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THE ROLE OF INTERNATIONAL CRIMINAL LAW IN VIOLATIONS OF THE ENVIRONMENT DURING ARMED CONFLICT

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Abstract:

Environmental destruction during armed conflict has become an increasingly significant concern in contemporary international law, given its long-term ecological, economic, and humanitarian consequences. Armed conflicts often result in severe environmental degradation, including deforestation, pollution, destruction of ecosystems, and depletion of natural resources. International Criminal Law (ICL), as a mechanism of accountability, plays a crucial role in regulating such conduct and punishing perpetrators responsible for environmental harm. This article examines the legal framework governing environmental protection during armed conflict, with particular emphasis on the role of ICL and its interaction with International Humanitarian Law (IHL). It analyzes the evolution of legal norms, the provisions under the Rome Statute of the International Criminal Court (ICC), and relevant principles such as proportionality, distinction, and military necessity. The paper also explores challenges in enforcement, including high thresholds for liability, evidentiary difficulties, and political constraints. Furthermore, it discusses the emerging concept of ecocide as a potential independent international crime. The article concludes that while ICL has made notable progress, significant gaps remain, necessitating reforms to ensure effective accountability and sustainable environmental protection in times of armed conflict.

Keywords: International Criminal Law, Armed Conflict, Environmental Protection, War Crimes, Ecocide, International Humanitarian Law, International Criminal Court, Environmental Damage

Introduction:

The relationship between armed conflict and environmental degradation is both profound and deeply concerning. Warfare has historically inflicted significant harm on the natural environment, ranging from scorched earth tactics and destruction of agricultural lands to toxic contamination and loss of biodiversity. In modern conflicts, the scale and intensity of environmental damage have increased due to advanced weaponry, industrialized warfare, and strategic targeting of natural resources.

The environment is not merely a passive victim of war but an essential component of human survival and socio-economic stability.

Environmental damage during armed conflict often leads to long-term consequences such as food insecurity, displacement of populations, health crises, and economic instability. Therefore, the protection of the environment during warfare has become an important aspect of international law.

International Criminal Law (ICL), in conjunction with International Humanitarian Law (IHL), seeks to regulate conduct during armed conflict and ensure accountability for serious violations. While IHL provides rules governing the conduct of hostilities, ICL enforces these rules through criminal responsibility. This article critically examines the role of ICL in addressing environmental violations during armed conflict

and evaluates its effectiveness in achieving justice and deterrence.

Historical Evolution of Environmental Protection in Armed Conflict:

The protection of the environment during armed conflict is a relatively recent development in international law. Traditional laws of war focused primarily on protecting civilians and property, with little explicit attention to environmental concerns.

The Hague Regulations of 1907 laid the foundation for modern laws of armed conflict by regulating the means and methods of warfare. Although these regulations did not explicitly mention environmental protection, they prohibited unnecessary destruction of property, which indirectly extended to environmental resources.

The Geneva Conventions of 1949 and their Additional Protocol I of 1977 marked a significant advancement by explicitly addressing environmental protection. Article 35(3) of Additional Protocol I prohibits methods or means of warfare intended or expected to cause widespread, long-term, and severe damage to the natural environment. Similarly, Article 55 emphasizes the duty to protect the environment against such damage.

These provisions represent an acknowledgment of the intrinsic value of the environment and its importance for human survival. Over time, customary international law has reinforced these principles, making environmental protection a recognized component of the legal framework governing armed conflict.

Scope and Objectives

Scope:

This study focuses on the role of International Criminal Law in addressing environmental violations occurring during both international and non-international armed conflicts. It examines relevant legal provisions, judicial practices, and institutional mechanisms at the international level. The analysis is limited to the

intersection of ICL with environmental protection and does not extensively cover domestic legal frameworks.

Objectives:

- To analyze the legal framework of ICL concerning environmental protection during armed conflict.
- To examine how environmental damage is categorized under international crimes such as war crimes and crimes against humanity.
- To evaluate the role of international institutions, particularly the ICC, in prosecuting such violations.
- To identify challenges and limitations in enforcing ICL in cases of environmental harm.
- To explore emerging developments such as the concept of ecocide.
- To suggest measures for strengthening accountability mechanisms.

Legal Framework under International Criminal Law

Environmental War Crimes under the Rome Statute:

The Rome Statute of the International Criminal Court (1998) is the primary legal instrument governing international criminal accountability. Article 8(2)(b)(iv) of the Statute criminalizes:

“Intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment...”

