INTERNATIONAL ENVIRONMENTAL CRIMES: EXAMINING THE ONTOLOGY, TYPOLOGY AND ECOLOGY*

Abstract

Wars within the international community have spawned severe destruction to the environment throughout human history. The last few years have witnessed how the environment has been targeted and harmed severally. The motivation for this study was the deployment of technological sophistication during armed conflict which targets the natural environment with no attention and remedy for the fragility, and destruction of the natural habitat. The aim was to see how the Rome Statute of international criminal law, its rules, and institutions can protect the environment. In line with this, the study investigated how the application of international criminal law at present has effectively ensured environmental protection and reduced or stopped the worst kind of environmental degradation in the international community. The study went further to make critical assessment of the ontology, typology, and ecology of international environmental crimes and the linkage with the Rome Statute. It equally surveyed whether the extension of the scope of international criminal sanction to cover intentional destruction of the environment during armed conflict has cured perceived inaction of the international community. Some of the advantages and disadvantages of international criminal law have been examined with respect to providing a moral mandate for environmental protection both during armed conflict and in times of peace.

Keywords: International, Environmental Crimes, Ontology, Typology, Ecology.

1. Introduction

The emergence of International environmental law as a distinct legal regime was a very important development of the late 20th century. The international community was alarmed by environmental damage and technological disasters, which have tended to become more destructive as they affect ever larger concentrations of population.[1] International legal measures of one kind or another.[2] had long been taken to prevent or alleviate pollution or accidents affecting more than one state. However, the global community has realised that the actual and potential consequences of environmental degradation are becoming so serious, as human being and natural order are all endangered, and thus, much emphasis had to be given to the prevention of environmental damage. In this respect, the use of international criminal justice in the protection of environment has become relevant and germane. The consequences spewed by some environmental disasters are perceived far beyond national borders thereby necessitating stronger measures to stop recurrence of the events.

The global community shows a level of concern for the environment when celebrating the first earth day in 1970.[3] Popular movements and scientific bodies pressed governments to take remedial measures over range of human activities[4] affecting the environment. The United Nations responded in Stockholm Conference following years of study and discussion on a global basis.[5] The declaration called on states to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damages.[6] This marked the beginning of international environmental law in modern times. One can find a plethora of legal instruments on international environmental protection.[7] However, it is noticeable that neither national nor international environmental law offers effective protection against the very worst act of intentional environmental destruction. Most gross intentional environmental violations particularly seem unsanctioned.

This study argues that in most extreme destruction of the environment, international criminal condemnation and punishment is needed. It advocates for the extension of International Criminal Law to cover grave environmental offences, especially when committed by humans. It is proposed that the International criminal law should extend its jurisdiction to legal persons and introduce a new international crime - 'crimes against the environment'. The

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[1]G. Heine (eds.) Environmental Protection: Potentials of Criminal Justice (Freiburg:United Nations Interregional Crime and Justice Research Institute, 1997) 28.

[2]Trail Smelter Arbitration (*United states v. Canada*) also, the Corfu Channel case (*United Kingdom v. Albaria*) Lake Lanoux arbitration (*France v. Spain*)

[3] Laura I. Barnes, 'Celebrate Earth day' Illinois waste Management & research Centre Library; F. Stoss, 'Earth day 1970-1995: An Information Perspective'. *Electronic Green Journal*, 1 (3) 1st April 1995.

[4] Ibid.

[5]The Declaration of the United Nations Conference on the Human environment 1972, UN.Doc. A/CONF.48/14, I.L.M

[6]Ibid. prin. 22 1416 (1972).

[7]Universal Declaration of Human rights 1948 in B.E. Carter, *International Law: Selected Documents.* New York: Aspen Publishes, 2007.

reason for this is to enable victims to institute and pursue criminal proceedings against offenders. By declaring some grave environmental offences as international crimes and placing them on the same level as genocide would advance international environmental protection law thereby benefiting both the present and future generations. Hence, this study investigates the nature and the classification of international environmental crimes as well as their implication on the ecosystem.

