United Rising

THE HAGUE UNIVERSITY OF APPLIED SCIENCES

Applied Research Project

Echoes of Ecocentrism: Criminalising **Ecocide** as the Vanguard of Environmental Protection in Times of War

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Abstract

This ARP addresses the research question: How can an ecocentric perspective inform a comprehensive analysis of Ecocide as a War Crime within the Rome Statute?

The research focuses on evaluating Article 8(2)(b)(iv) of the Rome Statute, probing how an ecocentric perspective can be seamlessly integrated into the development of environmental protections during armed conflicts. An interdisciplinary approach is adopted, drawing from legal and ecological scholarly journal articles and master dissertations. The research contends that integrating environmental norms into ICL frameworks is imperative for addressing contemporary environmental challenges. A critical examination of Article 8(2)(b)(iv) RS reveals inherent limitations, particularly concerning the need for more consensus in interpreting its definitions, thereby impeding its efficacy. The research also explores the disproportionate application of the Anthropocene paradigm within ICL frameworks, evaluating its inadequacy in addressing environmental protections. In response to the research question, the ARP proposes a two-fold approach. Firstly, recognising Nature's inherent rights is posited as a catalyst for evolving the principle of humanity enshrined in the Rome Statute, fostering a more inclusive environmental framework. Secondly, the ARP suggests that insights from Indigenous ideologies can guide the comprehensive application of ecocentric perspectives within the Rome Statute. In conclusion, the ARP advocates for the seamless integration of ecocentric perspectives into ICL frameworks, emphasising the urgency of adapting legal structures to address environmental challenges effectively during armed conflicts.

List of Abbreviations

AP I	Additional Protocol I
ARP	Applied Research Project
ENMOD	Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques
ICC	International Criminal Court
ICJ	International Court of Justice
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
IEL	International Environmental Law
IHL	International Humanitarian Law
ILC	International Law Commission
NATO	North Atlantic Treaty Organization
OTP	Office of the Prosecutor
RS	Rome Statute
UN	United Nations
UNEP	United Nations Environmental Program
UNGA	United Nations General Assembly
UNSC	United Nations Security Council

Introduction

The discussion around the crime of Ecocide dates back five decades. In 1970, Professor Arthur W. Galston first proposed the term 'Ecocide' at the Conference on War and National Responsibility in Washington, along with a proposed international ban on the crime.[i] As a bioethicist, he set a precedent by classifying the massive destruction of ecosystems as Ecocide. One example identified by Professor Arthur W. Galston was a chemical with defoliant effects, which later developed into Agent Orange.[ii] It was a mixture of herbicides used by the American military during the Vietnam War (sprayed between 1962 and 1971) with the dual purpose of destroying crops which might feed the Vietnamese and destroying forests, concealing Vietnamese forces.[iii] Just as it had a dual purpose, it unfortunately also had a dual effect. One was against the defoliation of the environment, and the second was the adverse effects on human health, such as cancer, miscarriages, and congenital malformations.[iv]

Various scenarios may give rise to Ecocide, including ocean and air pollution, soil impoverishment, and deforestation.[v] Despite these environmental concerns potentially appearing remote, the 2021 World Economic Forum's Global Risk Report highlights the prevalent consequences associated with environmental degradation.[vi] For instance, water pollution and soil degradation stand as leading causes of population displacement and food and water insecurity, all in turn leading to social fragmentation.[vii] Consequently, there is a significant global movement towards the criminalisation of Ecocide, spanning from individual countries to international organisations. Notably, the Environment and Sustainable Development Committee of the Deputies Chamber of the Brazilian Congress has approved a bill to criminalise severe cases of illegal or wanton destruction of the environment, referred to as Ecocide.[viii] Furthermore, the European Union has reached an agreement to pass a law aimed at preventing and punishing actions deemed comparable to Ecocide.[ix]

This ARP particularly focuses on Ecocide as a War Crime within the Rome Statute. As articulated in Article 8(2)(b)(iv) RS, the natural environment gains protection in instances of international armed conflicts.[x] Notably, situations of non-international armed conflict remain outside the scope of application of the provision. Despite the

apparent depth of the discussion around Ecocide, significant gaps that necessitate further exploration remain. This research endeavours to address these gaps, primarily by applying an ecocentric perspective to safeguarding the natural environment within the Rome Statute. This research holds profound relevance to the core mission of United Rising, as it aligns with the organisation's overarching goal. United Rising has an unwavering dedication to elevating awareness regarding the symbiotic relationship between humanity and the environment. Consequentially, the organisation places significant emphasis on the imperative recognition of Nature's inherent rights, understanding that these rights are inexorably intertwined with both our collective well-being and the intricate ecosystem that sustains us.

Research question, methodology and methods

The central research question is: How can an ecocentric perspective inform a comprehensive analysis of Ecocide as a War Crime within the Rome Statute? This central research question is divided into three main chapters. The first will answer the question: How is Ecocide reflected within the Rome Statute? Here, two perspectives emerge: ecocentrism and anthropocentrism. The second chapter will analyse the effectiveness of Article 8(2)(b)(iv) RS. It will answer the questions: What are the implications of the absence of concrete definitions within Article 8(2)(b)(iv) RS? Are there any prosecutorial challenges associated with this provision? The third chapter will address the questions: How does the Rome Statute hold the potential to address environmental issues? Can the incorporation of ecocentric perspectives influence the development of International Criminal Law frameworks? Potential environmentally friendly interpretive approaches will be analysed to evaluate how ICL could develop more holistically.

