

## **The Protection of the Environment in Times of Armed Conflict: International Criminal and Human Rights Law Perspectives**

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### **Abstract**

*The rising tide of technological progress has led to an increase in technological disasters that harm the environment, prompting global concern. Initially, the response to these disasters was centred on relief and compensation, but the focus has now shifted to preventive measures for environmental protection. Environmental protection involves a multifaceted strategy, encompassing various legal agreements, public engagement, and penalty enforcement. Social and economic consequences are also significant aspects of environmental preservation. Criminal law plays a pivotal role in safeguarding the environment. Environmental and human rights issues often overlap, as human well-being and access to basic needs are linked to the environment's state. Preserving the environment is vital for maintaining acceptable living conditions and safeguarding human rights, which are already covered by international legal frameworks. International criminal liability is closely linked to international humanitarian law and human rights law. After World War II, the Tokyo and Nuremberg Tribunals addressed serious offences, and later developments included the Genocide Convention and Adhoc Tribunals for Rwanda and Yugoslavia, expanding the scope of international criminal liability. This article is separated into two main portions. The initial examines international criminal law from the perspective of environmental protection, while the second explores environmental safeguarding during armed conflicts within the background of international human rights.*

**Keywords:** *Armed conflict, International Criminal Law, Human Rights Law, Environmental protection, International Humanitarian Law.*

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### **1. Introduction**

Due to the rising tide of technological progress, there has been a corresponding surge in technological disasters that wreak havoc on the environment. Consequently, the global community has grown increasingly alarmed about the environmental consequences of these disasters. (Chia, 2000) Initially, the primary global reaction to such technological catastrophes was focused on providing relief and processing compensation claims. However, the focus has now shifted towards prioritising preventative measures, highlighting the growing significance of safeguarding the environment.

Environmental protection involves a multifaceted strategy that utilises various legal agreements and tools. This holistic approach encompasses a spectrum of actions, ranging from engaging the public in decision-making processes to enforcing penalties. Social and economic consequences are also significant elements of environmental preservation. In addition to these methods, the role of criminal law independently is pivotal in safeguarding the environment. (“United Nations General Assembly Resolutions of Interest,” 2014)

Environmental and human rights issues often have a significant overlap, as the well-being of individuals and their access to nutrition, health, and living conditions are closely connected to the state of the environment. (Wexler, 2011) The future of humanity largely hinges on maintaining acceptable living conditions, and any effective actions aimed at preserving the environment are inherently linked to safeguarding human rights. The existing international legal framework for human rights already covers a range of individual interests, including the right to life, a safe home, and the protection of property. As a result, international human rights instruments are equipped to address various claims related to environmental hazards and disasters. (Westra, 2011)

The evolution of criminal liability in International Criminal Law (ICL) is closely tied to International Human Rights Law (IHRL) and International Humanitarian Law (IHL). During World War II, millions of people lost their lives, and numerous violations of IHL occurred. These serious crimes were prosecuted by the International Military Tribunals at Nuremberg and Tokyo. The notion of international criminal responsibility was expanded by the Genocide Convention and the establishment of the Adhoc Tribunals for Rwanda and Yugoslavia. As such, its legal framework covers offences against both combatants and non-combatants. (Saul, 2016) The phrases "crimes against humanity" and "genocide" encompass a range of offences that breach the borders between IHL and IHRL, as well as varying interpretations of both legal frameworks. (*Ibid*) This article is split into two sections. The initial section focuses on examining ICL concerning environmental protection, while the second section delves into the topic of safeguarding the environment during times of armed conflict within the framework of IHRL.

## **2. Environmental Protection during Armed Conflict under the International Criminal Law**

International criminal liability for international crimes is governed by ICL. (Diamond, 2009) The inaugural international criminal tribunal, which convened in 1474, featured judges from Switzerland, Germany, and Alsace. It presided over the case of Peter von Hagenbach, who, as the governor of a German territory, faced trial and subsequent criminal responsibility for offenses that occurred during the occupation of the territory. (Al-Duaij, 2004)

Both The Hague Law and Geneva Law already include provisions that incorporate the concept of International Criminal Liability, serving as the foundation for such liability in the realm of international law. The Hague Law specifically outlines liability for the compensation of serious violations of the obligations outlined in the Hague Convention. (*Ibid*) In this context, states are held accountable for any transgressions committed by their armed combatants, making the state internationally liable for the actions of its armed forces. (“The Avalon Project Laws of War: Laws and Customs of War on Land (Hague IV); October 18, 1907,” n.d.) Similarly, Additional Protocol I of the Geneva Convention establishes liability and imposes absolute responsibility to provide compensation for violations of the obligations detailed in the Protocol. Here, the state is held vicariously liable for any actions taken by its armed troops that contravene Geneva Law. (Clapham, Gaeta, & Sassòli, 2015)