2. The Ontology of *Sui Generis* International Environmental Crimes

The prosecution of international and intentional environmental damage during armed conflict is primarily but not exclusively situated within the ambit of the international criminal court. While other international tribunals and courts such as international criminal tribunal for former Yugoslavia (ICTY), international criminal tribunal for Rwanda (ICTR), and Special tribunal for Lebanon (STL), all have limited and temporary geographical jurisdiction, the international criminal court is inherently constituted to be unlimited and permanent in its geographical reach.[8] The major focus of this study is to see the best way to utilize international criminal law in protecting the environment. Examining the action and procedure of international criminal law gives a picture of high potentiality in addressing environmental destruction during armed conflict rather than a demonstrated outcome.[9] It is clear that no person has been convicted of this crime.[10] The destruction and carnage of World War II showed high level of environmental destruction but nobody was convicted of environmental crime.[11] The glaring case of a German General Lothar Rendulic at the International Military Tribunal at Nuremberg is a point at hand.[12] The defendant was charged with the wanton destruction of private and public property, scorched earth policy in the province of Finmark, Norway, during the retreat of the XXth Mountain Army commanded by him. The consequence of his action was complete destruction, devastation and carnage of the environment which manifested conspicuously after about three years. The tribunal held that the action though wrongful cannot be said to be criminal. The defendant was said not to be criminally responsible as his action was said to be militarily necessary at the time under Hague Regulations.[13] Starting from the Nuremberg period, no important prosecution under international criminal law for environmental destruction has taken place.[14]

The need arises for a better perspective and understanding of the nature of *sui generis* crime against the environment and the lacuna in the prosecution of persons seen to have committed this crimes during armed conflict. Thus, one may ask, is it deficiency in the prosecution for environmental destruction which constitutes the problem or deficit in the Rome Statute? In addressing this issue, the International Committee of the Red Cross (ICRC), opines that, the current law is adequate for environmental protection; the problem according to International Committee of the Red Cross is the issue of enforcement.[15] Some commentators have supported the position of International Committee of Red Cross.[16] Though it is a wonderful thing that lack of enforcement of environmental prohibition has been noticed and identified, it is very important that one should not be carried away with it and not see the deficiency in the legal instruments which protects the environment.[17]It is very hard and troublesome to implement the deficiencies in the current law by enforcing the same inadequate provisions.

Another case in the recent times is the setting of fire to oil wells in the Gulf war. The fact of the case was that Iraq mischievously discharged huge amount of oil in the Persian Gulf when they opened the oil terminals causing 'the largest oil spill ever'.[18]Furthermore, in February1991fire was set on more than 600 Kuwaiti oil wells by the Iraqi military thereby casting large smoke over a huge area.[19]The effects of the billowing smoke across Kuwait and

[8] Matthew Gillett, 'Prosecuting Environmental Damage under International Criminal Law' in James Crawford & Sara Nouwen (eds) (2010) 111 *Select Proceedings of the European Society of International Law* 331; Charles P. Trumbull IV, The Victims of Victim Participation in International Criminal Proceedings (2008) 29 (4) *Michigan Journal of International Law* 783

[9] *Ibid*

[10] Tara Weinstein, 'Prosecuting Attacks that Destroy the Environment: Environmental Crimes or Humanitarian Atrocities?' (2005) 17 *Geo Int'l Envtl'L Rev* 698,

[11] *Ibid*

[12] The Hostages Trial (Trial of Wilhelm List & Ors.) 8 *Law Reports of Trials War Criminals* 66

[13] Article 23 (g) of Hague Convention II 1899 with Respect to the Laws and Customs of War on Land, Annexed Regulations (1899) 1 (2) AJIL 129

[14] Matthew Gillett op cit 332.

[15] Antoine Bouvier, 'Protection of the Natural Environment in Time of Armed Conflict', (1991) 31 (285) *International Review of the Red Cross* 567-578

[16] Matthew Gillett, op cit 333.

[17] *Ibid.*

[18] Adam Roberts, 'Environmental Issues in International Armed Conflict: The Experience of the 1991 Gulf War', in Richard J. Grunawalt et al. (eds), Protection of the Environment during Armed Conflict, (1996) 69 *International Law Studies* 222 - 278

[19] Yoram Dinstein, 'Protection of the Environment in International Armed Conflict' in J.A Frowein & R. Wolfrum (eds.), (2001) 5 *Max Planck Yearbook of United Nations Law* 543.

