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From Ecocide to Eco-Sensitivity: 'Greening' Reparations at the International Criminal Court

This paper considers the possibilities and challenges facing international criminal law as a means of meaningfully responding to environmental destruction. Noting the interconnections between environmental destruction and the causes, conduct and impacts of mass violence, scholars have explored multiple ways in which international criminal law might be better equipped to respond to such harms. These have ranged from using existing provisions to introducing a new crime against the environment. This paper examines the evolution of these approaches and considers the capacity of international criminal law to respond to environmental destruction. In light of the challenges associated with introducing a new crime, it focuses on the possibilities associated with 'greening' the Rome Statute. Building on this approach, the paper considers whether the reparation framework adopted by the ICC offers an opportunity to meaningfully respond to environmental destruction and related human rights violations. It argues that there are three main ways in which this might be done: (i) by introducing the concept of 'eco-sensitivity' to reparations designed to respond to other anthropocentric harms; (ii) by awarding reparations that explicitly recognise the harm caused by environmental destruction when possible; and (iii) by exploring the possibilities of an environmental approach towards 'transformative reparations'.

Keywords: international crime; the International Criminal Court; reparations; ecocide; environmental destruction

1. Introduction

Periods of mass violence have devastating and far reaching consequences for civilian lives and livelihoods. This reality has prompted the development of diverse avenues through which victims can seek justice and redress for grave human rights violations. International criminal law has become one such avenue, via the evolution of individual accountability, and the introduction of victim participation and reparation mechanisms. The creation of the permanent International Criminal Court (ICC) signalled a commitment amongst its proponents to end impunity and deliver 'justice for victims' around the world.[1] In reality, the Court recognises and responds to a relatively narrow category of victimisations, even when jurisdiction and resource constraints allow it to carry out investigations and prosecutions. The focus on the core crimes of genocide, crimes against humanity, war crimes and the crime of aggression excludes millions who suffer as a result of poverty, hunger, disease, natural disaster, financial crises and inequality.[2] Even within the context of the core crimes, the prioritisation of certain forms of violence over others obscures the multifaceted harms caused by those crimes.[3] In this paper, I consider attempts to address one such obfuscation, namely, the ways in which the anthropocentric nature of the core crimes[4] renders invisible the destructive harm that mass

violence can have on the natural environment and the people who rely on that environment.[5] Undoubtedly, much of the destruction of our natural world is carried out during times of peace, often in the context of activities deemed completely legal. However, mass violence also brings threats to the environment, indeed over 80% of all major armed conflicts between 1950 and 2000 took place in locations which sustain roughly half the world's plant species, as well as many rare animal species. Furthermore, the interconnections between environmental destruction and mass violence are increasingly being exacerbated by climate change.[6] Climate change causes environmental changes that may ignite violence, while conflict also harms the resources communities need to withstand the consequences of climate change.[7] International criminal law's failure to respond to environmental destruction grows all the more notable and problematic in such contexts.

While debates over ways to respond to environmental destruction and related human rights violations can be traced to the 1970s,[8] international criminal law has struggled to provide accountability and redress for such harms. This has led campaigners to advocate for the expansion of international criminal law to better encompass environmental destruction. Some have argued in favour of introducing new crimes, such as 'ecocide'[9] or 'grave' or 'severe' crimes against the environment.[10] The 'moral imperative' to introduce specific criminal accountability for environmental destruction is compelling.[11] If international criminal law aims to deliver justice for crimes that 'shock the conscience of humanity', then the ever-increasing awareness of global environmental destruction suggests that environmental crime should be classed as such a crime.[12] However, there are significant barriers to introducing a crime against the environment, ranging from issues around culpability and causation to the political resistance to expanding individual accountability beyond the four core crimes.[13] Partially in response to these barriers, others have explored the ways in which we might 'green' the current framework, using the existing core crimes to incorporate greater awareness of environmental destruction and related human rights violations.[14] In this context, the ICC Office of the Prosecutor's (OTP) 2016 Policy Paper on Case Selection and Prioritisation,[15] which placed stress on environmental destruction and illegal exploitation of natural resources in selecting future cases, was met with considerable excitement.[16] Although limited by the parameters of the existing core crimes, the Policy Paper signals an increased awareness of the high environmental costs of genocides, crimes against humanity, war crimes and the crime of aggression.

This paper analyses the possibilities and challenges of introducing a new crime and using the existing international criminal law framework to respond to conflict- and atrocity-related environmental destruction. While it acknowledges the need for more significant changes to the framework in the longer term, it argues that the 'greening' of the existing framework offers pragmatic potential for accountability and redress in the short to medium term. In that spirit, the paper then explores how the increased environmental awareness signalled by the OTP's Policy Paper might be taken forward and adapted into the ICC's reparations mandate. It puts forward three suggestions for ways in which we might 'green' reparations. These include (i) adopting an 'eco-sensitive' approach to the design and implementation of reparations for human rights violations; (ii) awarding reparations that explicitly recognise the harm caused by

environmental destruction when possible; and (iii) expanding understandings of 'transformative' reparations to encompass underlying environmental discrimination and inequality. The paper acknowledges the already significant pressures that are placed on the ICC's reparations mandate,[17] and recognises that criminal institutions such as the ICC cannot in and of themselves prevent and respond to the environmental devastation that so often accompanies conflict and mass atrocity.[18] However, it argues that the scale of the problem should invite innovative and flexible legal responses whenever possible – including within existing structures - rather than induce paralysis.

The paper proceeds as follows. Section two places the paper's arguments in context by exploring the interconnections between mass violence, environmental destruction and grave human rights violations. Section three explores in greater detail the campaigns to achieve greater accountability through international criminal law, and the significance of the OTP's Policy Paper in this regard. Section four sets out how the ICC's reparations mandate might be adapted to better respond to environmental destruction. Section five concludes.

2. Mass Violence and Environmental Destruction

Mass violence and the environment intersect in three main ways: environmental destruction can be a *cause* of mass violence, the *conduct* of mass violence can cause environmental destruction, and the continued impacts of that destruction can be a *barrier* to long-lasting peace. This section discusses each in turn.

The Environment as a Cause of Mass Violence

While environmental conditions will inevitably interact with other social, economic and political factors,[19] environmental degradation and destruction is increasingly acknowledged as causing violence to erupt in a number of intersecting ways.[20] Environmental neglect can impact negatively on human rights and communities' welfare, exerting pressure on societies, entrenching societal divisions, and increasing the potential for conflict.[21] Poverty resulting from unequal, unfair or unsustainable use of natural resources can act as a powerful recruitment tool for rebel groups,[22] and can motivate the commencement or continuation of conflict.[23] Such cases can be found for example in the Solomon Islands, where disputes over timber rights, logging and mining revenues, and associated environmental degradation are thought to have been an important factor in the origins of conflict.[24] In Liberia, the unsustainable exploitation of natural resources and the related human rights violations perpetrated against the indigenous peoples fuelled the 1980 coup d'état.[25] Indeed, the United Nations Environment Programme (UNEP) has estimated that at least forty percent of internal conflicts over the last sixty years have related to the exploitation of natural resources.[26]

Mass Violence as a Cause of Environmental Destruction

Mass violence can cause environmental destruction in four main ways. First, the environment may be directly attacked as a means of depriving targeted populations of food, water and shelter.[27] For example, the US's use of Agent Orange as a means of destroying the Viet Cong's forest cover in Northern Vietnam, Cambodia and Laos, caused devastating environmental harm

and a refugee crisis.[28] Environmental destruction is also a frequent feature of conflicts involving indigenous populations, which may feature deliberate attacks on the environments on which those populations rely.[29] Second, environmental devastation often accompanies other tactics of mass violence and grave human rights violations. For example, Saddam Hussein's burning of 600 Kuwaiti oil wells which resulted in atmospheric pollution spreading as far as the Himalayas, causing a severe threat to the surrounding fragile desert ecosystem.[30] Armed forces can also leave trails of environmental destruction behind them through their use of heavy vehicles and the construction of temporary camps.[31] Forced displacement or movements of refugee populations can also take a toll on the natural world, as those groups seek out shelter, food and other supplies.[32] Third, environmental destruction can result from parties to a conflict or perpetrators turning to wildlife poaching or other natural resource exploitation in order to fund their campaign.[33] For example, poaching in the DRC has had disastrous impacts on many endangered animals,[34] while the overexploitation of forests in Liberia has threatened the long-term viability of the forest.[35] Fourth, and more broadly, conflict can result in 'armed and lawless societies that can severely impact the environment.'[36] For example, the influx of small arms into a country can see a shift in hunting practices that can be devastating for local wildlife and the communities who rely on that ecosystem.[37]

Environmental Destruction as a Barrier to Long-Lasting Peace

Just as environmental pressures can lead to mass violence, the environmental impact of violence can make the restoration of peace more difficult.[38] The destruction of the environment can remove natural resources which may have provided a potential platform for cooperation, and practically impact the pool of resources available for social reconstruction.[39] It can also limit the possibility of enjoying natural features that cross sectarian divides, such as nature recreation areas. Such limitations make a return to conflict more likely. For example, the UNEP's post-conflict environmental assessment in Darfur noted both the ongoing impacts of conflict-related environmental destruction and the underlying and unresolved tensions around access to natural resources which made continued conflict more likely. As a result, it indicated that 'long term peace [would] not be possible unless…underlying and closely linked environmental and livelihood issues were resolved.'[40] Transitions from violence to peace can also have high environmental costs, as neo-liberal market forces interact with weakened institutions and post-conflict socio-economic challenges.[41] A study into seven post-conflict states demonstrated that natural resource extraction, deforestation and land use conflicts intensified in the aftermath of conflict, and that the return of displaced populations may cause further environmental damage.[42] As observed by Millburn, 'while armed conflict is very damaging to biodiversity, the post-conflict period can be even more so.'[43] In the longer term, environmental degradation can lead to the release of carbon and the associated exacerbation of climate change, a phenomenon that is likely to pose larger international security threats through changes to the world's physical and geopolitical landscape.[44]

This section demonstrated the multifaceted connections that exist between mass violence, the destruction of the environment. From even the limited examples included here, it can be seen that conflict can have significant detrimental impacts on the environment that can be long-term

and have serious consequences for human rights, health and wellbeing, as well as the environment itself.[45] The following section explores international legal responses to these impacts, focusing in particular on attempts to pursue greater individual criminal liability for environmental destruction.