## **3. International Military Tribunals**

It is possible to link the idea of international criminal responsibility to the Versailles and Sevres treaties that followed World War I, where Allied leaders utilized these agreements to establish criminal accountability for Kaiser Wilhelm II and Ottoman officials in connection with the Armenian Genocide. However, during that period, there was a lack of the necessary political determination to develop and implement International Criminal Law. The formation and implementation of ICL had to be postponed until those responsible for crimes in another global conflict were prosecuted. (Kuhli, 2014)

The United Nations War Crimes Commission (UNWCC) was created in October 1943 with the primary objective of investigating and determining responsibility for alleged war crimes that occurred during World War II. It gathered evidence and interviewed witnesses related to these alleged crimes. The UNWCC had investigative authority but was not authorized to pass judgment on the war crimes themselves. Instead, after completing its investigations, it would report its findings to the United Nations. The cases and supporting documentation were later referred to the International Military Tribunal for the Far East and the Nuremberg International Military Tribunal after the UNWCC's investigations. These courts were tasked with using the UNWCC's evidence to bring war crimes cases against specific persons. (Simpson, 2014) Established in 1945, the first international tribunal to try war crimes committed during the course of Nazi Germany during World War II served as a template for further trials. The Tokyo Tribunal was founded in 1946 to hear cases involving transgressions of international mandates that had place in Southeast Asia from 1928 to 1945. (Joseph, S., & McBeth, A. (Eds.), 2010)

The London International Military Tribunal's Charter, Article 6, included the rules governing the Tokyo and Nuremberg tribunals. According to this article, breaking the rules or conventions of war is a war crime. The Nuremberg trials marked the first instance where environmental war crimes were recognized. In these trials, nine Germans were accused of the severe mistreatment of Polish forests, which included extensive deforestation and timber extraction from significant areas of the country. This harmful activity posed a threat to various species. This marked a significant early effort on the international stage to introduce the idea of establishing individual criminal responsibility for ecocide. (Al-Duaij, 2004) The principles established by the Nuremberg tribunal Charter and its rulings laid the foundation for the development of new norms in international law. (Commission, 1998)

A resolution passed by the General Assembly directed the International Law Commission to create a draft based on the Nuremberg Principles. This draft included all the requirements to be included in an international legal framework. The Nuremberg Charter outlined the principles that established the foundation for criminal responsibility. It stated that anyone who committed an act in violation of international legal mandates would be held accountable and subject to punishment under international criminal law. Importantly, this meant that individuals could be held accountable and punished under international law even if they had not violated their own national laws.

Individuals could be responsible for grave breaches of international law, even if they claimed to be following orders from a superior. However, to be liable under this principle, the person must have had the opportunity to refrain from the wrongful act but still chose to violate international law. Additionally, all individuals facing prosecution for such crimes were entitled to a fair trial.

#### **4. The Adhoc Criminal Courts**

The concept of international criminal liability, which was initially established under the Nuremberg Tribunal after World War II, saw limited use for several years. There was no widespread application of individual criminal liability, even in cases where significant atrocities

occurred, such as the Khmer Rouge's actions in Cambodia, which followed by the deaths of approximately two million lives. Nevertheless, with the establishment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of IHL in Yugoslavia (ICTY) by the United Nations Security Council, the idea of individual criminal culpability was given new life. (Al-Duaij, 2004) This was a major development for international justice. The establishment of ad hoc tribunals later advanced this theory of international criminal culpability. Two main ad hoc tribunals were initially established: The ICTR and ICTY, to try people for major crimes committed during the Yugoslav conflicts, the ICTY was established. It was able to bring legal action against serious transgressions of international humanitarian law, including crimes against humanity, genocides, and violations of the Geneva Conventions. In order to address the genocide in Rwanda as well as other transgressions of IHL, the ICTR was founded. Aside from these international tribunals, the notion of ad hoc tribunals was expanded to hybrid tribunals such as the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in Cambodian Courts (ECCC). To resolve situations of international criminal culpability in specific circumstances, these hybrid courts blended aspects of international and domestic legal systems. Additionally, the idea of ad hoc tribunals had an impact on domestic authorities, which resulted in the establishment of tribunals like the Iraqi High Tribunal (IHT) to look into crimes that were committed during the Iraq War. (de Londras, 2009) All things considered, the establishment of these tribunals has been essential to the advancement of the concepts of international criminal liability and accountability for grave transgressions of international law.

The legislation establishing the ICTY gave it the power to bring criminal charges against anybody found in breach of IHL. Intentionally taking a person's life without a military justification, causing significant property damage, using civilians or prisoners of war as human shields or combatants in combat, and illegally detaining civilians were among the serious offences listed in the statute. These activities were all serious violations of IHL.