The legal research design suitable for this ARP is interdisciplinary research, as it is best suited when combining law and the environment. The disciplines associated with this research are law and ecology. This approach enables a more comprehensive analysis of environmental legal frameworks, as it considers the legal aspects and ecological dimensions. Most of the research used are scholarly journal articles and official

documents released by either independent experts or organisations specialising in this topic.

Chapters

Chapter 1: Ecocide as a War Crime within the Rome Statute

This chapter elucidates the historical landscape of IEL in the context of armed conflict, delineating the protective mechanisms afforded to the natural environment within prevailing frameworks of ICL. Thus, this chapter will answer the question: How is Ecocide reflected within the Rome Statute? This chapter navigates the dichotomy between ecocentrism and anthropocentrism.

International Environmental Law during Armed Conflict

Conducting warfare by implicitly causing environmental damage is a method used throughout the annals of history. The Roman Empire salted their enemies' fields during the Third Punic War.[xi] The actions of Union troops during the American Civil War prompted the inclusion of the prohibition to use "poison in any manner, be it to poison wells, or food or arms" in the Lieber Code.[xii] The environmental threats posed by nuclear weapons during the Pacific War of World War II[xiii] and the utilisation of 'Agent Orange' in the Vietnam War[xiv] underscore the gravity of modern environmental warfare. The most recent example of using the environment as a tool during armed conflict is the attack on Ukraine's occupied Kakhovka Dam in June 2023.[xv] The consequences of this calamity involve the destruction of flora and fauna, which will take debates to completely return. Furthermore, the floods dislodged landmines hidden beneath riverbeds, transporting them vast distances from the conflict zone.[xvi] A perilous outcome looms as neighboring countries and their inhabitants may face explosive threats for years to come. Thus, it became evident that international law exhibited limitations in safeguarding the natural environment during armed conflict, attributable to the anthropocentric nature of IHL and ICL.[xvii] Protection against environmental damage was contingent upon the threat to human interests.

A milestone encapsulating the development of international law on environmental protection amid armed conflict is Article 8(2)(b)(iv) RS. It prohibits:

"[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"[xviii]

Due to the usage of "or", this Article is the first and only ecocentric approach within the Rome Statute to the protection of the natural environment during an international armed conflict.[xix] The disjunctive provides the natural environment with an intrinsic value, meaning that harm to human interests is not a requirement when protecting the natural environment.

The dichotomy between ecocentrism and anthropocentrism

It is imperative to delineate between anthropocentric and ecocentric concepts. Anthropocentrism, at its core, places human interests above all else.[xx] This is not to say that this perspective does not value the natural environment. Due to the environment's ability to provide life through food, shelter, clothing, and fuel, anthropocentrism recognises the natural environment's value to humankind.[xxi] Furthermore, anthropocentrism recognises the environment's ability to contribute values that enhance the overall quality of human life, extending beyond mere survival benefits. For instance, the aesthetic value of endangered species necessitates their protection.[xxii] In summary, the anthropocentric perspective inherently subordinates safeguarding the natural environment to actions undertaken for the benefit of humankind.

Conversely, ecocentrism encompasses a broader worldview than anthropocentrism, integrating biocentrism—assigning intrinsic value to all living entities—and zoocentrism—attributing value to animals.[xxiii] Ecocentrism establishes the natural environment as distinct from human interests, positing it as independent from human exploitation. An intrinsic value is assigned as "nonhuman species and entire ecosystems exist not merely as elements in an anthropocentric utilitarian calculus or as extensions of human moral characteristics, but as entities with moral value in their own right."[xxiv]

In conclusion, Ecocide as such lacks a definition within the Rome Statute. Nevertheless, the natural environment is protected and given intrinsic value pursuant to Article 8(2)(b)(iv) RS. However, this Article is yet to be invoked.

Chapter 2: Effectiveness of Article 8(2)(b)(iv) Rome Statute

This chapter aims to address the inquiries: What are the implications arising from the absence of precise definitions within Article 8(2)(b)(iv) RS? Are there any prosecutorial challenges associated with this provision? Accordingly, this chapter will span over two subjects. Firstly, an examination of the ramifications stemming from the lack of consensus regarding explicit definitions within Article 8(2)(b)(iv) RS. Subsequently, an elucidation of the ICC's procedural challenges regarding environmental crimes.

Lack of consensus regarding explicit definitions within Article 8(2)(b)(iv) Rome Statute

The first subject revolves around three issues: the actus rea, the proportionality test, and the mens rea.

a. Actus rea: “widespread, long-term and severe”

Article 8(2)(b)(iv) RS requires “[the attack causing] widespread, long-term and severe damage to the natural environment […].”[xxv] The first obstacle presents itself in the lack of precise definitions for these three cumulative conditions within the Statute and its Elements of Crime.[xxvi] Nevertheless, should the Rome Statute and its Elements of Crime be inconclusive, the ICC, in second place, shall apply “applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict”.[xxvii] In the context of Article 8(2)(b)(iv) RS, many scholars[xxviii] have predominantly applied the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)[xxix] and Additional Protocol I to the Geneva Conventions of 12 August 1949 (AP I),[xxx] due to their similar terminology.

Article I(1) ENMOD reads:

> “[e]ach State Party to this Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party”.[xxxi]

The Committee on Disarmament defines “widespread” as “encompassing an area on the scale of several hundred square kilometres”; “long-lasting” as “lasting for a period of months, or approximately a season”; and “severe” as “involving serious or significant disruption or harm to human life, natural and economic resources or other assets”.[xxxii] Due to the disjunctive “or” the conditions within this Article are not cumulative, representing a more lenient approach to protecting the natural environment than the Rome Statute.