3. Responding to Environmental Destruction

Growing international awareness of the connections between mass violence, human rights violations and environmental destruction has resulted in the expansion of legal frameworks governing environmental protection.[46] Examples include the adoption of the Environmental Modification Convention,[47] the Declaration and Protocol on Asphyxiating Gases and Bacteriological Methods of Warfare, and Additional Protocol I to the Geneva Conventions;[48] the drafting of guidelines for the protection of the environment during armed conflict by the International Committee of the Red Cross;[49] and the work of the International Law Commission on the Protection of the Environment in Relation to Armed Conflicts.[50] On the 8th July 2019 the International Law Commission adopted draft legal principles to enhance protection for the environment before, during and after armed conflicts, a development praised as 'the biggest step forward in legal protection for the environment in conflicts since the 1970s.'[51]

In this context, it is notable that the concept of international environmental crime has failed to gain much traction in the rapidly expanding area of international criminal law.[52] Neither of the ad hoc tribunals addressed environmental crime, and the Rome Statute of the ICC includes only one explicit reference to environmental protection: Article 8(2)(b)(iv). This draws on the language of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) and Additional Protocol I, and specifies that, within the scope of an international armed conflict, the following actions could constitute a war crime:

> Intentionally launching an attack in the knowledge that such attack will cause ... widespread, long-term and severe damage to the environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

This Article contains numerous jurisdictional barriers, and an almost prohibitively high bar for the OTP to reach in order to prove guilt. In relation to finding jurisdiction, the damage to the environment must be linked to an international conflict and committed 'as part of a plan or policy or as part of a large-scale commission of such crimes', potentially excluding singular acts of environmental destruction.[53] The elements of damage, disproportionality and intent present further hurdles. 'Widespread', 'long-term' and 'severe' damage are each difficult to prove alone,[54] and are also viewed cumulatively and balanced against military advantage.[55] The ICC Elements of Crimes state that the 'military advantage anticipated' is assessed from the perspective of the perpetrator on the basis of the information available to him/ her at the time of launching the attack,[56] making it difficult to prove disproportionality.[57] In the context of intent; the OTP would be required to prove that the accused both intended to launch an attack

and *knew* that the conduct would cause environmental harm. In light of these stringent requirements, it is unsurprising that there have been no prosecutions using Article 8(2)(b)(iv) to date.

International criminal law's failure to adequately recognise and respond to environmental destruction overlooks a range of serious human rights violations experienced both individually and collectively,[58] denies victims access to justice and redress for those violations, and misses an opportunity to express international condemnation of attacks on the natural world.[59] In recognition of this lacuna, activists, lawyers, policy actors and academics have explored different avenues through which to extend individual criminal accountability to include environmental destruction. As noted above, suggested approaches tend to fall into one of two camps. The first is that there is a need for a new international crime against the environment, sometimes framed as ecocide or 'grave' or 'severe' crimes against the environment. The second is that it is possible to 'green' international criminal law by using existing core international crimes to prosecute environmental destruction. The following subsections outline the emergence and development of these two approaches.

A New International Crime

Discussions around the need to introduce an international crime of ecocide can be traced to the 1970s.[60] Often linked to the outrage felt over the US's use of Agent Orange in Vietnam, Cambodia and Laos,[61] these discussions focused largely on wartime situations in which intent to cause environmental harm was present.[62] As part of the review of the Genocide Convention in 1973, a draft International Convention on the Crime of Ecocide was prepared for UN consideration by war crimes expert Professor Richard A. Falk. This outlined a military offence that could be committed in times of war or peace, and could include acts such as using

(a) weapons of mass destruction, whether nuclear, bacteriological, chemical, or other;
(b) The use of chemical herbicides to defoliate and deforest natural forests for military purposes;
(c) The use of bombs and artillery in such quantity, density, or size as to impair the quality of the soil or to enhance the prospect of diseases dangerous to human beings, animals, or crops;
(d) The use of bulldozing equipment to destroy large tracts of forest or cropland for military purposes;
(e) The use of techniques designed to increase or decrease rainfall or otherwise modify weather as a weapon of war;
(f) The forcible removal of human beings or animals from their habitual places of habitation to expedite the pursuit of military or industrial objectives.[63]

Although never adopted, the concept of ecocide resurfaced in UN discussions over the effectiveness of the Genocide Convention throughout the 1970s and 1980s, with the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommending that the inclusion of ecocide be investigated further.[64] However, the review never progressed beyond this point, for reasons that remain unclear, but which may be linked the influence of

powerful governments and their focus on protecting their nuclear arms.[65] Similarly, while early versions of the Rome Statute's precursor, the 'Codes of Crimes Against the Peace and Security of Mankind', contained a specific Article covering environmental crimes, this was substantially watered down and eventually removed entirely.[66]

More recently, the campaign to prosecute ecocide has been taken up by academics Higgins, Short and South, who argue in favour of criminalising ecological destruction regardless of when it occurs as a strict liability offence.[67] Higgins describes ecocide as:

> the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.[68]

Adopting the same or similar definitions, other academics, legal practitioners and activists have also called for the criminalisation of ecocide or 'grave' or 'severe' crimes against the environment as the fifth crime against peace under the Rome Statute.[69] Often, these arguments are in favour of a crime that captures environmental damage in times of peace as well as in war, in recognition of the fact that the devastation sown by some human activities under the cover of 'peace' is often far greater than that caused in 'war'.[70]

The urgent environmental challenges facing our planet, the failure of environmental regulation to prevent widespread destruction, and the normative expressive value of prohibiting the loss of ecosystems all make the call for a crime against the environment compelling.[71] However, there are significant practical barriers to introducing a new crime. For one, political resistance to the introduction of a crime that might curb economic expansion is likely,[72] as is resistance to a crime that restricts the ability of states to exploit the natural environment during conflict. Such resistance has been evidenced for example by the US's rejection[73] of the International Committee for the Red Cross's finding that

> The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long- term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon.[74]

Additional practical challenges would arise from the complexity and ambiguity of environmental crimes and the difficulties that this would pose when proving causation. The level of intention required would also require careful consideration, as environmental crimes may not necessarily result from specific intent, but rather from 'ignorance, complacency, and negligence to human and natural life.'[75] This has led advocates to argue in favour of strict liability[76] or 'reasonably foreseeable intent',[77] both of which would mark a departure from the approach taken in respect of the other core crimes.[78] Personal jurisdiction would require expansion to incorporate corporations or legal persons, raising challenges in obtaining agreement from the Assembly of State Parties, as well as issues around complementarity if domestic jurisdictions did not also allow for corporate responsibility.[79] Similarly, expanding victimisation beyond humans might lead the ICC into debates around legal personhood and

whether the concept might similarly require expansion beyond human beings.[80] More broadly, expanding the ICC's mandate would place additional resource strains on an already stretched tribunal, as it attempted to adapt to the realities of investigating and prosecuting a new type of crime, and potentially responding to a new category of non-human victims.[81]

'Greening' the Rome Statute

Despite the limitations of the core crimes, there are some who have argued that the existing international criminal legal framework as contained in the Rome Statute can to some extent incorporate environmental destruction. For example, Freeland has argued that:

> Where the circumstances so warrant, the prosecution of environmental crimes within the terms of the existing jurisdiction of the Court is possible and appropriate under the provisions of the Rome Statute. There is no legal reason why this should not be the case.[82]

In addition to exploring the possibilities offered by the explicit reference to the environment in Article 8(2)(b)(iv),[83] scholars have analysed the other core crimes over which the ICC has jurisdiction to demonstrate how they might be used to prosecute environmental crime despite their lack of specific reference to the environment.[84] In the context of genocide, 'acts causing serious bodily or mental harm' or 'deliberately inflicting on the group conditions of life calculated to bring about its physical destruction' could arguably include environmental destruction, falling within the type of acts that constitute genocide.[85] This approach would acknowledge the 'genocide-ecocide nexus' as highlighted by Crook and Short, who noted that while this nexus may be far from a recent development for indigenous peoples around the world, it is likely to become a far more frequent occurrence in light of climate change.[86] As they argue, 'assaults on the essential foundations of life of national groups (and ecosystems are perhaps the most important of all such foundations) is what [genocide] was designed to highlight and prohibit.'[87] There is some precedent in this regard; in 2008 the ICC OTP established a connection between genocide and the deliberate destruction of the environment by systematically destroying properties, vegetation and water sources and repeatedly destroying, polluting or poisoning communal wells or other communal water sources by the militia and Janjaweed in Darfur.[88] However, the stringent *mens rea* requirement, namely the 'intent to destroy, in whole or in part' a protected group, places limitations on the use of genocide to prosecute environmental harm.