The offences were all the result of breaches of war rules and conventions, notably regarding the use of weapons and the harm caused on civilians and their property. These violations fell under the purview of international tribunals. Additionally, the international tribunals had the authority to address cases involving unjustifiable harm and deliberate destruction of religious and educational institutions. Furthermore, intentional theft of both public and private property was within the jurisdiction of these international tribunals. (Brownlie, 1998)

The formation of the ICTR and ICTY broadened the definition of criminal liability by holding people accountable for Rwanda's genocide and other serious violations of IHL. (Aksar, 2004) This tribunal was given the authority to deal with transgressions committed in Rwanda, such as the deliberate mass murder of people. The tribunal also had jurisdiction over crimes against humanity committed as part of mass assaults on individuals on the basis of their nationality, race, or religion. In addition, it was in charge of prosecuting offences against acts of aggression against life, bodily integrity, and mental health, as well as violations of Common Article 3 of the Geneva Conventions and its protocols. (Alston, 2013)

The trial of those responsible for the Rwandan genocide saw a number of noteworthy developments at the ICTR. The case of Rwanda's Prime Minister Jean Kambanda in 1998 is among the first mentions of genocide executions under the purview of the ICTR. Kambanda acknowledged the existence of the genocide in Rwanda and entered a guilty plea. He was given a life sentence, nonetheless, in spite of his confession. (Wilmschurst, 2014) The first full trial conducted by the ICTR in 1998 was "The Prosecutor v. Jean-Paul Akayesu." Akayesu was charged

with individual criminal responsibility on twelve counts of crimes committed within the tribunal's jurisdiction. These counts included:

Genocide penalised in accordance with Article 2(3)(a) of the Act. Complexity in Genocide, as defined by Article 2(3)(e) of the legislation. Crimes against humanity under Article 3(a), 3(b), and 3(f). Direct and widespread encouragement to carry out genocide is illegal under Article 2(3)(c) of the legislation. Article 4(a) of the Act includes violations of Article 3 of the 1949 Geneva Conventions. ("International Criminal Tribunal for Rwanda: Prosecutor V. Akayesu," 1998) The ICTR was instrumental in bringing the perpetrators of these horrific atrocities to justice, and these accusations accurately portray the seriousness and complexity of the crimes perpetrated during the Rwandan genocide. "Akayesu was sentenced to many jail sentences, with lengths ranging from October 2, 1998, after being judged directly liable for his offences.

Increasing individual criminal culpability was made possible in part by the Sierra Leone Tribunal, also known as the (SCSL). This tribunal was established to look into violations of Sierra Leonean law and humanitarian law that occurred during the country's civil war, which broke out on November 30, 1996, and ended on January 16, 2002. The court was given the authority to bring charges against a broad variety of offences, such as crimes against humanity, infractions against Protocol II and Article 3 of the Geneva Conventions, serious breaches of other IHL, and offences that fall within Sierra Leonean law. These charges covered a wide range of acts, which includes wilful property destruction and sexual abuse of girls. Up to its dissolution in 2013, the SCSL was in existence. (Art 2, SCSL)

In partnership with the United Nations and the Kingdom of Cambodia, a domestic statute was established to establish the ECCC. These chambers were established to punish people for their criminal responsibility for violating wartime laws. They were expressly established to hold trials against high-ranking Khmer Rouge government officials accused of violating IHL. The ECCC's hybrid nature introduced an innovative approach to holding those responsible for widespread atrocities accountable. (Meisenberg, 2016) The Extraordinary Chambers were authorized to address a wide range of offenses that violated Geneva law, including intentional harm or harm to a person's health. They also had jurisdiction over any acts of property destruction that were not necessary for military purposes. (Article 6 Statute for Extraordinary chambers in the Courts of Cambodia) Moreover, the chambers had the authority to prosecute cases involving the deliberate destruction of cultural property, as long as it occurred between April 17, 1975, and January 6, 1979, in violation of The Hague and Geneva. (Article 7; *Ibid*)

The international criminal liability system saw a significant development with the establishment of "internationalized domestic tribunals." The Bosnian War Crimes Chamber in Sarajevo served as a model for the creation of the first such tribunal, the Iraqi High Tribunal (IHT). (Scharf, 2007) The IHT was empowered to deal with grave violations of the IHL, with a particular emphasis on Iraqis who were guilty of mass executions that went against IHL. It also held jurisdiction over various crimes committed between July 17, 1968, and May 1, 2003, which includes crime against humanity, war crimes, and domestic law breaches. (Ali, 2023) One of the first instances this panel decided was the Dujail trial. In this trial, the former president of Iraq, Saddam Hussein, and six other defendants were found guilty of crimes against humanity. On January 15, 2007, two more defendants, Awad Hamed al-Bandar, and Barzan Ibrahim al Hassan, were put to death. On March 20, 2007, a fourth prisoner, Tahan Yassin Ramadan, was put to death after the Trial Chamber was directed by the Appeals Chamber to commute his life sentence to death. (Trahan, 2008)