Article 35(3) AP I reads:

> “[i]t is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment”.[xxxiii]

The preparatory work of AP I defines “long-term” as damage lasting decades.[xxxiv] On the other hand, “widespread” and “severe” remain undefined. Additionally, this Article creates “an absolute ceiling of permissible destruction”.[xxxv] Should the threefold threshold be met, the military necessity and proportionality assessment become void. This deepens the value placed on the natural environment but makes the threshold exceptionally high. Unlike ENMOD, the AP I and the Rome Statute establish cumulative conditions for the actus rea, creating a higher threshold for protecting the natural environment.

Overall, should an instance arise where the ICC would strive to clarify Article 8(2)(b)(iv) RS more concretely, the interpretations of AP I would most likely be applied.[xxxvi] The reason here is two-fold. Firstly, the similar terminology of “and” underscores the similar nature of the Articles. Secondly, most Rome Statute provisions are based on the Geneva Conventions and Additional Protocols. However, the standards under AP I are “nearly impossible to meet in all but the most egregious circumstances”.[xxxvii] Consequentially, any damage would have to last multiple decades for the attack to meet the requirement of “long-term”.

Due to the uncertainty caused by the lack of concrete definitions within Article 8(2)(b)(iv) RS, two significant implications arise. First, the principle of legality requires

that crimes be "as specific and detailed as possible, so as to clearly indicate to their addressees the conduct prohibited, namely both the objective elements of the crime and the requisite mens rea."[xxxviii] Currently, this principle would not be met, as the objective elements of Article 8(2)(b)(iv) RS remain undefined. Second, the ICC's first attempt to enforce Article 8(2)(b)(iv) RS may fail due to the rule of lenity. It provides that "[t]he definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted."[xxxix] Thus, if there are no concrete definitions for the objective elements of Article 8(2)(b)(iv) RS, the rule of lenity would most likely play in favour of the addressee.

b. Proportionality: "attack […] would be clearly excessive in relation to the concrete and direct overall military advantage anticipated"

The broad expanse of Article 8(2)(b)(iv) RS proportionality test does not grant the natural environment more protection. Paired with the undefined actus rea, the exceptionally high threshold of the proportionality test complicates this Article's applicability.

The drafters of the Rome Statute borrowed the high threshold from Article 51(5)(b) AP I, which prohibits disproportionate attacks on civilians and civilian objects.[xl] In the same vein, AP I does not state that military consideration could justify attacks against the natural environment that meet the actus rea standards.[xli] Thus, the drafters chose the most minor environmental-friendly proportionality test for this apparent ecocentric war crime.[xlii] Similarly, to increase the threshold of difficulty in identifying an attack as being disproportionate, two more changes to the AP I standard were incorporated into Article 8(2)(b)(iv) RS proportionality test.

Firstly, the drafters included "clearly" in front of "excessive".[xliii] Robert Cryer pointed out that the term "clearly" is unparalleled in IHL and "does not fulfil its ostensible purpose, which was to clarify the crime, but simply raises the threshold and introduces greater uncertainty into the law in this area."[xliv] This uncertainty is reflected in the Report on NATO's bombing campaign against the Federal Republic of Yugoslavia.[xlv]

Here, the Committee assessed various categories of damages, one of them relating to the Environment.[xlvi] The NATO bombing campaign caused the release of pollutants due to targeting certain chemical plants and oil installations.[xlvii] However, the Committee concluded that an investigation by the OTP into the collateral environmental damage caused by the NATO bombing campaign need not commence.[xlviii] A reason for this is the uncertainty caused by a high proportionality threshold, which, among other requirements, was not met as the "word 'clearly' ensures that criminal responsibility would be entailed only in cases where the excessiveness of the incidental damage was obvious."[xlix] However, NATO targeting Serbian petrol-chemical industries was legitimised due to its crucial military purpose, although environmental contamination was identified.[l]

Secondly, the drafters changed the requirements for the military advantage. The word "overall" was added, now reading "concrete and direct overall military advantage". According to the ICRC, including "overall" does not alter the meaning of the military advantage requirement.[li] Contradictory to this view stands the drafting history of the Rome Statute. It stipulates that the term "overall" was meant to warrant that the military advantage would encompass advantages which were "planned to materialize at a later time and in a different place".[lii] This standard is further indicated through the commentary in the ICC's Elements of Crimes, which elaborates that "concrete and direct overall military advantage" alludes to a military advantage which "may or may not be temporally or geographically related to the object of the attack".[liii]

On the contrary, the AP I proportionality test standards indicate that a military advantage should be "substantial and relatively close", disregarding any advantages that "only appear in the long term".[liv] Hence, the understanding of "military advantage" within Article 8(2)(b)(iv) RS exponentially expands the initial intent under AP I.

In conclusion, the proportionality test within Article 8(2)(b)(iv) RS sets an extremely high standard. It only hinders the protection of the natural environment during international armed conflicts, by allowing the perpetrator a wider margin of appreciation.

c. Mens rea: “intentionally launching an attack in the knowledge […]”

The mens rea component within this provision is inherently challenging, sharing comparable complexities with the actus rea and the proportionality test. Specifically, the subjective nature of the mens rea introduces several issues, as it can be dolus directus or dolus eventualis.[lv] The former is direct intention where a perpetrator intends to commit a crime and follows through.[lvi] The latter is constructive intent. Here, the perpetrator foresees the outcome of the crime and proceeds, regardless of the consequences.[lvii] The inherent subjectivity of the mental element contributes to a spectrum of challenges, expanding the scope of analysis within this ARP.