In the context of crimes against humanity, environmental destruction could arguably fall within three categories of act. First, the prohibition of 'extermination, or intentional infliction of conditions of life…calculated to bring about the destruction of part of the population'. Second, the deportation or forcible transfer of a population, persecution through the intentional and severe deprivation of fundamental rights contrary to international law. And third, it could be considered an example of 'other inhumane acts', provided the destruction occurred 'as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.'[89] Mistura has argued that this crime lends itself more easily to environmental

prosecutions, as the *mens rea* requirements are less rigorous than those applied to genocide.[90] Again there is some limited precedent; in the situation in Darfur the OTP found that the same behaviour highlighted above in the context of genocide, which also incorporated the forcible displacement of populations, could constitute a basis for crimes against humanity charges.[91]

In relation to the crime of inter-state aggression, environmental degradation through military attacks could qualify as the 'use of armed force by a state against the sovereignty, territorial integrity or political independence of another State', although criminal liability would be limited to those in positions to effectively control or direct the political or military action of a state.[92] Precedent for investigating aggression-related environmental harm can be found in an initial enquiry into NATO's 1999 bombing campaign against Serbian security and military positions by the International Tribunal for the former Yugoslavia, although no criminal case emerged from the investigation.[93]

Using the existing core crimes framework poses inevitable restrictions on the ability of the ICC to recognise and respond to environmental destruction; these provisions were not designed with the environment in mind. However, in light of the barriers that face any attempts to introduce a new crime, there is value in considering how best to work with the tools available. In apparent support of this way of thinking, there has been some progress in the 'greening' of the prosecutorial policy at the ICC. In 2013, the OTP released its Policy Paper on Preliminary Examinations,[94] which included 'environmental damage' as an explicit factor to be considered by the Office in the conduct of its preliminary examination of a situation that might warrant an investigation. Similarly, the OTP's 2016 Policy Paper on Case Selection and Prioritisation incorporated specific mention of the environment in its rules and principles guiding the exercise of prosecutorial discretion. In determining which cases to select and prioritise, the OTP is required to focus on the 'gravity' of the crimes, which in turn comprises the *scale*, *nature*, *manner of commission* and the *impact* of the crimes. In the context of the manner of commissioning, the OTP noted that it

> will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.

In the context of impact, the OTP noted that

> The impact of the crime may be assessed in light of, inter alia… the environmental damage inflicted on affected communities.

These combined Policy Papers suggest that individuals are more likely to be investigated and selected as cases for prosecution when environmental destruction has occurred in the context of the core crimes than when it has not. However, the Office's powers are obviously constrained: it will only be able to pursue situations and cases in which core crimes appear to have been committed. As observed by Anton, 'causing long-term and severe damage to the natural environment is criminal because it is a means (as a weapon or target) by which atrocities

on human beings are perpetrated.'[95] While Cusato argues that the 2016 Policy Paper frames nature as a direct or indirect beneficiary of protection, this seems to stretch the OTP's meaning into new terrain.[96] Given the ICC's definition of victims as natural or legal persons, it seems more likely that environmental destruction will be viewed through the prism of human rights violations. This has resulting implications for how reparations for environmental harm might be conceived, as discussed below.

Despite these limitations, the papers signal an increased awareness of the ways that conflict, atrocity and the environment are interconnected. While some commentators have been sceptical about the practical implications of the Policy Papers,[97] ICC Senior Appeal Counsel Helen Brady has stated that the reference to the environment is 'highly important and it's not just symbolic – it means something.'[98] While others have explored what these documents might mean for future case selections and prosecutions,[99] for the remainder of this paper, I will instead consider how the ICC might build upon and expand this emerging environmental sensitivity in respect of another aspect of its work: its reparations mandate. Repairing environmental damage is not usually considered an important issue in the aftermath of mass violence, when the short-term needs of human victims take precedence. However, as discussed above, environmental degradation and the loss of natural resources can harm livelihoods, place barriers in the way of recovery, and sow the seeds of future human rights violations.[100] Rather than seeing environmental and human welfare as mutually exclusive, it is therefore worth exploring how reparations which seek to respond to human rights violations might also encompass environmental considerations.

4. 'Greening' Reparative Justice for Environmental Destruction

It is first worth briefly outlining the nature of the ICC's reparations mandate. Under Article 75 of the Rome Statute, the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. It may also order that the award for reparations be made through the Court's Trust Fund for Victims (TFV). The TFV is an independent, non-judicial institution that operates within the Rome Statute system and which can use funds made available by voluntary contributions to complement any money or property collected from the convicted person.[101] In practice, the TFV has solely relied on voluntary contributions, due to the indigence of the accused. This is likely to continue.[102] In addition to facilitating the delivery of reparations, the TFV may also provide assistance in the form of physical and psychological rehabilitation and material support to victims who have suffered harm as a result of a crime within the Court's jurisdiction, providing those crimes are linked to a situation under investigation. Assistance programmes have been delivered in the DRC and Uganda, and have included measures such as medical referrals, individual and group counselling, and socio-economic activities.[103]

The ICC's jurisprudence has established the conditions necessary for a victim to claim reparations. These include that the victim be a natural person or legal entity that has suffered harm, whether directly or indirectly. The harm must be personal and can be material, physical

and psychological. Reparations can be awarded if the harm suffered was a result of the commission of any crime within the jurisdiction of the Court, with the causal link between the crime and harm being determined in light of the specificities of a case.[104] Reparations can be individual or collective in nature, or both, depending on the scope and extent of any damage, loss or injury.[105] In addition, the Court may order awards to intergovernmental, international or national organisations, although it has yet to do so. Prior to making an order, the Court may invite representations from the convicted person, victims, other interested persons and States, as well as relevant experts.[106]

The requirement that harm be 'personal' to a natural or legal person is reflective of the anthropocentric nature of the core crimes and prohibits the Court from responding to environmental destruction outside the context of a related human rights violation. However, I would argue that there are three interlinked ways that reparations and assistance can contribute to repairing environmental destruction, while retaining a focus on responding to human victimisation. These are: (i) adopting an 'eco-sensitive' approach to the design and implementation of reparations for anthropocentric harms; (ii) awarding reparations that explicitly recognise harm caused by environmental destruction when possible; and (iii) expanding understandings of 'transformative' reparations to encompass underlying environmental discrimination and inequality. These are explored in turn in the following subsections. It should be noted that the recommendations here are necessarily fairly general, as every experience of conflict or atrocity is different, and there are therefore no specific reparative measures that will always be appropriate.

Eco-Sensitive Reparation Design and Implementation

Reparations can take myriad forms and recognise a diverse range of harms. Their flexibility allows them to be sensitive to the nature and context of the crimes that have been committed.[107] However, if misconceived or insensitively delivered, reparations may exacerbate tensions or undermine the cooperation and reconciliation needed to prevent future violence and harm.[108] In cases where the environment has been directly targeted, or where there are tensions around access to resources, a lack of sensitivity to such considerations could have long-term repercussions to the possibilities of long-term peace. Therefore, at a minimum, the TFV could adopt an 'eco-sensitive approach' to the design and implementation of reparations. Adapted from the practice of conflict-sensitivity (which is already implemented by the TFV),[109] an eco-sensitive approach would be defined as (i) attempting to understand how reparations may interact with environmental damage through the use of environmental impact assessments; (ii) monitoring, evaluating and mitigating against any unintended environmental effects, and (iii) positively influencing environmental sustainability wherever possible.[110] Adopting an eco-sensitive approach would signal a further 'mainstreaming' of environmental consciousness in the work of the Court and related bodies. It would acknowledge the interconnections between humans and their environment, and the need to ensure projects do not have unintentionally harmful results in the future due to their environmental impacts.