## **5. The 1998 International Criminal Court Statute (Rome Statute)**

Many international crimes have resulted in the imposition of criminal culpability on individuals by ad hoc and permanent criminal tribunals like the ICTR and ICTY. It ought to be mentioned that these courts did not possess universal jurisdiction, which meant that they could not handle every case of a country's transgression of international law or crime. To monitor international crimes, including environmental crimes, the International Criminal Court (ICC) was founded in 1998 under the Rome Statute. (Al-Duaij, 2002)) For "war crimes, crimes against humanity, and genocides," the International Criminal Court (ICC) has the last say. The offence of aggression was originally not within the court's purview, but it was subsequently amended to include it. (Hayes, 2013)

The Rome Statute created legal accountability for violations of the fundamental principles of IHL. It expressly included environmental protection under the jurisdiction of the ICC, encompassing both direct and indirect environmental devastation during armed conflict. The act was designed to protect the natural environment. Furthermore, it imposed criminal liability for activities that impacted the environment indirectly.

In addition to assuming authority to handle serious human rights abuses, this court prioritised environmental preservation. Environmental protection encompassed human rights breaches even though the Rome Statute did not specifically address them. Included in this were environmental protection-related human rights, such as the right to life and the right to physical health. Although it did not specifically grant itself the power to handle major environmental crimes that threatened human safety and environmental health, the court did handle human rights abuses. By designating as a war crime, the deliberate destruction of natural resources with the purpose to cause widespread and irreparable harm that outweighs any potential military benefit, the Rome Statute did refer to environmental crimes. Article 8(2)(b) of the Rome Statute Consequently, the Rome Statute solely classified environmental sanctions as crimes against humanity.

#### **6. Protection of the Natural Environment *per se***

International Criminal liability is established for harm to the environment, specifically by categorizing it as an international offense, such as a war crime. Deliberate acts of destruction that result in significant, enduring, extreme, and severe harm to nature and its components are strictly prohibited. If an individual engages in such destructive actions, they can be held criminally responsible under Article 8(2)(b)(iv). This protection extends to tangible assets and property that suffer damage due to armed conflicts and hostilities, as they are indirectly safeguarded as elements of the environment. (Jha, 2014) The legal provisions inherently prioritize environmental protection. However, criminal liability comes into play when the harm inflicted on the environment outweighs the military advantage sought. The criteria for establishing criminal liability in these cases are quite stringent. Consequently, only the most severe, long-lasting, and extensive environmental destruction falls under the purview of ICL. This provision allows for minimal harm to the environment, as it does not encompass cases involving less significant damage within the scope of ICL. (Cusato, 2015)

The offense of war crimes involves elements of international criminal liability, which include the requirements of proportionality and necessity. These aspects, along with the word "overall," are explicitly mentioned in Article 8, setting a high standard for the crime. In addition to these high thresholds and the incorporation of proportionality and necessity principles, the fundamental elements of the crime have been integrated. To establish international criminal liability, both the *actus rea* (physical action) and *mens rea* (mental intent) components are necessary. It is essential to prove actual physical destruction, and the harm inflicted must be deliberate and intentional. (Mrema, 2009)

The Rome Statute includes provisions for prosecuting environmental harm, which encompass not just instances of actual harm inflicted upon the environment but also acts that likely to cause significant, widespread, and prolonged damage to nature. This provision is primarily centred on ecological concerns, focusing solely on environmental destruction without considering its impact on human beings as a factor for criminal liability. (Afriansyah, 2013) Is it conceivable for the ICC to establish jurisdiction under Article 8(2)(b)(iv) on the basis of proof of the perpetrator's mental state (intentional or knowing conduct), the degree of damage (widespread, long-term, severe), and a proportionality threshold? The Prosecutor must present proof that environmental war crimes were committed as part of a strategy or plan in order to establish jurisdiction under Article 8(1). (Ambos, 2018) This raises the crucial question of whether a single act of catastrophic environmental damage qualifies as a war crime under Article 8(2)(b)(iv), which grants the ICC jurisdiction. (*Ibid*)

The above-mentioned article of the Rome Statute presents practical challenges in its application. To meet the criteria, the actual physical damage must be severe, long-term, and widespread. While the Rome Statute establishes a threshold, it lacks specific criteria or a clear definition for determining these thresholds. Consequently, the *actus reus*, or the physical act required, appears to be highly vague. The second element, *mens rea*, required for proof is purely subjective, making it difficult to establish knowledge of the resultant harm. Additionally, it is implied that environmental protection is not supplied during non-international armed conflicts by the fact that Article 8(2)(b)(iv) does not apply to them. (Jha, 2014) On the other hand, several elements of the Rome Statute, such as war crimes and crime against humanity, deal with environmental damage in both foreign and domestic armed conflicts.

