC has already confirmed that an IO “which exercises command and control over national contingents or which has mandated the recourse to armed force by its Member States” is the addressee of the obligation to respect and ensure respect for IHL,<sup>168</sup> including the rules on the protection of the natural environment. As part of their prevention and protection activities, POs must do everything in their power to ensure respect for IHL and to promote respect for the natural environment in armed conflict situations. POs can use the ICRC Guidelines, PERAC Principles and other instruments to increase their engagement with parties to armed conflict so as to strengthen the protection of natural resources, “map out critical environmental infrastructure and encourage conflict parties to agree on protected demilitarised zones”, and enhance domestic capacity and expertise to promote accountability for protecting the natural environment.<sup>169</sup> By adhering to IHL, POs can prevent environmental degradation and contribute to the restoration of peace and stability.

In addition to their obligations under IHL, there are customary IEL principles and standards that need to be respected by POs deployed in relation to armed conflicts. Moreover, POs have already begun to translate their environmental obligations into action by adopting environmental policies and guidelines and starting pre-deployment training. PERAC Principle 7 codifies this already widespread practice, which relies on binding obligations.

165 See e.g. ICRC Commentary on GC III, above note 84, para. 153; Robin Geiß, “Common Article 1 of the 1949 Geneva Conventions – Scope and Content of the Obligation to ‘Ensure Respect’ – ‘Narrow but Deep’ or ‘Wide and Shallow’?”, in H. Krieger (ed.), above note 156; Michael N. Schmitt and Sean Watts, “Common Article 1 and the Duty to ‘Ensure Respect’”, *International Law Studies*, Vol. 96, 2020; Federal Court of Canada, *Daniel Turp v. The Minister of Foreign Affairs*, Case No. T-462-16, 24 January 2017, para. 71.

166 See ICRC Commentary on GC III, above note 84, paras 186–206. See also ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, paras 158–163.

167 ICRC Guidelines, above note 26, Rule 26(B).

168 See ICRC Commentary on GC III, above note 84, paras 171–175; Timo Koivurova and Kritika Singh, “Due Diligence”, in *Max Planck Encyclopedia of Public International Law*, 2022, paras 22–27, 45; Emilie Max, *The UN Security Council and Common Article 1: Understanding the Role of Peacekeeping Operations in Ensuring Respect for IHL*, Working Paper No. 6, Geneva Academy, 2021.

169 See A. Sarfati, above note 3, pp. 8–9.



## Conclusion

The 1992 UN Conference on Environment and Development affirmed that “peace, development and environmental protection are interdependent and indivisible”.<sup>170</sup> The PERAC Principles also emphasize the importance of protecting the environment for restoring and ensuring lasting peace, and recommend incorporating the restoration and protection of the environment damaged by conflict into peace agreements.<sup>171</sup> Thus, protecting the environment is a critical component for ensuring lasting peace; accordingly, POs are required to take measures to prevent harm to the environment, reduce their carbon footprint, manage waste responsibly, conserve local ecosystems and assess risks linked to environmental degradation, climate change and resource conflicts.<sup>172</sup> POs must also address environmental issues and risks in their efforts to promote peace and security, and UN environmental policies and guidelines are already addressing these issues. POs have an essential role, including helping host States to address environmental degradation, climate change and illegal exploitation of natural resources. Furthermore, measures such as carrying out environmental impact assessments, mapping areas of particular environmental importance and coordinating efforts among relevant international actors are essential. Systematically factoring environmental concerns into the mandates of POs will enable them to better anticipate, prevent and respond to such non-traditional security threats and ensure lasting peace.<sup>173</sup>

For POs, respecting and protecting the environment and managing their environmental footprint should be viewed not only as a policy matter (operational effectiveness, legitimacy and long-term legacy) but also as a legal obligation. By upholding their environmental obligations and implementing best practices, POs can directly contribute to maintaining international peace and security, promoting human rights and supporting sustainable development. Hence, the UN Security Council should continue including and expanding environmental functions in the mandates of POs. It is also crucial to sensitize and spread awareness of environmental issues among peacekeepers, policy-makers and other relevant national and international actors in order to ensure a sustainable future.

170 Rio Declaration, above note 31, Principle 25.

171 PERAC Principles, above note 6, Principle 22.

172 See United Nations, *Greening the Blue Report 2021: The UN System's Environmental Footprint and Efforts to Reduce It*, 18 February 2022, pp. 12–14; UNSC Res. 2349, 31 March 2017, para.26; UNGA Res. 63/281, 11 June 2009; United Nations, “Security Council Statement on Possible Security Implications of Climate Change Important When Climate Impacts Drive Conflict”, SC/10332, 20 July 2011, available at: <https://press.un.org/en/2011/sc10332.doc.htm>. See also Jean-Pierre Lacroix, “Protecting Peace: How UN Peacekeepers Are Part of the Climate Solution”, 21 September 2019, available at: <https://medium.com/we-the-peoples/protecting-peace-how-un-peacekeepers-are-part-of-the-climate-solution-707c7fecba6e>; O. Brown, above note 4, p. 12.

173 See HIPPO, above note 12, para. 66; A. Sarfati, above note 3, p. 7.