There is some evidence that the TFV is already moving in an eco-sensitive direction. While acknowledging that the ICC does not have a 'going green policy', the Fund claims that it has tried to progressively integrate an environmental dimension into its interventions.[111] For example, in its 2014-2017 Strategic Plan the Fund identifies as one of its Programming Guiding Principles:

> Work with implementing partners to assess, mitigate and evaluate the likely environmental impact of a proposed project or programme, taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse.[112]

However, the Fund has acknowledged that its ability to integrate environmental concerns into its activities has been limited by the lack of a monitoring mechanism and limited resources available to dedicate specifically to environmental issues. The 2014-2017 Strategic Plan claimed that the next TFV plan would pay particular attention to putting in place a structured monitoring system that matches its stated priorities and goals for environmental impact. As the Fund has not made subsequent Strategic Plans public, it is not possible to ascertain whether it has done so. However, while an eco-sensitive approach would at a minimum incorporate the monitoring and evaluation highlighted in the Strategic Plan, it would also ideally look beyond 'mitigation' to consider ways in which assistance and reparation projects could positively influence environmental sustainability.[113]

Introducing this level of eco-sensitivity would not rely on or be linked to the OTP's selection of situations and cases which feature environmental destruction. Rather, it could be implemented throughout the TFV mandate and incorporated into the delivery of measures that respond to human rights violations resulting from the core crimes. For example, collective symbolic reparations[114] to acknowledge suffering might encompass the establishment of projects that help restore and conserve natural spaces. Drawing from environmental peacebuilding and security studies,[115] this might involve, for example, creating peace parks for use by impacted communities. Examples of peace parks can be found in diverse contexts, and although often used to resolve transboundary conflicts between states, can also be used to contribute to the rehabilitation of an area after conflict.[116] In Myanmar, a community-based NGO known as KESAN has been involved in the creation of the Salween Peace Park Initiative, described as a 'space that promotes peace, cooperation, cultural preservation, and environmental and natural resources conservation.'[117] The Peace Park's Charter establishes that the war has eroded the bio-cultural practices of local communities, and acknowledges that peacebuilding must have both 'ecological and cultural dimensions.'[118] Other forms of reparations, such as vocational training and income-generating activities[119] could also be designed in ways that minimise negative environmental impacts and where possible proactively seek to repair environments while restoring the livelihoods of victims. This potential is already acknowledged by the TFV, which has highlighted 'environmentally-friendly livelihood activities' as a form of material support that can be offered through its assistance mandate.[120] The dependence of much of the population within regions of armed conflict on natural resources, means that initiatives improving the quality and accessibility of

such resources could potentially assist a large number of people beyond the direct beneficiaries.[121]

To be effective, eco-sensitivity would require application at each stage of reparation design and delivery and would be mainstreamed into the TFV's institutional mindset.[122] This would require initial environmental impact assessments of the effects likely to arise from a reparation project, featuring consultation and public participation as integral aspects to ensuring the reparation proceeded in an eco-sensitive manner.[123] Ongoing monitoring and evaluation would also be required as projects progressed, and the TFV would need to have the willingness to adjust as necessary. Indeed, an eco-sensitive approach might involve fundamental changes in the way the TFV thinks about the delivery of its reparation mandate, for example through the development of eco-sensitive policies and project delivery standards.[124] This could be supported and entrenched by the ICC Chambers incorporating eco-sensitivity into any subsequent reparation principles produced in future cases.[125]

As with integrating a conflict-sensitivity model, introducing greater eco-sensitivity would have resource implications, and require a shift in mindset amongst those responsible for designing and implementing reparations.[126] However, the resource implications of this shift would lessen with time and should be weighed against the risks of environmentally unsustainable or damaging projects, as well as the potential benefits of measures which capture the connections between human and environmental recovery.

Reparations that Explicitly Recognise Environmental Destruction

In cases where the OTP successfully brings prosecutions which encompass 'the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land' or which inflict environmental damage on affected communities,[127] the Court's Chambers could award reparations which explicitly respond to the harm caused by that destruction and damage. As noted by Special Rapporteur for environmental protection Marja Lehto:

> No reparations entailing environmental remediation have so far been ordered, but the decision on the principles and procedures would seem to allow for such measures as well.[128]

It is possible to 'transpose some of the current provisions on reparations to accommodate justice for non-human life.'[129] As further observed by Marja Lehto, 'the effects of environmental damage are often felt both individually and collectively',[130] thus requiring reparations which are individual or collective in nature, or both. To facilitate such awards, the Court could consult with appropriate experts to assist in determining the scope and extent of environmental damage, loss and injury and to suggest various options concerning the appropriate types and modalities of reparations.[131] The ICC could learn from the practice of other courts in this regard. For example, the New South Wales Land and Environment Court has called expert witnesses to assess the harm to rivers and streams, soil, trees and habitat of endangered species.[132] These have included 'terrestrial ecologists, biologists, experts in aerial photography, environmental scientists, fauna ecologists, agricultural consultants, a natural

history and environmental consultant, a veterinarian, ornithologists, wetland ecologists, frog biologists, plant ecologists, plant ecology and restoration experts and arborists.'[133] Where possible in light of what may be an ongoing security issue, the Court may also consider different methods and techniques to establish harm, such as site visits, photographs and aerial photographs, and satellite images.[134]

Repairing the harm caused by environmental destruction undeniably poses specific challenges: complete restitution is likely to be impossible in many cases.[135] The temporal dimension of harm will also limit what can realistically be done; the full range of impacts of environmental destruction may only emerge of time. However, potential avenues of restitution could include: (i) orders for restoration of any harm to the environment caused by the commission of the offence, if feasible, and if not, payment of the costs and expenses incurred in restoring the environment; (ii) costs for carrying out a specified project for the restoration or enhancement of the environment for the victims' benefit; or/and (iii) payment of a specified amount to an environmental trust or a specified environmental organization for the purpose of a specified restoration project.[136] Such measures are likely to be resource-intensive and require specialist expertise and equipment, suggesting that other forms of reparation might be preferable.[137] Therefore, the Court may consider awarding compensation and ordering fines or orders for the forfeitures of property which factor in harm to the environment.[138] In the context of international law, the commentary to the articles on State responsibility,[139] the International Law Institute,[140] the UN Compensation Commission[141] and the International Court of Justice[142] have each made clear that environmental destruction is compensable.

Valuating environmental destruction for the purpose of compensation may pose challenges;[143] a lack of information, scientific certainty, and/or sufficient resources may inhibit the fact-finding and analysis necessary to calculate the nature of the harm.[144] However, methods of assessment and valuation have developed in recent international law and international human rights law practice. For example, when addressing the environmental damage resulting from Iraq's invasion and occupation of Kuwait, the Environmental Panel of the UN Compensation Commission acknowledged the relative lack of methods for evaluating damage, and instead relied on more general principles, 'particularly the principle that reparation must, as far as possible, wipe out all the consequences of the illegal act.'[145] Given the challenges associated with exact restitution, the Commission used an equivalency-based model which valuated the costs of replacing lost natural resources with resources that could supply equivalent ecological services.[146] At the International Court of Justice[147] judges adopted a valuation approach which took into account 'the perspective of the ecosystem as a whole, by adopting an overall assessment of the impairment or loss of environmental goods and services prior to recovery'.[148] This considered the nature of the harmful acts,[149] harm,[150] and affected area,[151] as well as the area's capacity for natural regeneration.[152] In the context of international human rights law, the Inter-American Court of Human Rights has previously ordered compensation for material damage (including environmental damage) and the immaterial damage caused to a people's spiritual connection with their territory.[153] These examples show that the compensability of environmental destruction is well recognised, and that valuation approaches exist to enable compensation to be awarded.[154]

The Court may also wish to look to other more collective forms of reparation. Firstly, because compensation alone might not be enough to deliver a sense of justice to victims, unless it is accompanied by other symbolic measures of acknowledgment.[155] This may be particularly the case where the harmed communities have a strong connection to land that extends beyond material or financial into spiritual, cultural or familial relationships. Secondly, as noted by Lee: '[t]he distribution of cash reparations alone will do little to bring about sustainable development, but will simply alleviate poverty temporarily.'[156] Indeed, in line with the eco-sensitive approach advocated above, reparations should be delivered with an eye on long term environmental sustainability.[157] The costs of delivering compensation to large numbers of victims may also make collective and community-oriented reparations for environmental destruction more feasible. Explicitly awarding eco-sensitive collective measures, such as the those discussed in the above subsection, would acknowledge the symbiotic relationship between restoring the environment and repairing harm experienced by individuals living in that environment, with potentially wide-ranging impacts.[158]

Environmental Destruction and Transformative Reparations

More radically, we might consider applying an eco-sensitive lens to the 'transformative reparations' discourse. Transformative justice has been defined as 'transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion.'[159] Advocates of transformative reparations recognise that for marginalised groups, the end of violence may precipitate a continuation of or return to positions of subjugation, and that reparations should therefore contribute to 'overcoming structures of inequality and discrimination.'[160] They have been predominantly advocated for in the context of widespread or systematic sexual violence, 'where the occurrence of the crime reflects more ingrained structural discrimination and marginalisation of certain groups that precipitate such violence.'[161] Feminist transitional scholars have critiqued dominant forms of reparation, such as restitution, compensation and rehabilitation, for risking a return of women harmed during conflict to the positions of gendered inequality that may have preceded and contributed to conflict, and endured post-conflict.[162] Instead, a transformative reparations agenda aims to look forward, unsettling the status quo and learning from the past in order to positively impact the allocation of resources and values of a society. A significant contribution of transformative justice literature is to argue in favour of representative forms of justice (by increasing the numbers of women in positions of power), redistributive justice (which seeks to enhance economic equality), and recognition (through the designation of social and cultural standing or status).[163]