## **7. War Crimes**

Four separate crimes are addressed in the Rome Statute, which establishes the jurisdiction of the ICC. Crimes against humanity, aggression, genocide, and war crimes are all part of this category. The general term "war crimes" encompasses serious violations of the laws of war. (Bothe, 2013) Because of the gravity of these offences, states have designated them as war crimes punishable by criminal courts.

Signatory states to the Rome Statute are required to establish national mechanisms to criminalize violations of the Geneva Law's mandates. They are obligated to investigate and prosecute individuals who have committed grave breaches of these laws, regardless of where these offenses occurred. (Art 8 Of Rome Statute) War crimes include acts that result in severe and extensive damage to property that is not necessary for military purposes. Additionally, deliberate attacks on civilian objects, which have no direct military significance, are considered war crimes. The Rome Statute's Article 8 expressly mentions the environment. War crimes are committed when wilful assaults on civilian objects result in the loss of life, harm to individuals, or destruction to civilian property. This includes attacks that clearly outweigh the intended military benefit in terms of the extensive, persistent, and serious environmental harm they produce. (*Ibid*) Plundering a town or area, using poisonous weapons, using lethal, or comparable gases, and intentionally using starvation as a weapon are all included in Article 8. The Rome Statute designates each of these actions as a war crime. (*Ibid*)

The Rome Statute's Article 8(v)(2) contains unique guidelines for protecting the environment during armed conflict. The act of pillaging or looting civilian territories is considered a war crime. Another war crime is compelling non-combatants to migrate for motives other than their personal protection. The Act also designates the unlawful detention and destruction of civilian property as a war crime. War crimes perpetrated in non-international armed conflicts were distinguished from

those committed in international armed conflicts in the past. Currently, though, there is a movement to do away with this distinction and apply a single set of laws to all forms of armed conflict. (Caesius, 1999)

### **8. Crimes against Humanity**

It is possible that the first ideas about human beings are where the concept of crimes against humanity originated. The Rome Statute, which addresses premeditated and extensive attacks on civilian populations, adds weight to this argument. In addition to the crimes listed in the Rome Statute, the Nuremberg Charter's Article 6(c) lists other offences that fall under the category of crimes against humanity. (Art 6(c) of the Rome Statute) It is well-known that the Rome Statute's Article 7 was influenced by Article 6(c) of the Nuremberg Charter. (Art 7 of the Rome Statute)

Rape, torture, sexual slavery, murder, persecution, and other cruel actions are crimes that come under the purview of national law. But when these crimes are committed as a part of a larger, organised assault, they have the potential to become a global issue. (Cryer, 2014) The main requirement for taking these domestic crimes to a global scale is that they have to be planned and executed with purpose. According to Article 7(i)(d), "deportation or forcible transfer of population" is one of the main crimes related to armed conflicts. This can happen as a result of serious environmental degradation or the depletion of natural resources that are essential to human survival. (Bruch, 2009)

Criminal liability for crimes against humanity is not predicated on a connection to armed conflict. Whether they take place in a period of peace or during an armed war, these acts are punishable. To prove culpability, there must be a discriminating purpose, which means that the aforementioned offences must be committed on the basis of ethnicity, politics, nationality, religion, or race. Moreover, these transgressions need to be a part of a well-thought-out attack. The person may face charges for a crime against humanity if these conditions are met at the time of the aforementioned offences. (Robinson, 1999)

The Rome Statute normally does not have jurisdiction over a single case of rape, torture, sexual slavery, or murder. Instead, the Rome Statute focuses on crimes against humanity, which require intentional actions against a large number of individuals as part of an overall plan. The involvement of state or organizational policy is a hidden but essential element in these cases. (Zhu, 2019) Customary international law regards this strategy plan as crucial as well, the ICTR and ICTY implement it. An assault must consist of several widely dispersed or methodical acts against the civilian population as part of a state or organization's policy to carry out such an attack in order to be prosecuted under the ICC law. (*Ibid*) The term "crimes against humanity" gives these crimes, which are often classified as domestic, an international dimension. (Robinson, 1999)

### **9. Genocide**

According to General Assembly Resolution 96 (1), the denial of an entire human group's right to exist is the definition of genocide. It is comparable to murder, which takes away a person's right to life. Genocide is a horrible act that primarily threatens the variety of mankind by attacking both the individuals who commit it and the groups to which they belong. (Wilmschurst, 2014)

The crime of genocide, as outlined in the Rome Statute, is consistent with the definition provided in Article II of the Genocide Convention. (Boas, 2011) Both the Rome Statute and the Genocide Convention share a similar number of offenses and recognize four protected groups. Specifically, under the Rome Statute, genocide is committed through the deliberate killing of any national, racial, or ethnic group. If any of these four groups are subjected to conditions that involve physical destruction, it constitutes an act of genocide. Additionally, taking actions to prevent births within any national, ethnic, or racial group is considered genocide as it obstructs population growth.