Concluding the first subject, which has dealt with an examination of the ramifications stemming from the lack of consensus regarding explicit definitions within Article 8(2)(b)(iv) RS, a salient concluding remark emerges. Article 8(2)(b)(iv) RS is unique in its most basic form as it is the only war crime criminalising damage to the natural environment. Nevertheless, a pressing need exists to reach a consensus on the exact meaning behind the definitions of this war crime.

Procedural challenges regarding environmental crimes at the ICC

This section will briefly analyse some procedural challenges associated with prosecuting environmental damages, inter alia corporate liability.

In 2016, the OTP published a Policy Paper on Case Selection and Prioritization,[lviii] underscoring their commitment to give special consideration to prosecuting crimes falling under the Rome Statute that involve “environmental degradation, unlawful exploitation of natural resources, or unauthorised dispossession of land.”[lix] Notably, this focus on environmental harm within the OTP's Policy Paper presents a potential avenue for implementing an ecocentric interpretation of the Rome Statute.[lx]

Nonetheless, specific, discernible gaps regarding potential prosecutions remain. For instance, the Rome Statute exclusively mentions the environment in the context of international armed conflicts, thereby leaving environmental harm unaddressed during

non-international armed conflicts. Thus, the precise criteria and standards remain ambiguous should the ICC be inclined to address environmental harm resulting from an internal armed conflict. Consequently, there is a risk that individuals could potentially face charges for actions they were unaware were criminal.[lxi]

An additional prosecutorial challenge related to environmental damage is the absence of corporate liability within the Rome Statute. Article 25 RS, stipulating individual criminal responsibility, only mentions natural persons, not legal persons.[lxii] Furthermore, corporate liability as a concept has yet to be universally recognised.[lxiii] The issue of prosecuting environmental damage under ICL arises due to the jurisdictional limitations of international tribunals. The absence of corporate liability poses a significant obstacle,[lxiv] given that corporate entities frequently commit environmental harm.[lxv] However, a significant development in this area is the 2022 ILC Draft principles on protection of the environment in relation to armed conflicts.[lxvi] Principle 10 stipulates for the due diligence by business enterprises with "respect to the protection of the natural environment […] when acting in an area affected by an armed conflict".[lxvii] Further, Principle 11 establishes liability for business enterprises for "harm caused by them to the environment […] when acting in an area affected by an armed conflict".[lxviii] Essentially, whilst the concept of corporate responsibility in international law is not yet established, soft law instruments offer an initial foundation. Similarly, to the OTP's Policy Paper on Case Selection and Prioritization, it highlights the international community's willingness and commitment to move towards prioritising the protection of the natural environment more thoroughly.

In conclusion, there are significant limitations within Article 8(2)(b)(iv) RS. However, the Rome Statute has major environmental potential and could remain the appropriate mechanism to address environmental war crimes.

Chapter 3: The environmental potential of the Rome Statute

Chapter three will delve into the inquiries: How does the Rome Statute hold the potential to address environmental issues? Can the incorporation of ecocentric perspectives influence the development of International Criminal Law frameworks? In order to answer these questions, four distinct topics will be evaluated. Initially, the conciliation between IEL and ICL is examined. This will commence with a succinct introduction to IEL, followed by instances of its integration into the framework of ICL. The second focal point will centre on the argument regarding the potential amendment of the Rome Statute to incorporate Ecocide as the fifth core crime. Subsequently, the third topic will entail an in-depth scrutiny of Environmental Justice. This analysis will encompass a depiction of environmental realities during conflict situations and mention Article 21(3) RS. The final topic will encapsulate the ongoing debate regarding a paradigm shift from the Anthropocene to an ecocentric approach concerning environmental crimes.

IEL and ICL

The development of IEL can be roughly broken down into three eras. The pre-substantial development era started in 1972 with the Stockholm Conference; the post-sustainable development era spanned from 1992 to 2012; and the globalisation era focused on the Anthropocene and the Sustainable Development Goals.[lxix]

a. Pre-substantial era

The Stockholm Declaration on the Human Environment laid the foundation of modern IEL. Despite its status as a soft law instrument, this Declaration signifies a consensus among States to internationalise environmental protection due to the transboundary effects of environmental damages, such as pollution.[lxx] Concurrently, the United Nations Environmental Program (UNEP) was established alongside the Stockholm Conference and remains a pivotal actor in global environmental matters.[lxxi]

b. Post-sustainable development era

In 1987, the World Commission on Environment and Development initiated a report outlining long-term environmental strategies for achieving sustainable development by 2000.[lxxii] It defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[lxxiii] This definition, articulated during the UN Conference on Environment and Development (Rio Conference) 1992, was further expounded in the Rio Declaration.[lxxiv] The Declaration outlined methods for achieving sustainable development, including the polluter pays principle,[lxxv] the environmental impact assessment,[lxxvi] and the precautionary principle.[lxxvii]

c. Globalisation era

After the Rio+20 Conference, there was a prevailing belief that globalisation contradicted sustainable development objectives.[lxxviii] The emphasis on technological advancement and market forces was perceived as undermining the environmental agenda. The deregulation of multinational companies benefited the Global North, while vulnerable communities in the Global South suffered due to rejected environmentally friendly policies favouring small-scale farmers.[lxxix] The adverse effects of environmental damage continued to impact minorities disproportionately.[lxxx]