It is arguable that similar principles are applicable when thinking about reparations for conflict- and atrocity-related environmental destruction. As explored in section two, environmental damage during conflict should be situated in a broader context which often involves environmental harm pre- and post- conflict, as well as structural inequalities which shape who is able to access and use natural resources.[164] For many targeted communities or marginalised

groups, a return to the status quo would be a return to limited access to resources and lack of input into how the natural world is used and protected.[165] The end of conflict may also involve a return or emergence of unsustainable resource exploitation, environmental degradation, and/or lack of protection for the environment.[166] A failure to address these underlying environmental issues and inequalities can make a lasting peace less likely, plant the seeds for future human rights violations, and overlook the challenges facing those who were originally marginalised.[167] Indeed, the environmental justice movement has worked since the 1960s to expose these inequalities,[168] highlighting how disadvantaged groups suffer disproportionately from environmental degradation and unequal distribution of natural resources.[169] Mirroring the calls from proponents of transformative justice, environmental justice is commonly described as requiring distributive justice, procedural justice and recognition.[170]

The ICC has been identified as an important organ for pursuing transformative reparations.[171] This has been evident in its judgments. As stated in the amended Lubanga reparation decision, the principles of dignity, non-discrimination and non-stigmatisation mean that reparations should address underlying injustices and avoid replicating discriminatory practices or structures that predated the commission of the crimes.[172] The TFV has similarly spoken of the importance of ensuring awards that 'do not exacerbate the root causes of the conflict.'[173] However, the possibilities for a court-ordered reparation to unilaterally fundamentally change underlying structural inequalities are undoubtedly limited, as acknowledged in scholarly critiques of gender transformative justice.[174] As noted by Durbach and Chappell, achieving equal representation in decision making, a significant redistribution of economic resources and the removal of socially and culturally embedded bias requires extensive state-sponsored, collective measures.[175] In the context of environmental transformative justice, while one can see the value of increasing the political representation and recognition of, for example, indigenous communities impacted by unequitable natural resource exploitation, this is likely beyond the power of a judicial institution, without accompanying state buy-in. Similarly, large-scale redistribution of natural resources and habitat management may require integration into peace agreements and post-conflict policies. The ICC cannot force a state to act, and is therefore limited in what it can achieve. There are also significant resource limitations on what the Court can achieve in terms of repairing the environment. Drumbl has highlighted the challenges this poses to implementing environmental change:

> Unless this criminal law apparatus is hooked into broader restorative remediation efforts, compensation efforts, and scientific expertise…the actual hard work of improving the damage to the environment will not take place.[176]

However, such limitations do not mean that the ICC cannot seek to integrate environmental transformative justice to the extent available. For example, representative/procedural justice elements can be incorporated by ensuring that those with an understanding of the specific environmental context in which violence occurred are heard prior to reparation orders being made and during the design and implementation of reparative projects.[177] Steps can be taken to identify the intersections of ethnicity/race/clan, class, sexuality, nationality, dis/ability and employment status which influence access to natural resources, to ensure that discriminatory

practices of exclusions are not reproduced via the provision of reparations.[178] Adopting an eco-sensitive approach to design and implementation as advocated above could also contribute to mainstreaming environmental concerns into the TFV's operations.[179]

While likely incapable of natural resource redistribution without state cooperation and involvement, a focus on reparative measures which have the potential to bring about long-term positive impacts on the environment could have lasting benefits for targeted communities that may have historically lacked access to natural resources. It could be that some of the measures discussed above could facilitate this type of environmental transformative agenda. For example, KESAN has described the Salween Peace Park as aiming to contribute to conflict transformation by expanding the conversation around 'governance' to address issues of 'militarization, conflict, displacement, resource capture, and destructive development'.[180] Emerging environmental peacebuilding theory argues that cooperation over environmental resources and biodiversity management can help prevent the outbreak of conflict and enable peacebuilding to promote a transition towards peaceful and sustainable development.[181] Facilitating the treatment, management and development of natural habitats could simultaneously develop biodiversity and human welfare both to meet the needs of the present generation and to improve the standard of living, sanitation and social, environmental and political stability for future generations.[182] It might be that a more holistic, eco-sensitive approach to reparations might 'deflect, subsume and eventually even transcend entrenched social conflicts'.[183]

5. Conclusion

With so much already expected of the ICC, it might be fair to query whether there is 'any place within the already congested transitional justice agenda…to consider the addition of environmental justice?'[184] One might also question whether a system designed to focus on grave human rights violations such as international criminal law is equipped to protect the environment on its own terms.[185] Certainly, there are both practical and conceptual challenges associated with encompassing environmental destruction into the ICC's remit. The introduction of a new crime against the environment seems far away, if not impossible, and the existing core crimes include little recognition of environmental destruction. The TFV faces resource restrictions and implementation challenges that inevitably impact upon its ability to deliver meaningful reparations to victimised communities. This paper has acknowledged and engaged with these challenges. Yet, it has also sought to demonstrate both that there are ways and means of adopting greater environmental awareness into the ICC's legal and reparative framework, and that it is imperative that we continue to explore ways to do so. While the proposals made here have been relatively modest, their introduction might nonetheless play some role in addressing the harm caused by environmental destruction. Furthermore, beyond constituting a form of acknowledgement for those who suffered, they may also contribute to a more general consciousness raising. As a high-profile international institution, the ICC has the potential ability to draw attention to the need to take seriously the impact of violence on the environment and prevent and repair these types of harm.

The interconnections between conflict, atrocity and environment mean that the neglect of environmental destruction has potentially long-term and severe implications for individuals and communities recovering from mass violence and human rights violations. Indeed, the wellbeing of humans cannot be achieved in isolation from the wellbeing of nature.[186] An eco-sensitive approach to international criminal law and reparations is therefore necessary if the impacts of mass violence are to be meaningfully and sustainably addressed. Furthermore, it is important to note that these interconnections impact on all of us. Environmental degradation risks not only to the emergence or resurgence of conflict, but larger international security threats through its contribution to global warming and associated changes to the physical and geopolitical world. Integrating environmental considerations into our responses to conflict is therefore not only important to the wellbeing of victimised impacted communities, but a development and security imperative.[187]

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[1] Luke Moffett, *Justice for Victims before the International Criminal Court* (London: Routledge, 2014).
[2] Sara Kendall and Sarah Nouwen, 'Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood', *Law and Contemporary Problems* 76, no. 3 (2013): 235 – 262.
[3] Rachel Killean, 'Constructing Victimhood at the Khmer Rouge Tribunal: Visibility, Selectivity and Participation', *International Review of Victimology* 24, no. 3 (2018): 273-296.
[4] Carsten Stahn, Jens Iverson and Jennifer Easterday, 'Protection of the Environment and Jus Post Bellum: Some Preliminary Reflections' *Environmental Protection and Transitions from Conflict to Peace* (Oxford: Oxford University Press, 2017), 16.
[5] Audra Mitchell, 'Only Human? A Worldly Approach to Security', *Security Dialogue* 45, no. 1 (2014): 5-21.
[6] Thor Hanson and others, 'Warfare in Biodiversity Hotspots', *Conservation Biology* 23, no. 3 (2009): 578–587.
[7] ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts – Recommitting To Protection In Armed Conflict On The 70th Anniversary Of The Geneva Convention* (Geneva: International Committee of the Red Cross, 2019), Chapter 6.
[8] Anastacia Greene, 'The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?', *Fordham Environmental Law Review* 30, no. (2019): 7-19.
[9] See e.g. Polly Higgins, Damien Short and Nigel South, 'Protecting the Planet: A Proposal for a Law of Ecocide', *Crime Law and Social Change* 59 (2013): 251-266; Tim Lindgren, 'Ecocide, Genocide and the Disregard of Alternative Life-Systems', *The International Journal of Human Rights* 22, no. 4 (2018): 525-549.
[10] See e.g. Frédéric Mégret, 'The Case for a General International Crime Against the Environment' in *Sustainable Development, International Criminal Justice and Treaty Implementation,* ed. Sebastien Jodoin and Marie-Claire Cordonier Segger (Cambridge: Cambridge University Press, 2013), 50-70; Martin Crook and Damien Short, 'Marx, Lemkin and the Genocide–Ecocide nexus', *The International Journal of Human Rights*, 18, no. 3 (2014): 306.
[11] Greene, 'Quixotic Quest or Moral Imperative?'
[12] Mégret, 'International Crime Against the Environment': 60-61.
[13] Alessandra Mistura, 'Is there Space for Environmental Crimes under International Criminal Law? The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritisation on the Current Legal Framework', *Colombian Journal of Environmental Law* 43 (2018): 181.
[14] Matthew Gillett, 'Eco-Struggles: Using International Criminal Law to protect the Environment During and After Non-International Armed Conflict' in *Environmental Protection and Transitions from Conflict to Peace,* ed. Carsten Stahn, Jens Iverson and Jennifer Easterday (Oxford: Oxford University Press, 2017), 220-256; Steven Freeland, 'Human Rights, the Environment and Conflict: Addressing Crimes Against the Environment', *International Journal on Human Rights* 2, no. 2 (2005): 113-141.
[15] ICC, Office of the Prosecutor, Policy Paper on Case Selection and Prioritisation, 15 September 2016, www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf. (accessed January 17, 2020).