Furthermore, deliberately, and forcibly transferring children between different groups is also recognized as a genocidal offense. (Art 6 of Rome Statute)

Genocide, in its definition, typically does not encompass harm to the environment. However, intentionally targeting and killing members of a group can result in the depletion of a significant environmental component. This can subsequently disrupt the ecological balance, leading to a decline in the local environment. Additionally, imposing life-threatening conditions that indirectly result in the killing of group members can also contribute to environmental degradation. (Art 6(b) of Rome Statute)

The key factor in establishing genocide as a crime under the Rome Statute is the perpetrator's intent, or *mens rea*. Genocide must be committed against a distinct group defined by religious, racial, ethnic, or national differences. It is important to note that individual acts of deliberate killing, causing harm, or displacing individuals from one group to another do not automatically qualify as genocide. To be prosecuted for genocide, there must be a clear intention to cause harm to a specific part or the entire section of society based on their defined group identity. (Knoops, 2016)

#### **10. Case: The prosecutor's vs President Omar Al-Bashir**

Omar Hassan Ahmad Al Bashir is to be charged with a crime after a request was made to obtain an arrest warrant under Article 58. (Van der Vyver, 2010) Omar Hassan Ahmad Al Bashir is wanted on ten counts related to indirect (co) perpetration as per Rome Statute Article 25(3)(a). The ten counts are as follows:

Article 7(1)(a) lists murder as a crime against humanity, while Article 7(1)(b) lists extermination, and Article 7(1)(d) lists forcible transfer, torture, and rape.

Two war crimes are listed in Article 8(2)(e)(v): one for plundering and one for deliberately conducting attacks on civilian populations. Murder, severe physical or mental injury, or deliberately putting every member of the targeted group through living conditions meant to induce the group's physical disintegration are the three forms of genocide. The accusations and counts against Omar Hassan Ahmad Al Bashir are based on the Rome Statute, a treaty that formed the ICC and outlined several international crimes. The allegations level grave accusations of war crimes, genocide, and crimes against humanity. (*Ibid*)

The charges in this case under Article 6(c) involve intentionally causing the physical destruction of ethnic groups, namely the Fur, Masalit, and Zaghawa, the depletion of natural resources and severe environmental degradation. The perpetrators in this case deliberately eliminated the means of survival for the entire target group by poisoning water sources, such as communal wells, destroying water pumps, and stealing livestock. They also pillaged towns and villages, taking away the assets of households and communities. Due to these attacks, a minimum of 2.7 million people, which included a significant portion of the targeted groups residing in their villages, were forcefully displaced from their homes. (Diamond, 2009)

Omar Al Bashir may be tried as an indirect (co)offender of the pertinent crimes against humanity and war crimes, according to the pre-trial chamber's findings, which are in line with Article 25(3)(a) of the Statute. Rejecting the prosecution's case, the majority of the pre-trial panel stated that there was insufficient evidence to support the belief that the Sudanese government had the deliberate goal of eliminating the Masalit, Fur, and Zaphawa communities. (Giamanco, 2011)

#### **11. Environmental Protection during Armed Conflict under International Human Rights**

Human rights are the fundamental rights that every individual possesses from birth, and they are crucial for preserving human dignity. (Hannan, 2010) These rights are often described as the essential moral entitlements required for a life with dignity. (Forsythe, 2017) The understanding

and interpretation of human rights may vary depending on the specific economic, social, and cultural context of a society. (Merrills, 1989) As a result, there is no universally agreed-upon or universally applicable definition of human rights.

You can think of human rights as belonging to one of three distinct generations: the first, second, or third. Basic political and civil liberties are bestowed upon individuals as part of the first generation of human rights. The second generation of human rights focuses on economic, cultural, and social aspects of society. The third generation of human rights is based on the concept of a shared human legacy, (*Ibid*) also known as collective or group rights, which encompass the right to an environment that is both safe and suitable for the environment. Global cooperation between citizens, governments, and NGOs is essential for the realisation of these fundamental rights of the third generation. (Natarajan, 2017)

Environmental protection and human rights are distinct legal domains, but they often intersect. For example, governments and international organizations have acknowledged citizens' right to a healthy and clean environment. (Divan, 2022) Human rights are crucial for the well-rounded development of individuals, and access to material comforts and a healthy living environment is essential for fostering such development. Without proper hygiene and living conditions, it is impossible for anyone to pursue this objective. Therefore, there exists an inherent connection between the environment, development, and human rights. (Natarajan, 2017)

There is an obvious connection between human rights and environmental protection, as stated in the Declaration of the United Nations Conference on the Human Environment. Human rights depend on both natural and built surroundings, according to the Declaration's preamble. (Van Aggelen, 1999) Environmental preservation is not explicitly recognized as a human right, while the UDHR and related accords establish an implied link between human rights and the environment. This section focuses on the explicit environmental human rights that can be utilised to protect the environment in times of armed conflict. In addition, it looks at environmental and human rights laws in different regions.