d. Conciliation between IEL and ICL

While ostensibly ecocentric, the core focus of IEL consistently centres around the interests of sovereign states. The principle of prevention stands as the cornerstone of IEL, imposing a duty on states to exercise due care in the face of environmental harm.[lxxxi] However, this duty does not preclude states from exploiting natural resources per their needs. Consequently, sovereign prerogatives often supersede the protection of the natural environment, rendering the exploitation of resources acceptable as long as the environment of other states remains unscathed.[lxxxii] As a result, the enforcement of IEL remains disjointed and fragmented, primarily due to the absence of comprehensive multilateral environmental agreements endowed with international legal significance.[lxxxiii] Moreover, IEL lacks a system of courts with compulsory jurisdiction, contributing to its inefficacy.[lxxxiv] Therefore, it becomes imperative to

integrate IEL into ICL. This evolution is feasible, given the influence of international criminal tribunals on legal developments.[lxxxv] For example, the ICJ has issued ground-breaking environmental decisions, such as awarding compensation for environmental damage in the case of Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua).[lxxxvi] This ruling is pivotal as the ICJ recognised it as the first instance of adjudicating a claim for compensation for environmental damage.[lxxxvii] The ICJ's rationale aligns with established principles of international law about state responsibility, particularly concerning compensation for environmental damage and expenses incurred by an injured State.[lxxxviii] Furthermore, the ICJ acknowledged that natural recovery is not guaranteed in all cases when restoring the environment to a pre-damage state, necessitating active restoration methods.[lxxxix] Consequently, the ICJ deemed payment for restoration a valid form of compensation. The ICJ's judgment should set a precedent for other international criminal tribunals to incorporate IEL into existing ICL frameworks.

In conclusion, the intrinsic value attributed to the natural environment is derived from acknowledging harm, leading to the establishment of precedents stemming from ICL. This paves the way for prospective advancements, particularly in integrating principles from IEL into the framework of ICL. Consequently, there exists a potential avenue for the influence of ecocentric perspectives in reshaping ICL frameworks.

Ecocide as a fifth core crime within the Rome Statute

The crime of Ecocide was proposed to be included by the drafters into the Rome Statute as a stand-alone crime.[xc] However, it was not fruitful. Nevertheless, the push to criminalise Ecocide has not subsided. In June 2021, the Independent Expert Panel for the Legal Definition of Ecocide finalised their work on a legal definition of Ecocide. The proposed definition reads:

> "ecocide" means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."[xci]

The goal of the Independent Expert Panel for the Legal Definition of Ecocide is for this proposed definition to be included in the Rome Statute as a fifth core crime, namely as Article 8 ter RS.[xcii]

Incorporating Ecocide as a fifth core crime within the Rome Statute would yield several notable benefits, including an enhanced framework for international accountability in addressing environmental harm and a heightened deterrence effect through individual criminal liability. Additionally, the incorporation of an individual crime of Ecocide within the Rome Statute represents a pivotal departure from the current limitations of environmental protections. This proposed crime transcends the confines of war crimes exclusively committed during international armed conflicts.[xciii] The conceptualisation of Ecocide seeks to expand upon the existing criminalisation of environmental damage in the context of international armed conflict, recognising that the most egregious ecological harm often occurs outside the realm of armed conflicts.[xciv] Crucially, the proposed definition of Ecocide addresses the jurisdictional gap concerning actions conducted during peacetime. The ICC currently lacks jurisdiction over offences occurring in times of peace.[xcv] By introducing the core crime of Ecocide, the ICC stands poised to confront contemporary environmental challenges comprehensively, acknowledging that the most severe ecological damage frequently arises in non-conflict situations.[xcvi] In essence, the proposed Ecocide definition not only builds upon the existing legal framework pertaining to environmental offences during the armed conflict but also anticipates and addresses the urgent environmental concerns that extend beyond the traditional scope of the ICC's jurisdiction, thereby enhancing the Court's efficacy in responding to contemporary ecological crises.

Another advantageous outcome would be the catalysing effect, prompting ICC State Parties to integrate Ecocide into their domestic legal frameworks.[xcvii] However, a key concern arises, as State Parties are not mandated to adopt ICC-induced changes in their domestic jurisdiction.[xcviii] The Rome Statute merely requires national laws to facilitate cooperation with the ICC[xcix] and penalise offences against the administration of justice.[c]

Furthermore, the primary challenge of amending the Rome Statute is securing a two-thirds majority among the Assembly of State Parties, consisting of 123 States.[ci] Various obstacles, such as a lack of political will, contribute to the prolonged debate over criminalising Ecocide. Despite some countries incorporating variations of Ecocide into their domestic laws, the need for more prosecutions persists.[cii] Additionally, uncertainty prevails due to the absence of concrete definitions within the proposed Ecocide definition, as its objective and mental elements are drawn from sources like the Rome Statute, AP I, or ENMOD. As discussed in Chapter 2, the legal community has yet to reach a consensus regarding the concrete meaning of specific definitions.

While the Rome Statute presents the opportunity to introduce an additional core crime through an amendment to its Statute, it may not distinctly tackle the specific environmental concern of providing concrete protection. In lieu of potentially "risking a symbolic revolutionisation" by introducing Ecocide as the fifth core crime within the Rome Statute, a more prudent approach involves emphasising the environmental potential of the Rome Statute. [ciii] This can be achieved by, for instance, applying existing environmental norms.[civ]

Environmental Justice within the Rome Statute

Environmental Justice is a pivotal concern within sustainable development, intricately weaving together the fundamental objectives of environmental protection and social justice. At its core, Environmental Justice encompasses a broad conceptual framework that delves into the equitable distribution of environmental costs and benefits.[cv]

On the international stage, numerous environmental impacts can be viewed through the lens of Environmental Justice. Notably, the plight of several low-lying Pacific Island States exemplifies this perspective as they confront the imminent threat of total disappearance due to the rising sea levels induced by climate change. This underscores the urgency of considering Environmental Justice as a guiding principle in shaping global responses to environmental challenges.[cvi] However, as a consistent theme in international law, the focus remains on ensuring and protecting sovereign

rights through the lens of protecting humanity. Thus, tailoring environmental protection to the whims of humans, in turn serving the state interest.