[16] See e.g. Tara Smith, 'Why the International Criminal Court is Right to Focus on the Environment', *The Conversation,* 24 September 2016, theconversation.com/why-the-international-criminal-court-is-right-to-focus-on-the-environment-65920 (accessed January 17, 2020); Donald K. Anton, 'Adding a Green Focus: The Office of the Prosecutor of the International Criminal Court Highlights the 'Environment' in Case Selection and Prioritisation', *Griffith Law School Research Paper No. 17-03*, 2016.
[17] See e.g. Luke Moffett, 'Reparations for Victims at the International Criminal Court: A New Way Forward', *The International Journal of Human Rights* 21, no. 9 (2017): 1204-1222.
[18] Lindgren, 'Alternative Life Systems'.
[19] Daniel Schwartz and Ashbindu Singh, *Environmental Conditions, Resources, and Conflicts: An Introductory Overview and Data Collection* (United Nations Environmental Programme, 1999).
[20] Merryl Lawry-White, 'Victims of Environmental Harm During Conflict: The Potential for Justice' in *Environmental Protection and Transitions from Conflict to Peace,* ed. Carsten Stahn, Jens Iverson and Jennifer S. Easterday (Oxford: Oxford University Press, 2017): 367.
[21] Richard Milburn, 'Mainstreaming the Environment into Postwar Recovery: The Case for 'Ecological Development', *International Affairs* 88, no. 5 (2012): 1085.
[22] *Idem.*
[23] Schwartz and Singh, *Environmental Conditions, Resources, and Conflicts*.
[24] Matthew Allen and others, 'Justice Delivered Locally: Systems, Challenges, and Innovations in Solomon Islands' *World Bank,* August 2013.
[25] Liberia Truth and Reconciliation Commission, Final Report, Vol. II, Consolidated Final Report of 30 June 2009.
[26] UNEP, *Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law* (Nairobi: United Nations Environment Programme, 2009).
[27] Regina Rauxloh, The Role of International Criminal Law in Environmental Protection' in *Natural Resource Investment and Africa's Development,* ed. Francis N Botchway (Cheltenham, Edward Elgar, 2011), 426.
[28] Ines Peterson, 'The Natural Environment in Times of Armed Conflict: A Concern for International War Crimes Law?', *Leiden Journal of International Law* 22 (2009): 331– 2.
[29] See e.g. W. George Lovell, *A Beauty that Hurts: Life and Death in Guatemala* (2nd ed) (Austin, University of Texas Press, 2010).
[30] M. Schmitt, 'Green War: An Assessment of the Environmental Law of International Armed Conflict', *Yale Journal of International Law* 22 (1997): 19.
[31] Tania Marie Proechel, 'Solving International Environmental Crimes: The International Environmental Military Base Reconstruction Act – a Problem, a Proposal, and a Solution', *Loyola of Los Angeles International and Comparative Law Review* 29 (2007): 121.
[32] Meredith DuBarry Huston, 'Wartime Environmental Damages: Financing the Cleanup', *University of Pennsylvania Journal of International Economic Law* 23 (2002) 899.
[33] Jerome de Hemptinne, 'The Protection of Animals During Warfare', *AJIL Unbound* 111 (2017): 272-276.
[34] UN Security Council, *Interim report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo,* 22 May 2002, (S/2002/565), para. 52.
[35] UN Security Council, *Report of the Panel of Experts pursuant to paragraph 25 of Security Council resolution 1478 (2003) concerning Liberia*, 28 October 2003, (S/2003/779), para. 14.
[36] Carl E. Bruch, 'All's Not Fair in (Civil) War: Criminal Liability for Environmental Damage in Internal Armed Conflict', *Vermont Law Review* 25 (2001): 699.
[37] U. C. Jha, *Armed Conflict and Environmental Damage* (New Delhi, Vij Books India Pvt Ltd, 2014), 103.
[38] Rosemary Rayfuse, 'Introduction' in *War and the Environment. New Approaches to Protecting the Environment in Relation to Armed Conflict* (Leiden, Brill/ Nijhoff, 2014), 5.
[39] Gillett, 'Eco-Struggles', 248.
[40] UNEP, *Sudan: Post-Conflict Environmental Assessment* (Nairobi: UNEP, 2007), 8.
[41] David M Ong, 'Prospects for Transitional Environmental Justice in the Socio-Economic Reconstruction of Kosovo', *Tulane Environmental Law Journal* 30, no. 2 (2017): 2017.
[42] Andres Suarez, Paola Andrea Arias-Arevalo and Eliana Martinez-Mera, 'Environmental Sustainability in Post-Conflict Countries: Insights for Rural Colombia', *Environmental Development Sustainability* 20 (2018): 997-1015.
[43] Richard Milburn 'The Roots to Peace in the DRC: Conservation as a Platform for Green Development', *International Affairs* 90, no. 4 (2014): 884.
[44] Caitlin E. Werrell and Francesco Femia, 'Climate Change Raises Conflict Concerns' The UNESCO Courier, https://en.unesco.org/courier/2018-2/climate-change-raises-conflict-concerns (accessed January 17, 2020).
[45] Rauxloh 'The Role of International Criminal Law', 428.
[46] See e.g. Carsten Stahn, Jens Iverson and Jennifer S. Easterday, *Environmental Protection and Transitions from Conflict to Peace* (Oxford: Oxford University Press, 2017).

[47] *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*, 18 May 1977, 16 I.L.M. 90.
[48] ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I),* 1125 UNTS 3, 8 June 1977.
[49] ICRC, *Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict*, endorsed by UN GA Res. 49/ 50 (1994).
[50] Michael Bothe, 'The ILC's Special Rapporteur's Preliminary Report on the Protection of the 'Environment in Relation to Armed Conflict: An Important Step in the Right Direction' in *International Law and the Protection of Humanity. Essays in Honor of Flavia Latanzi,* ed, Pia Acconci and others (Leiden: Brill, 2017): 213– 24.
[51] Doug Weir, Director at the Conflict and Environment Observatory, cited in 'Why Legal Principles on War and Environment Matter' UNEP, 20 August 2019, https://www.unenvironment.org/news-and-stories/story/why-legal-principles-war-and-environment-matter (accessed January 21, 2020).
[52] Freeland, 'Human Rights, the Environment and Conflict', 119.
[53] Anton, 'Adding a Green Focus', 3.
[54] See descriptions of each in the Operational Law Handbook, International and Operational Law Department, Judge Advocate General's Legal Center and School, US, 2010, available at /www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2010.pdf (accessed January 21, 2020).
[55] See Matthew Gillett, 'Environmental Damage and International Criminal Law' in *Sustainable Development, International Criminal Justice and Treaty Implementation,* ed, Sebastien Jodoin and Marie-Claire Cordonier Segger (Cambridge: Cambridge University Press, 2013), 73 – 99.
[56] ICC, *Elements of Crimes*, 2011, footnote 36.
[57] Gillett, 'Eco-Struggles', 229
[58] Lawry-White, 'The Potential for Justice', 370.
[59] Robert Sloane, 'The Expressive Capacity of International Punishment', *Stanford Journal of International Law* 43 (2007) 39; Ciara Laverty, 'What lies beneath? The turn to values in international criminal legal discourse' EJIL:Talk!, 23 April 2018, www.ejiltalk.org/what-lies-beneath-the-turn-to-values-in-international-criminal-legal-discourse/#more-16124 (accessed January 17, 2020).
[60] See e.g. Barry Weisberg, *Ecocide in Indochina: The Ecology of War* (San Francisco: Canfield Press, 1970); Nicodème Ruhashyankiko, *Study of the Question of the Prevention and Punishment of the Crime of Genocide,* UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/416, 4 July 1978.
[61] Tord Björk, *The Emergence of Popular Participation in World Politics: United Nations Conference on Human Environment 1972* (Stockholm: University of Stockholm, 1996): 15.
[62] Crook and Short, 'Marx, Lemkin and the Genocide–Ecocide Nexus', 306; Charles Waugh, ''Only You Can Prevent a Forest': Agent Orange, Ecocide, and Environmental Justice', *Interdisciplinary Studies in Literature and Environment* 17, no.1 (2010): 113–32.
[63] Richard A. Falk, 'Environmental Warfare and Ecocide – Facts, Appraisal, and Proposals', *Security Dialogue* 41, no. 3 (1973): 80–96.
[64] UN Commission on Human Rights, *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 38th session*, Geneva, E/CN.4/Sub.2/1985/57, 5–30 August 1985.
[65] Crook and Short, 'Marx, Lemkin and the Genocide–Ecocide Nexus', 308; Anja Gauger and others, *Ecocide is the Missing 5th Crime Against* Peace (London: Human Rights Consortium, University of London, 2012).
[66] Lindgren, 'Alternative Life Systems', 534.
[67] Higgins, Short and South, *Protecting the Planet*; Polly Higgins, *Eradicating Ecocide: Laws and Governance to Prevent the Destruction of Our Planet* (London: Shepheard-Walwyn, 2010); Damien Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (London: Zed Books, 2016).
[68] Higgins, *Eradicating Ecocide*.
[69] See e.g. Sailesh Mehta and Prisca Merz, 'Ecocide – A New Crime Against Peace?', *Environmental Law Review* 17, no. 1 (2015): 3–7; Deniz Tekayak, 'Protecting Earth Rights and the Rights of Indigenous Peoples: Towards an International Crime of Ecocide', *Fourth World Journal* 14, no. 2 (2016) 5–13.
[70] Mégret, 'International Crime Against the Environment', 57.
[71] Higgins, Short and South, *Protecting the Planet.*
[72] Short, *Redefining Genocide.*
[73] John Bellinger and William Haynes, 'A US Government Response to the International Committee of the Red Cross Study Customary International Humanitarian Law', *International Review of the Red Cross* 89, no. 866 (2007). It should also be noted that the US is also a non-State Party and ongoing critic of the ICC itself.
[74] Jean-Marie Henkaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, *Volume 1: Rules* (Cambridge: Cambridge University Press): 151, Rule 45. France, the UK and the US also resist the application of this rule to nuclear weapons.
[75] Lindgren, 'Alternative Life Systems', 541.