IHRL and international environmental law cover separate but interconnected areas. The well-being of humanity hinges on preserving liveable conditions on our planet, necessitating actions to safeguard the environment. These environmental protection measures are closely tied to the advancement of human rights. The global legal framework for protecting human rights ultimately results in a secure environment. Human rights law already safeguards aspects related to an individual's life, residence, and property. Therefore, it can be argued that existing human rights provisions already play a role in preserving the environment. (Heinämäki, 2010)

The fundamental goal of human rights is to ensure and attain self-determination and self-realization. These objectives are realized through a set of rights that safeguard individuals from arbitrary government intervention. Ultimately, adhering to environmental conservation standards results in the preservation of natural resources, which is crucial for the survival of humanity. (*Ibid*) The establishment and approval of numerous human rights agreements occurred prior to the worldwide acknowledgement of environmental protection as a significant international concern. Since then, environmental protection has received less attention in these treaties. However, international human rights treaties specifically cover the rights to health and life as they pertain to environmental issues. (Wayii, 2020) The right to life is preserved by all major human rights treaties and customary international law; it is upon this basis that international human rights law establishes the legal framework that regulates the use of force against individuals. (Gaggioli, 2013) While other rights may be temporarily limited in times of national emergency, the right to life itself cannot be taken away, even if other rights are temporarily curtailed. Within the framework

of human rights legislation, this fundamental right limits the use of physical force against individuals. (*Ibid*)

In times of peace or war, people are protected from the wrongful actions of their government according to international human rights legislation. Human rights treaties and international humanitarian law both serve to safeguard basic human rights, such as the prohibition of torture. In cases of imminent risk to the nation's life, governments are permitted by various human rights accords to temporarily impose restrictions on specific rights. However such restrictions are not permissible under humanitarian law because the legislation was established to deal with the exceptional situations that arise during armed conflicts. International humanitarian law (IHL) applies to both states and non-state entities, whereas human rights legislation has historically only applied to states. (Bothe, 2005)

### **12. United Nations Declaration of Human Rights (UDHR), 1948**

Concern for protecting human rights on a worldwide scale began with the establishment of the United Nations. Helped along by the United Nations, numerous vital resources for human rights promotion and defence were developed. The UDHR was declared by the General Assembly to be an ideal that all nations and persons should strive to achieve. (Clapham, 2015) It's true that the UDHR, adopted by the United Nations in 1948, does not explicitly mention "environmental" or "environmental protection." However, as you've pointed out, a contemporary interpretation of the Declaration can indeed relate some of its provisions to environmental protection.

Article 3 asserts the "right to life and security of person." (Salman, 2004) A contemporary perspective could argue that this right is closely linked to environmental protection because a safe and healthy environment is essential for ensuring the right to life and the security of individuals. Without a clean and sustainable environment, people's lives could be jeopardized, whether through pollution, climate change, or other environmental hazards.

"The right to a standard of living adequate for the health and wellbeing of himself and his family" is codified in Article 25(1) of the Declaration. Achieving a satisfactory standard of living is impossible in a degraded or polluted environment, as mentioned earlier. So, one could read this as a subtle call to action to protect the environment so that future generations can continue to enjoy healthy, prosperous lifestyles. (Art 25(1) UDHR)

Because environmental considerations are fundamental to the realization of various human freedoms such as the right to exist and to a minimum level of material well-being—a contemporary reading of the UDHR can imply a connection between environmental protection and human rights. Protecting the environment is seen as an integral part of fulfilling human rights that are widely recognised, particularly the rights to life and health. Accordingly, safeguarding the natural world is considered the top priority for guaranteeing the enjoyment of human rights on a worldwide scale. (Wayii, 2020)

### **13. International Covenant on Civil and Political Rights (1996) (ICCPR)**

Nations were given the opportunity to sign, ratify, or accede to the International Covenant on Civil and Political Rights (ICCPR) when it was founded by General Assembly resolution 2200 A (XXI) on December 16, 1966. It was formally put into effect on March 23, 1976. Environmental degradation may constitute a violation of the right to life, as stated by the Inter-American Commission for Human Rights and the United Nations Human Rights Committee. Environmental damage is a violation of the right to life as granted by Article 6 (1) of the ICCPR, dated 1966, according to the precedent set by the UN Human Rights Committee in the landmark case of *E.H.P. v. Canada*. (O. Russo, 2023)