This provision establishes environmental destruction as a war crime, but only under strict conditions. The requirement that damage must be “widespread, long-term, and severe” sets a high threshold, limiting the scope of prosecutions.

Individual Criminal Responsibility:

ICL focuses on individual accountability rather than state responsibility. Military commanders, political leaders, and other individuals may be

held criminally liable for environmental harm if they:

- Directly commit the act,
- Order or facilitate the act,
- Fail to prevent or punish subordinates (command responsibility).

This principle ensures that those in positions of authority cannot evade responsibility for environmental destruction.

Complementarity Principle:

The ICC operates on the principle of complementarity, meaning it acts only when national courts are unwilling or unable to prosecute. This creates both opportunities and challenges for addressing environmental crimes, as domestic legal systems may lack the capacity or willingness to prosecute such cases.

Principles of International Humanitarian Law and Environmental Protection

International Humanitarian Law provides key principles that indirectly safeguard the environment:

Principle of Distinction:

This principle requires parties to distinguish between civilian objects and military objectives. Environmental resources such as forests, rivers, and agricultural lands are generally considered civilian objects and should not be targeted.

Principle of Proportionality:

Attacks that may cause incidental environmental damage are prohibited if such damage is excessive in relation to the anticipated military advantage.

Principle of Military Necessity:

Destruction of the environment is permissible only if it is necessary for achieving a legitimate military objective. Unnecessary or wanton destruction is prohibited.

Precautionary Principle:

Parties must take all feasible precautions to minimize environmental harm, including careful planning and choice of weapons.

These principles collectively contribute to the protection of the environment, even in the absence of explicit criminal provisions.

Defending the environment

Environmental degradation and exploitation can be both a cause and a consequence of armed conflict. The International Court of Justice has recognised that damage to its environment may constitute an 'essential interest' of a state. The Court also affirmed that, 'the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn'. This is a truism even during times of warfare and certainly extends to the preservation of, and access to natural resources.

Of course, warfare by its very nature results in damage to the natural environment and to natural resources, as well as to other 'protected sites'. However, this alone cannot be justification for the intentional targeting of them.⁴⁰⁴

International Criminal Court in Punishment for Violations of the Environment:

The International Criminal Court appeared in the middle of 1998 AD to express the will of most members of the international community to lay the foundations of permanent, stable and impartial criminal justice. This court is specialized in punishing the most serious crimes of concern to the international community, including crimes committed against the natural environment. Only natural persons and by dropping immunities on major criminals (Ibrahim 2018). The jurisdiction of the International Criminal Court appears to punish four categories of crimes: crimes against humanity, war crimes, crimes of genocide and the crime of aggression. Under which

⁴⁰⁴ Crimes against the environment and international criminal law | International Bar Association, Available at <https://share.google/IDxNSFYphmkvPdtoo>

category were environmental crimes included (Alhendi 2022).⁴⁰⁵

Role of the International Criminal Court

The International Criminal Court plays a pivotal role in enforcing ICL. Although its jurisdiction over environmental crimes is limited, the Court has demonstrated an increasing willingness to address environmental issues.

In 2016, the Office of the Prosecutor issued a policy paper indicating that it would give particular consideration to crimes involving environmental destruction, illegal exploitation of natural resources, and land grabbing. This policy shift reflects a broader interpretation of the Court’s mandate.

Despite this progress, no case has yet been prosecuted solely on the basis of environmental damage. However, environmental factors have been considered in cases involving war crimes and crimes against humanity, signaling a gradual evolution in legal practice.

Case Studies of Environmental Damage in Armed Conflict

The Gulf War (1991):

During the Gulf War, Iraqi forces set fire to Kuwaiti oil wells, causing massive environmental damage, including air pollution and oil spills. This incident highlighted the devastating impact of warfare on the environment and prompted international calls for accountability.

The Vietnam War:

The use of chemical agents such as Agent Orange resulted in widespread deforestation and long-term health consequences. Although these actions predated modern legal frameworks, they remain a powerful example of environmental harm during conflict.

Recent Conflicts:

Contemporary conflicts in regions such as Syria, Ukraine, and parts of Africa have involved significant environmental damage, including destruction of infrastructure, contamination of water sources, and exploitation of natural resources.

These examples illustrate the urgent need for stronger legal mechanisms to address environmental violations.