[76] Higgins, *Eradicating Ecocide*.
[77] Freeland, 'Human Rights, the Environment and Conflict'.
[78] Rosemary Mwanza, 'Enhancing Accountability for Environmental Damage under International Law: Ecocide as a Legal Fulfilment of Ecological Integrity', *Melbourne Journal of International Law* 19 (2018): 610.
[79] David Scheffer, 'Corporate Liability under the Rome Statute' *Harvard International Law Journal* 57 (2016): 38.
[80] For more on the debate about extending legal rights to non-human life forms, see e.g. Erin O' Donnell and Julia Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand and India' *Ecology and Society* 23 (2018) 7; Rob White, Green Victimology and Non-Human Victims' *International Review of* Victimology 24 (2018) 239.
[81] Mwanza, 'Ecological Integrity', 606.
[82] Freeland, 'Human Rights, the Environment and Conflict', 133.
[83] Gillett, 'Environmental Damage'.
[84] Freeland, 'Human Rights, the Environment and Conflict'.
[85] *Ibid.*
[86] Crook and Short, 'Marx, Lemkin and the Genocide–Ecocide Nexus'. See also Lindgren, 'Alternative Life Systems'.
[87] Crook and Short, 'Marx, Lemkin and the Genocide–Ecocide Nexus', 313. See the recent calls for Brazilian president Jair Bolsonaro to be indicted for encouraging genocide against Brazil's indigenous peoples: www.theguardian.com/world/2019/nov/27/jair-bolsonaro-international-criminal-court-indigenous-rights (accessed January 20, 2020).
[88] ICC Pre-Trial Chamber, *Situation in Darfur, The Sudan*, 'Public Redacted Version of Prosecution's Application under Article 58 Filed on 14 July 2008', Case No. ICC-02/05-157, 12 September 2008, para. 200.
[89] Anton, 'Adding a Green Focus'.
[90] Mistura, 'Is there Space'.
[91] ICC PTC, 'Situation in Darfur', paras. 210 and 211.
[92] Gillett, 'Eco-Struggles'.
[93] ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia*, 13 June 2000, 39 ILM 1257.
[94] ICC OTP, Policy Paper.
[95] Anton, 'Adding a Green Focus', 1.
[96] Eliana Teresa Cusato, 'Beyond Symbolism: Problems and Prospects with Prosecuting Environmental Destruction before the ICC', *Journal of International Criminal Justice* 15 (2017): 494.
[97] William Schabas, Feeding Time at the Office of the Prosecutor, *International Criminal Justice Today*, 23 November 2016, www.international-criminal-justice-today.org/arguendo/icc-prosecutors-perpetuation-of-the-fiction-of-objectivity/ (accessed January 17, 2020).
[98] Phoebe Braithwaite, 'Environmental Crimes Could Warrant International Criminal Court Prosecutions' *Inter Press Service*, 1 October 2016, www.ipsnews.net/2016/10/environmental-crimes-could-warrant-international-criminal-court-prosecutions/ (accessed January 17, 2020).
[99] Anton, 'Adding a Green Focus'; Braithwaite, *ibid*; Cusato, 'Beyond Symbolism'; Mistura, 'Is there Space'; Nadia Bernaz, 'An Analysis of the ICC Office of the Prosecutor's Policy Paper on Case Selection and Prioritization from the Perspective of Business and Human Rights', *Journal of International Criminal Justice* 15 (2017): 527-542.
[100] Milburn, 'The Roots to Peace', 883-884.
[101] See ICC, *Regulations of the Trust Fund for Victims*, ICC-ASP/4/Res.3, 3 December 2005.
[102] Moffett, 'Reparations for Victims'.
[103] Trust Fund for Victims, 'Assistance Programmes', www.trustfundforvictims.org/en/what-we-do/assistance-programmes (accessed January 20, 2020). For a recent assessment of this mandate see Anne Dutton and Fionnuala Ní Aoláin, 'Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate', *Chicago Journal of International Law* 19, no. 2 (2019): 490.
[104] ICC, *Prosecutor v Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, ICC-01/04-01/06-3129-AnxA, 3 March 2015.
[105] ICC, Rules of Procedure and Evidence, ICC-ASP/1/3 (adopted 9 September 2002), Rule 97 and 98.
[106] ICC, Rome Statute, Article 75(3), Rules of Procedure and Evidence, Rule 97(3).
[107] Ruti Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000): 127.
[108] Lawry-White, 'The Potential for Justice', 368.
[109] The ICC Trust Fund for Victims, Strategic Plan 2014-2017, August 2014.

[110] Adapted from 'Conflict-sensitive approaches to development, humanitarian assistance and peace building: Resource Pack', available at www.conflictsensitivity.org/key_reading/conflict-sensitive-approaches-to-development-humanitarian-assistance-and-peacebuilding-resource-pack/ (accessed January 17, 2020).
[111] TFV Strategic Plan, 24.
[112] *Idem.*
[113] Peter Woodrow and Diana Chigas, *A Distinction with a Difference: Conflict Sensitivity and Peacebuilding* (Cambridge, MA: CDA Collaborative Learning Projects, 2009) available at www.cdacollaborative.org/publication/a-distinction-with-a-difference-conflict-sensitivity-and-peacebuilding/ (accessed January 17, 2020).
[114] Modalities previously awarded in the Lubanga and Katanga cases in the DRC situation, and the Al Madhi case in the Mali situation. See Draft Implementation Plan for collective reparations to victims, Submitted to the Amended Reparations Order of 3 March 2015 in the case against Thomas Lubanga Dyilo (ICC-01/04-01/06), ICC-01/04-01/06-3177-AnxA; Draft implementation plan relevant to Trial Chamber II's order for reparations of 24 March 2017 (ICC-01/04-01/07-3728), ICC-01/04-01/07-3751-Red; Corrected version of Draft Implementation Plan for Reparations, Annex I, 20 April 2018, ICC-01/12-01/15-265-Conf, 30 April 2018 ICC-01/12-01/15-265-Conf-Corr+Corr-Anx
[115] Lesley Evans Ogden, 'Environmental Peacebuilding', *Bioscience* 68, no. 3 (2018): 157-163.
[116] Examples can be found in the US and Canada, Peru and Ecuador, Costa Rica and Nicaragua, Albania, Greece and Macedonia, and South Africa and Botswana. See Saleem Hassan Ali, *Peace Parks: Conservation and Conflict Resolution* (Cambridge: MIT, 2007).
[117] Salween Peace Park Initiative, https://kesan.asia/salween-peace-park-initiative/ (accessed January 17, 2020).
[118] Shona Loong, 'Notes from the Salween Peace Park' New Mandela, 27 May 2019, www.newmandala.org/notes-from-the-salween-peace-park/ (accessed January 17, 2020).
[119] Modalities previously awarded in the Lubanga and Katanga cases in the DRC situation. See TFV, 3 March 2015 Draft Implementation Plan; TFV, 24 March 2017 Draft Implementation Plan.
[120] TFV, *Report to the Assembly of State Parties on the Projects and Activities of the Board of Directors of the Trust Fund for Victims for the Period 1 July 2017 to 30 June 2018 Seventeenth Session*, ICC-ASP/17/14, 5-12 December 2018.
[121] Milburn, 'Mainstreaming the Environment', 1088-1089.
[122] Maria Lange, 'Conflict-Sensitive Humanitarian Assistance: Building Capacity for Mainstreaming' in *Working in Conflict – Working on Conflict: Humanitarian Dilemmas and Challenges,* ed. Pat Gibbons and Brigitte Piquard (Bilbao: University of Duesto, 2006): 155-170.
[123] Stephen Jay and others, 'Environmental Impact Assessment', *Environmental Impact Assessment Review* 27, no. 4 (2007) 287-300.
[124] Huma Haider, 'Conflict Sensitivity: Topic Guide' *Governance, GSDRC Applied Knowledge Services*, www.gsdrc.org/docs/open/gsdrc_cs_topic_guide.pdf (accessed January 17, 2020).
[125] See ICC Rome Statute, Article 75(1): 'The Court shall establish principles relating to reparations…'; ICC, *Prosecutor v Thomas Lubanga Dyilo*, Decision Establishing the Principles and Procedures to be Applied to Reparations, ICC-01/04-01/06-2904, 7 August 2012.
[126] Resource Pack.
[127] ICC OTP, Policy Paper.
[128] Second report of the Special Rapporteur, Ms. Marja Lehto (71st session of the ILC (2019)), A/CN.4/728, 27 March 2019, 32.
[129] Mwanza, 'Ecological Integrity', 606.
[130] Second report of the Special Rapporteur, 32.
[131] ICC, Rules of Procedure and Evidence, Rule 97.
[132] Reece Walters and Diane Solomon Westerhuis, 'Green Crime and the Role of Environmental Courts' *Crime, Law and Social Change* 59 (2013) 279.
[133] Rob White, 'Experts and Expertise in the Land and Environment Court', *Australian Journal of Forensic Sciences* 49 (2017) 4.
[134] *Ibid.*
[135] Gabčíkovo-Nagymaros Project (Hungary/Slovakia), *Judgment,* International Court of Justice Reports, 25 September 1997, pp. 77–78, para. 140: 'The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.'
[136] Eileen Skinnider, *Victims of Environmental Crime – Mapping the Issues* (Vancouver: The International Centre for Criminal Law Reform and Criminal Justice Policy, 2011), 55.
[137] Lawry-White, 'The Potential for Justice', 380.
[138] Mwanza, 'Ecological Integrity', 606.