The necessity for a holistic and expansive understanding of the right to life was emphasised by the Human Rights Committee in its general statement on Article 6 of the ICCPR. According to this understanding, there is a strong link between protecting the environment and people's right to life, highlighting the importance of environmental protection in upholding this fundamental right. (Alfredsson & Ovsioek, 1991)

Article 27 reaffirms that countries with individuals who are part of ethnic, religious, or linguistic minority groups must ensure and safeguard their ability to embrace their own cultural heritage, follow their own religious beliefs, and use their native languages. (Art 27 of ICCPR)

Article 17 of the Covenant is another provision that underscores the importance of safeguarding the environment. It imposes a duty to prevent any unauthorized intrusion into an individual's privacy, family, or home. To prevent such unlawful intrusions, it becomes evident that preserving the quality of the home environment is essential. Therefore, this article can be seen as an indirect endorsement of environmental protection, as it explicitly forbids any illegal interference with one's home or family, a goal that can only be achieved by preventing environmental degradation.

Numerous rulings from the United Nations Human Rights Committee have emphasized that during armed conflicts, occupying belligerents must grant local groups the opportunity to manage resources that are not deemed legitimate military targets. (Salman, 2004)

#### **14. International Covenant on Economic, Social and Cultural Rights, (ICESCR), 1996**

Upholding and guaranteeing economic, social, and cultural rights is the main objective of the global treaty known as the ICESCR. (Loper, 2021) It makes the claim that every person has a right to equitable and beneficial working circumstances that put safety first and support mental and physical health. In addition, Article 1, paragraph 2 subtly emphasises the significance of protecting the environment because it includes all means of human sustenance. In addition, Article 7 guarantees the right to fair and advantageous working circumstances that promote both mental and physical well-being. (Art 1(2) of ICESCR) It is the signatories' responsibility to guarantee that everyone has access to adequate living conditions, shelter, and clean food. The government's actions aimed at improving these standards also guarantee access to a healthy environment. (Art 11(1) of ICESCR)

In order to achieve the highest standards of mental and physical well-being, states are expressly required to take all necessary actions to safeguard and develop every aspect of the environment, as stated in Article 12 of the ICESCR. In the ICESCR of 1966, Article 12(1) highlights the right to health. It goes into detail on what states need to do to guarantee that this right is fully realized. States are specifically required under Article 12(2b) to improve all facets of industrial and environmental hygiene. This means that states are required to work towards improving conditions related to the environment and industrial practices to safeguard human health. While the specific level of protection is not clearly defined, the right to health generally includes an obligation to prevent environmental degradation that could have adverse effects on human health.

#### **15. Convention on the Rights of the Child (1989)**

The Convention on the Rights of the Child of 1989 does not include environmental protection as a specific right. On the other hand, it acknowledges that a child's right to health depends on environmental protection. (Wayii, 2020) This agreement ensures that every child has the right to the highest standard of health care. In addition, the resolution on the preservation of children and women during emergencies and wars is referenced in the preamble of the agreement, which makes direct reference to armed conflicts. (CRC, Preamble) In addition, environmental protection is only indirectly mentioned in Article 6 of the agreement, which stresses the right to life of every child. (Art 6 of CRC)

Article 24 explicitly mentions the environment and mandates signatory nations to guarantee the utmost level of health, both physical and mental, for children. It is the responsibility of the states to safeguard their citizens from disease and starvation by providing them with sufficient amounts of healthy food and safe drinking water. (Art 24 of CRC) They must also establish effective systems to address environmental pollution. Furthermore, there is a requirement for initiatives aimed at raising awareness among the populace regarding hygiene and environmental cleanliness. (*Ibid*)

Article 27 emphasizes the importance of indirect environmental protection by recognizing it as a fundamental element necessary for the survival and well-being of every child. The state is responsible for guaranteeing and securing adequate living standards for all children, and these standards can only be achieved in a clean and healthy environment. (Art 27 of CRC)

## 16. Conclusion

The adjudicating judicial powers of the international legal system are capable of dealing with the environmental consequences of war. The Rome Statute established the International Criminal Court (ICC) and gave it authority to try cases involving a wide variety of serious crimes, such as genocide, aggression, crimes against humanity, and war crimes. One thing to keep in mind is that the Rome Statute specifically names environmental degradation as a war crime in Article 8(2) (b) (iv). The loss of life-sustaining natural resources or severe environmental degradation can lead to the "deportation or forcible transfer of population," which is explicitly forbidden in Article 7 (1) (d). Human rights law plays an essential role in addressing the environmental impacts of war. Environmental protection is considered a third-generation human right since it is based on the idea of protecting our common human life. Protecting the right to a healthy environment nudge first- and second-generation human rights forward, making them more present and enjoyable. The right to health, life, and a decent quality of living are among the human rights that rely on a clean environment for their realisation and preservation.

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