Applying Environmental Justice to the Rome Statute, the ICC could develop the interpretation and applicability of the Rome Statute in a more environmentally sensitive direction. Two focus areas could aid said development, namely (i) translating environmental realities into the Rome Statute and (ii) utilising the extensive scope of Article 21(3) RS.[cvii]

a. Environmental realities

In the contemporary milieu, characterised by a world profoundly affected by climate change, it becomes imperative to discern the profound impact of environmental realities on international law. This section undertakes an evaluation of various examples.

Firstly, the reverberations of climate change manifest in rising sea levels, alterations in extreme weather patterns, and escalating global temperatures. A poignant manifestation of this immediate impact is witnessed in low-lying Pacific Island States grappling with the gradual submersion of their territories.[cviii] Despite the prevailing discourse predominantly centred on questions of statehood,[cix] there is an inherent linkage between climate change and international law, exemplified by initiatives such as the Paris Agreement. This legally binding international treaty on climate change, ratified by 196 Parties, underscores the imperative of global collaboration to ameliorate the deleterious effects of climate change.[cx]

Secondly, the spectre of transboundary pollution, encompassing air and water pollution, traverses national boundaries, exerting influence on neighbouring regions. The ramifications on international law are intricate, encompassing jurisdictional complexities. Concurrently, environmental degradation is forcing population movement, resulting in environmental migrants and refugees.[cxi] The magnitude of such large out-migration implicates international security, as states weakened by natural disasters find themselves challenged in negotiating trade and security agreements.[cxii]

Thirdly, a stark environmental reality emerges in the form of corporate irresponsibility.[cxiii] Corporations, as significant contributors to environmental degradation through practices like deforestation, unsustainable resource extraction, and large-scale plantations, necessitate an augmented conceptualisation of corporate responsibility within the ambit of international law.

In addition, the exploitation of natural resources and consequentially the environmental stresses have proven to be drivers of violence.[cxiv] These patterns have been reflected on by the UNSC, specifically in Resolution 1643 (2005), which stated that the illegal exploitation and trade of diamonds was a source for fuelling the conflicts in West Africa.[cxv] This scenario can be linked to the notion of environmental aggression which involves delineating actions that purposefully inflict ecological harm to obtain a competitive edge or cause detriment to a population.[cxvi]

Given these compelling circumstances, it is paramount to translate these environmental realities into the framework of the Rome Statute. In the context of this ARP, the primary advocacy centres on incorporating an ecocentric war crime. This may involve extending the scope of individual criminal responsibility to include legal persons. Consequentially, the actions of corporations regrading environmental degradation could be penalised. However, for this to be as effective as possible, the protection of the natural environment should also be extended to involve non-international armed conflicts. Additionally, and most importantly, it is paramount to recognise that the environment is consistently used as a means of warfare, and as such should be regulated.[cxvii]

b. Article 21(3) RS

Article 21 RS determines the applicable law for the ICC. Additionally, it sets out a unique hierarchy of sources of law due to its differentiating approach. It differentiates between ICC-specific sources of law (Articles 21(1)(a), 21(2)) and general international sources of law (Articles 21(1)(b)-(c)). Particularly noteworthy is Article 21(3), which stipulates that "[t]he application and interpretation of law pursuant to this article must

be consistent with internationally recognised human rights and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status."[cxviii]

Since Article 21(3) RS pertains to the interpretation and application of the law, its position lies external to the hierarchy established in Article 21(1) RS. For an environmentally friendly interpretative approach to the Rome Statute, it becomes imperative to scrutinise the term "internationally recognised human right". Article 21(3) RS notably references the non-discrimination principle among various human rights. A further interpretation was offered by Judge Pikis, who stated that "[i]nternationally recognised may be regarded those human rights acknowledged by customary international law and international treaties and conventions."[cxix]

The ICC adopts a comprehensive approach, often referred to as a 'shotgun' method, in selecting applicable sources of law.[cxx] When affirming a specific principle as an internationally recognised human right, the ICC endeavours to identify numerous concurrent sources, including human rights conventions, previous ICC jurisprudence, and soft law instruments.[cxxi] Through this comprehensive examination, the ICC conclusively affirms the international recognition of the right.

For the ICC to steer the interpretation and applicability of the Rome Statute towards greater environmental sensitivity, it is imperative to leverage the expansive scope of Article 21(3) RS. This provision, which mandates the applicability of international human rights law in all instances, establishes a normative framework encompassing all crimes within the Rome Statute.

A noteworthy development in 2022 was the UNGA's recognition of the "right to a clean, healthy, and sustainable environment" as a universal human right.[cxxii] This recognition has been enshrined in various legal instruments, including the African Charter on Human and People's Rights,[cxxiii] the 1988 Additional Protocol to the American Convention of Human Rights,[cxxiv] and the Arab Charter on Human Rights.[cxxv]

Collectively, these measures underscore the global demand for the universal acknowledgement of an autonomous human right to a healthy environment.