Challenges in Enforcing International Criminal Law

High Threshold of Liability:

The requirement of “widespread, long-term, and severe” damage creates a significant barrier to prosecution. Many harmful acts do not meet all three criteria simultaneously.

Evidentiary and Technical Difficulties:

Proving environmental damage requires scientific expertise, long-term data, and clear evidence of causation and intent. This makes investigations complex and resource-intensive.

Political and Jurisdictional Constraints:

ICL enforcement depends on state cooperation. Political considerations often hinder investigations and prosecutions, particularly when powerful states are involved.

Lack of Awareness and Priority:

Environmental crimes are often overshadowed by other serious violations such as genocide and crimes against humanity, leading to limited attention and resources.

Existing legal framework on environmental protection

Protocol I Additional to the Geneva Conventions introduced the protection of the environment in conflict expressly for the first time, prohibiting warfare methods “which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.” The Protocol further emphasizes “[a]ttacks against the natural environment by way of reprisals are prohibited.”

⁴⁰⁵ (PDF) The Role of International Criminal Law in Violations of the Environment During Armed Conflict, Available at <https://share.google/bEpp1klrww5aYE221>

These provisions have established the crucial quantifiable degree standards for one type of criminal environmental damage: “widespread,” “long-term,” and “severe.” At the same time, to this day, they are not concretely defined. The “widespread” term’s interpretation should be understood to be several hundred square kilometers. As for the “long-term” standard, there are variations to consider between several months to a season (in the context of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, hereafter ENMOD) or requiring damage to last decades, or in the range of years (possibly a scale of 10 to 30 years). It is understood that this standard does not cover short-term or temporary damage, such as from artillery bombardment. However, during the assessment it is vital to consider the duration of the indirect effects, such as health issues, from the given method or means of warfare. The “severe” standard, in the context of the ENMOD Convention, requires “serious or significant disruption or harm to human life, natural and economic resources or other assets.”

The Rome Statute enables the classification of environmental damage as a war crime under international criminal law. According to article 8(2)(b)(iv) of the Rome Statute, “[i]ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” is a war crime. The rule retains the quantifiable standards of the harm. However, it adds additional criteria, including raising the mens rea standard, now requiring evidence that demonstrates intent and knowledge. In the International Criminal Court’s jurisdiction, article 8(2)(b)(iv) has not been utilized yet, likely due to its high threshold of required damage.

Numerous countries and international organizations also prohibit methods and means of warfare, which could cause widespread,

long-term, and severe damage to the natural environment in their military manuals. In some countries, such as Italy and Ukraine, employing these methods and means would be unlawful regardless of the intent to cause such harm.⁴⁰⁶

The Emerging Concept of Ecocide

The concept of ecocide has gained significant attention in recent years. It refers to extensive environmental destruction that threatens ecosystems and human survival.

Proposals have been made to include ecocide as the fifth international crime under the Rome Statute. This would:

- Lower the threshold for prosecution,
- Recognize environmental harm as an independent crime,
- Enhance deterrence and accountability.

However, challenges remain, including defining the scope of the crime and achieving international consensus.

The Way Forward

To strengthen the role of ICL in addressing environmental violations, several reforms are necessary:

- Expanding legal definitions to include broader forms of environmental harm,
- Incorporating ecocide into international criminal law,
- Enhancing investigative capacity and use of environmental forensics,
- Promoting international cooperation and political commitment,
- Integrating environmental considerations into military training and planning.

Such measures would help bridge existing gaps and ensure more effective protection of the environment.

Conclusion

The role of International Criminal Law in addressing environmental violations during

⁴⁰⁶ <https://blogs.icrc.org/law-and-policy/2025/03/20/environmental-destruction-in-conflict-broadening-accountability-in-war/>

armed conflict is both crucial and evolving. While existing legal frameworks, particularly the Rome Statute, provide a foundation for accountability, their effectiveness is limited by high thresholds, evidentiary challenges, and political constraints.

The increasing recognition of environmental protection as a global priority has led to important developments, including the ICC's policy shift and growing support for the concept of ecocide. However, much remains to be done to ensure that environmental destruction during armed conflict is adequately addressed and punished.

Strengthening legal provisions, enhancing enforcement mechanisms, and fostering international cooperation are essential steps toward achieving this goal. Ultimately, protecting the environment during armed conflict is not only a legal obligation but also a moral imperative, as it directly impacts the survival and well-being of present and future generations.