[139] International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', *Yearbook of the International Law Commission*, 2, no. 2 (2001) 101, para. 15 of the commentary to Article 36.
[140] The Institute of International Law, 'Responsibility and Liability under International Law for Environmental Damage' *Session of Strasbourg* (1997), article 23.
[141] United Nations Compensation Commission, Governing Council, *Report and Recommendations made by the Panel of Commissioners concerning the fifth instalment of 'F4' claims* (S/AC.26/2005/10),4 April 2005, para. 58.
[142] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica*, International Court of Justice, 2 February 2018, General List No. 150.
[143] Tarcisio Hardman Reis, *Compensation for Environmental Damage under International Law: The Role of the International Judge* (London: Kluwer Law International, 2011), 157.
[144] Cymie Payne, 'Environmental Integrity in Post-Conflict Regimes' in *Jus Post Bellum: Mapping the Normative Foundations,* ed, Carsten Stahn, Jens Iverson and Jennifer Easterday (Oxford: Oxford University Press, 2014), 515.
[145] UN Compensation Commission, para. 80.
[146] Cymie Payne, 'Developments in the Law of Environmental Reparations: A Case Study of the UN Compensation Commission', in *Environmental Protection and Transitions from Conflict to Peace,* ed*,* Carsten Stahn, Jens Iverson, and Jennifer Easterday (Oxford: Oxford University Press, 2017), 358.
[147] Diane Desierto, 'Environmental Damages, Environmental Reparations, and the Right to a Healthy Environment: The ICJ Compensation Judgment in Costa Rica v. Nicaragua and the IACtHR Advisory Opinion on Marine Protection for the Greater Caribbean', *EJIL: Talk!,* 14 February 2018, /www.ejiltalk.org/environmental-damages-environmental-reparations-and-the-right-to-a-healthy-environment-the-icj-compensation-judgment-in-costa-rica-v-nicaragua-and-the-iacthr-advisory-opinion-on-marine-protection/ (accessed January 17, 2020).
[148] Certain Activities Carried Out by Nicaragua in the Border Area, para 78.
[149] *Ibid,* para 79.
[150] *Idem.*
[151] *Ibid,* para. 80.
[152] *Ibid,* para. 81
[153] *Case of the Saramaka People v Suriname*, Preliminary Objections, Merits, Reparations, Costs, Series C, No. 172 (Inter-American Court of Human Rights, 28 November 2007).
[154] As observed by the Special Rapporteur Marja Lehto, investment arbitration tribunals have also decided a considerable number of environmental cases, see Kate Parlett and Sara Ewad, 'Protection of the Environment in Investment Arbitration – a Double Edged Sword', *Kluwer Arbitration Blog*, 22 August 2017, cited in Special Rapporteur Second Report, 63, footnote 510.
[155] Pablo De Greiff, 'Justice and Reparations' in *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), 13.
[156] Tsuey-Ping Lee, A Welfare Approach to Mitigating Environmental Injustice: Exploring Needs of Pollution Victims, cited in Matthew Hall, *Victims of Environmental Harm: Rights, Recognition and Redress under National and International Law* (London: Routledge, 2013), 98.
[157] Pabuda Sachithanandan, 'Reparations for Victims and Sustainable Development' in *Sustainable Development, International Criminal Justice and Treaty Implementation*, ed, Sebastien Jodoin and Marie-Claire Cordonier Segger (Cambridge: Cambridge University Press, 2013), 242-261.
[158] Lawry-White, 'The Potential for Justice', 376.
[159] Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Peace', *The International Journal of Transitional Justice* 8 (2014): 339-361.
[160] UN Office of the High Commissioner for Human Rights and UN Women, *UN Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence* (2014).
[161] Moffett, 'Reparations for Victims', 1211.
[162] See e.g. Ruth Rubio-Marin, 'The Gender of Reparations in Transitional Societies' in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge: Cambridge University Press, 2009), 63-120; Fionnuala Ní Aoláin, Dina Francesca Haynes, and Naomi Cahn, *On the Frontlines: Gender, War and Post-Conflict Process* (Oxford: Oxford University Press, 2011); Rashida Manjoo and Calleigh McRaith, 'Gender-Based Violence and Justice in Conflict and Post-Conflict Areas' *Cornell International Law Journal* 44 (2011): 11–31.
[163] Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009), cited in Andrea Durbach and Louise Chappell, 'Leaving Behind the Age of Impunity', *International Feminist Journal of Politics*, 16, no. 4 (2014): 548-549

[164] Lawry-White, 'The Potential for Justice', 367.
[165] *Idem.*
[166] Ong, 'Socio-Economic Reconstruction of Kosovo'.
[167] UNEP 'Sudan— Post Conflict Environmental Assessment'.
[168] See early work from the US environmental justice movement, e.g. Robert Bullard, *Dumping in Dixie: Race, Class and Environmental Quality* (Boulder, Colorado: Westview Press, 1990).
[169] Britta Sjostedt, 'Searching for Environmental Justice in Peacebuilding – Tools Offered by International Environmental Law', Lund University, Nature of Peace, natureofpeace.blogg.lu.se/searching-for-environmental-justice-in-peacebuilding-tools-offered-by-international-environmental-law/ (accessed January 17, 2020).
[170] See e.g. David Schlosberg, *Defining Environmental Justice: Theories, Movements and Nature* (Oxford: Oxford University Press, 2009).
[171] Durbach and Chappell, 'Age of Impunity'.
[172] ICC Order for Reparations (amended), 4.
[173] ICC, *Prosecutor v. Thomas Lubanga Dyilo*: Observations on Reparations in Response to the Scheduling Order of 14 March 2012, ICC-01/04-01/06-2872.
[174] Luke Moffett, 'Reparative Complementarity: Ensuring an Effective Remedy for Victims in the Reparation Regime of the International Criminal Court', *International Journal of Human Rights* 17, no. 3 (2013): 368-390; Sarah Williams and Emma Palmer, 'Transformative Reparations for Women and Girls at the Extraordinary Chambers in the Courts of Cambodia', *International Journal of Transitional Justice*, 10 (2016): 311-331.
[175] Durbach and Chappell, 'Age of Impunity'.
[176] Mark Drumbl, Symposium on 'International Responses to the Environmental Impact of War', *Georgetown International Environmental Law Review* 17 (2004-05): 623.
[177] Durbach and Chappell, 'Age of Impunity', 551.
[178] *Idem.*
[179] See Durbach and Chappell, 'Age of Impunity', 555 noting the value of the Trust Fund's 'gender mainstreaming' to the project of gender transformative reparations.
[180] Salween Peace Park Initiative.
[181] Ken Conca and Geoffrey D. Dabelko, *Environmental Peacemaking* (Baltimore: Johns Hopkins University Press, 2002).
[182] Milburn, 'Mainstreaming the Environment'.
[183] Ong, 'Socio-Economic Reconstruction of Kosovo', 222.
[184] *Idem.*
[185] Susanna Borràs, 'New Transitions from Human Rights to the Environment to the Rights of Nature', *Transnational Environmental Law* 5, no. 1 (2016):128.
[186] Mwanza, 'Ecological Integrity', 593.
[187] Milburn, 'The Roots to Peace', 876.