Despite the ICC's broad approach to recognising principles, particularly evident in its expansive reading of Article 21(3) RS, it is crucial to acknowledge that, through this avenue, the application of environmental norms within the ICL framework is still viewed through an anthropocentric lens. Therefore, the following sub-chapter will evaluate how the ICL framework could develop towards a more ecocentric way, prioritising the natural environment in and of itself.

In conclusion, incorporating Environmental Justice within the ICC framework remains a work in progress. Nonetheless, the undeniable impact of environmental realities such as climate change and corporate greed on international peace and security necessitates a closer examination of these issues within the purview of the ICC.

The elimination of the Anthropocene

Until this point of the research, various analyses and evaluations were conducted, resulting in one main viewpoint. The overall ICL framework lacks an ecocentric focus. In terms of the Rome Statute, an ecocentric approach is touched upon in Article 8(2)(b)(iv) RS; however, it lacks precision and substance.

Consequentially, this sub-chapter will explore the ecocentric approach taken by ecologists whilst illustrating Indigenous ideologies. In addition, ecocentrism within existing IHL frameworks and practices will be explored. The purpose is to illustrate existing practices that can be incorporated within the Rome Statute to encourage an ecocentric pathway to environmental protection during armed conflict.

A fundamental philosophy shared amongst ecologists revolves around the belief that there should be a value shift from humans to planet Earth, as Mother Earth sustains all organisms.[cxxvi] As ecologist John Stanley Rowe argues: “Earth, not organism, is the metaphor for Life. Earth not humanity is the Life-center.”[cxxvii] This philosophy is deeply

linked to the concept of the environment possessing an intrinsic value. It suggests that nature has a value in and of itself, for itself.[cxxviii]

The notion of an intrinsic value has already taken significant steps in the international community. Its first acknowledgement was in the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats[cxxix] and, later, in the Convention on Biological Diversity.[cxxx] Subsequentially, the World Charter of Nature underpins strong ecocentric values by stipulating that humanity and culture are part of nature.[cxxxi] An additional aspect associated with the intrinsic value concept is the growing movement surrounding the Rights of Nature theory. It is viewed as relating more to Indigenous ideologies whilst providing legal rights to nature.[cxxxii] In fact, the Rights of Nature theory should be vested in environmental laws as its principles aim at recognising and protecting the natural environment.[cxxxiii] However, IEL remains fragile in the sense that it was established with Western property relations, relating to neo-colonial practices.[cxxxiv] The Western legal system portrays an anthropocentric perspective, as the protection of the natural environment remains contingent on the protection of humanity. The environment is viewed as a disposable good. Accordingly, as a good, Nature is subject to property rights, making it exploitable for profits. Thus, the natural environment continues to be exploited for the gain of individuals. Some of the devastating consequences include the exploitation of natural resources as fuellers for conflicts.[cxxxv] Consequentially, a need arises to step away from this Western ideology by focusing on the Rights of Nature theory which describes Nature and its individual elements as a subject of law.[cxxxvi] From a strictly normative standpoint, it cannot be asserted that Nature possesses legal rights as it lacks legal personality, being unable to express an independent will.[cxxxvii] Hence, similar to the understanding that rights belong to individuals rather than humanity, the relationship between Nature and its constituent components must be approached comparably. In this regard, numerous nations have incorporated the Rights of Nature theory into their constitutions, exemplified by Ecuador and Bolivia, where the recognition of Pachamama, translating to "Mother Earth" as a living entity with inherent rights is enshrined.[cxxxviii] New Zealand has bestowed legal personhood upon Te Urewera National Park and the Whanganui River.[cxxxix] In Colombia, notable legal precedents have extended rights to various

elements of nature, such as the Amazon.[cxl] Notably, the Awá Indigenous authority made history by petitioning the Special Jurisdiction for Peace, accrediting not only themselves as victims but also the Katsa Su, their extensive Awá territory, emphasising its "identity and dignity that constitute it as a subject of right."[cxli] These rulings acknowledge that entities other than human beings possess the capacity for existence and vulnerability to harm, thereby warranting reparation.[cxlii] This innovation is particularly noteworthy as it diverges from prevailing legal paradigms entrenched in a modern colonial knowledge system.[cxliii]

Moreover, shifts in environmental governance are evident, illustrated by promoting management structures that involve Indigenous communities as custodians or stewards of their ancestral lands.[cxliv] In essence, the Rights of Nature approach asserts that ecosystems, rivers, forests, and other natural entities possess inherent rights to exist, thrive, and evolve. It endeavours to safeguard the intrinsic value of the environment beyond its utilitarian human-centric perspectives.

Shifting the focus to ecocentrism within frameworks and practices of IHL, the assigned values to individuals, nature, and property reflect people's interconnected relationships with these entities.[cxlv] These values play a pivotal role in shaping decisions regarding these entities' utilisation, management, and safeguarding. Importantly, these values serve as the foundation for the legal approach, establishing the constraints on permissible conduct during armed conflicts as outlined in IHL.[cxlvi]

The embodiment of value is articulated through the principle of humanity encapsulated in the Martens Clause.[cxlvii] Over time, this principle has extended its application to encompass environmental preservation. For instance, Germany has emphasised that the principle of humanity should be interpreted to include the "intrinsic link between the survival of civilians and combatants and the state of the environment in which they live."[cxlviii] Similarly, the ICRC adopts an intrinsic approach to the natural environment in its Guidelines on the Protection of the Natural Environment in Armed Conflict. The Guidelines underscore protecting the environment in its own right, recognising its value "even if damage to it would not necessarily harm humans in a reasonably foreseeable way."[cxlix] Hereby, the ICRC inter alia underscores a broader commitment to

ecocentrism, acknowledging the intrinsic worth of the environment independent of its immediate impact on human interests.

The question remains, then, how ecocentrism can be a step towards environmental protection, with the goal of these concepts being implemented in the ICC's practice.

- Ethical perspective: Ecocentrism, from an ethical standpoint, broadens the scope of the moral community beyond human-centric concerns. It signifies a shift from an exclusive focus on humanity to embracing a mindset that extends respect and care to all life forms, including terrestrial and aquatic ecosystems.[cl]
- Spiritual outlook: Ecocentric moral sentiments have found resonance among individuals and societies, leading to the emergence of nature-based, innovative, ecocentric spiritualities. Growing evidence suggests the integration of ecocentric values, wherein even those with entirely naturalistic worldviews speak of the Earth and its ecosystems as 'sacred', emphasising the importance of reverent care and defence.[cli]
- Ecological context: Ecocentrism serves as a reminder of the interdependence of all life forms, highlighting the crucial dependence of humans and nonhumans on the ecosystem processes provided by nature.[clii]
- Legal perspective: Ecocentrism endeavours to alter ICL statutory frameworks and establish new precedents. More fundamentally, ecocentrism aims to reshape the cultural and ethical foundation of the law. It aims to unleash novel forms of reasoning and innovative structures.[cliii]
    - Amendment of the Rome Statute: Proposing the inclusion of Ecocide as the fifth core crime within the Rome Statute aims to extend global protection to the natural environment without necessitating the occurrence of an international armed conflict.
    - Conciliation between IEL and ICL: Integrating ecological principles into the frameworks of ICL involves acknowledging the intrinsic value of the natural environment. Taking this integration further, incorporating the Rights of Nature theory into the ICC's practice could elevate the natural

environment to the status of a legal subject, thereby securing inherent protections.

- Expanding the ICC's jurisdiction for specific Environmental Crimes: The natural environment as such is currently protected, although very limited, under Article 8(2)(b)(iv) RS. However, the natural environment has its individual components, just as a person is viewed separately from humanity. Thus, Nature's individual components should enjoy separate rights and protections.

To round up this chapter, the key conclusions are as follows. Several countries have incorporated the Rights of Nature and the notion of an intrinsic value of nature in either their constitutions or jurisprudence. It represents the growing movement to recognise the faulty system of the Anthropocene, given the ongoing environmental crisis.

Conclusion

The prioritisation of the natural environment has historically taken a back seat during armed conflicts, as it has been exploited to achieve strategic objectives. A notable departure from this trend is embodied in Article 8(2)(b)(iv) RS, posited as the inaugural ecocentric war crime provision. Despite the disjunctive "or" fostering optimism for an ecocentric shift, this optimism is countered by the ambiguous definitions within Article 8(2)(b)(iv) RS.

Primarily, the diverse interpretations of its objective elements introduce uncertainty into the overall comprehension of the provision. Secondly, including "clearly" and "overall" in the proportionality test complicates and elevates its application. Lastly, the purely subjective nature of the mental element renders identification nearly impractical.

Nevertheless, a consistent global intent to safeguard the environment is evident in the Stockholm and Rio Declarations, which are foundational to IEL. The ICRC Guidelines on the Protection of the Natural Environment in Armed Conflict and the ILC Draft principles on protection of the environment in relation to armed conflicts further establish tangible safeguards for the environment, imposing obligations on states and

business enterprises. However, the alignment of IEL and ICL appears inconsistent, as the sovereign state prerogative consistently takes precedence, reflecting an anthropocentric perspective.

Consequently, incorporating Ecocide as a fifth core crime within the Rome Statute seems excessively ambiguous due to the absence of precise definitions and political will. Therefore, the emphasis should be on leveraging the existing environmental potential of the Rome Statute. To achieve this, the incorporation of the concept of Environmental Justice is proposed. Ongoing environmental realities significantly impact international peace and security, necessitating a serious consideration of environmental norms when applying international law. When this scenario in evidently arises, it is of the utmost importance that environmental norms, such as the Rights of Nature, are implemented at the forefront. Regarding the ICC, Article 21(3) RS could become an initial pathway to incorporating environmental norms through the prism of internationally recognised human rights. However, it is imperative to reiterate that this approach, as it is based upon human rights law, would inevitably protect the natural environment through the prism of protecting humanity. Thus, the anthropocentric perspective would once again be enforced. Consequentially, the evolution of environmental protection during armed conflict should adopt and be focused on an ecocentric approach, recognising Nature's legal rights. A holistic approach, in which the natural environment enjoys rights in and of itself, for itself.

In summary, the research question, "How can an ecocentric perspective inform a comprehensive analysis of Ecocide as a War Crime within the Rome Statute?" can be addressed in two primary ways. However, based on the research and conclusions drawn, a nuanced formulation of the question is suggested. The broach concept of Ecocide as a War Crime remains an ambiguous topic. The emphasis should remain on the existing provision, specifically Article 8(2)(b)(iv) RS. The two primary ways of answering the research question are as follows:

I. By acknowledging the intrinsic value of nature, a paradigm shift from human-centric to Earth-centric values should be advocated, recognising that without a sustainable Mother Earth, there would be no humanity to protect.

II. A closer examination of Indigenous ideologies is essential when integrating the Rights of Nature theory into ICL frameworks.

Finally, two areas of research development emerge from this analysis. Firstly, a deeper exploration of Indigenous ideologies, including variations in their understanding and valuation of Nature, could enhance the research. Secondly, connecting ecological practices with legal frameworks is proposed to foster a holistic approach to addressing the environmental crisis infiltrating international law practices.

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