neighboring regions was very grave and discomforting to the inhabitants.[20]On assessment, the Iraqis seem to have been motivated not by military consideration but by sheer vindictiveness.[21] The most nagging question among scholars was whether Iraqi action - setting fire to the Kuwaiti oil wells was in breach of Protocol 1[22] and the ENMOD Convention.[23]The answer has been given in the negative because Iraq was not a contracting party to the two instruments and both instruments did not reflect customary international law.[24] But the question is, assuming that Iraq had been a contracting party to both instruments; could Iraq be held criminally responsible for the breach of the instruments? It is important to note that the cumulative threshold of 'widespread, long-term and severe damage' to the environment embodied in Protocol I would have served as a barrier to prosecuting Iraq.[25] This conclusion was equally reached by the officials of the Department of Defense of the United States when they reviewed the Gulf war.[26] In regards to the ENMOD Convention, though the cumulative threshold of 'widespread, long-lasting or severe effects' were met bearing in mind that even 'long-lasting' is measured here only in months.[27] Some have maintained that there was no deliberate manipulation of natural process.[28] So, Iraq couldn't have been held responsible under ENMOD. The underlying principle been that, 'the direct cause of the environmental destruction was the detonation of explosives on the well-heads, and the fact that those well-heads have been constantly supplied with inflammable oil to feed the fire triggered by those explosions by virtue of the pressures in the strata below them is a secondary, not a causative matter, thus, explosives, not oil pressure, were manipulated.'[29] Therefore, both Protocol I and ENMOD legal instruments would have failed to serve as instruments of effective prosecution of the Iraqi government in their mischievous action against the natural environment of the Kuwait and neighbors.

The ceasefire conditions in the Gulf war drawn by the Security Council Resolution 687[30]held Iraq 'liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait'.[31]It could be stated that the Security Council Resolution 687 found Iraq liable for 'wrongful act under international law for any environmental damage on the illegal invasion of Kuwait in breach of the United Nations Charter and customary international law, rather than on the laws of warfare'.[32] This means that there was no international prosecution on the environmental damage occasioned by Iraq's action because of the weakness of the existing legal instrument at that time. It is quite unfortunate that customary international law is yet to develop to the point of giving adequate protection for the environment in wartime. The treaty law has advanced but as seen in the case of Gulf war, threshold set by Protocol I is too high and the ENMOD convention seems to be too restricted in its interpretations thereby rendering it incapacitated to protect the environment during armed conflict. It is not doubtful that some intentional and direct damage to the environment is not included by ENMOD Convention and Protocol I which was later replicated in the Rome Statute.[33]

A great number of obstacles impede effective prosecution of environmental damage. International criminal law can be said to be underdeveloped in the protection of environment primarily in its few provisions relating to criminal responsibility for environmental destruction. The prohibition against producing widespread, long-term,

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[20] *Ibid.*

[21] Michael N Schmitt, Humanitarian Law and the Environment (2000) 28 (3) *Denver Journal of International Law & Policy* 269

[22] Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1) 1978 *UNTS* 112.

[23] Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques 1977 31 UST 333, 1977 (9614) *TIAS* (hereafter ENMOD).

[24] Yoram Dinstein, *op cit.* 545

[25] A. P. V Rogers, *Law on the Battlefield* (New York: Manchester University Press 1996) 124

[26] United States: Department of Defense Report to Congress on the Conduct of the Persian Gulf War 'Appendix on the Role of the Law of War', (1992)31 *ILM* 636-637

[27] Yoram Dinstein, op cit. 546; see also M. A Ross, 'Environmental Warfare and the Persian Gulf War: Possible Remedies to Combat Intentional Destruction of the Environment' (1991 - 1992) 10 *Dick J. Int'l L* 531

[28] L. Edgerton, Eco- Terrorist Acts during the Persian Gulf War: Is International Law Sufficient to Hold Iraq Liable?' (1995) 22 *Georgia Journal of International & Comparative Law* 172.

[29] Glen Plant, 'Introduction', in Glen Plant (ed.), Environmental Protection and the Law of War: The Fifth Geneva Convention on the Protection and Environment in Time of Armed Conflict (New York: Belhaven Press 1992) 3; See also Christopher C. Joyner & James T. Kirkhope, 'The Persian Gulf War Oil Spill: Reassessing the Law of Environmental Protection and the Law of Armed Conflict' (1992) 24 (1) *Case Western Reserve Journal of International Law* 29

[30] Security Council Resolution in (1991) 30 *ILM* 847

[31] Security Council Resolution 687 *Supra* 852

[32] Yoram Dinstein, *op cit* 548; see Christopher Greenwood, 'State Responsibility and Civil Liability for Environmental Damage Caused by Military Operations' in Grunawalt *op cit* 397.

[33] Art 8(2)(b)(iv) of Rome Statute of International Criminal Court (Hereafter, Rome Statute) 2187 UNTS 38544 (1998); 37 *ILM* 1999

and severe damage to the environment could be seen in the statute of international criminal law,[34] considered to embody significant limitations.[35] As an important document for the protection of the security of the global community in the contemporary world, international criminal court is inhibited because of its incapacity to prosecute environmental damage on account of its jurisdictional and operational restrictions. Provisionally, there is a limitation to the prosecution of crimes that occurred prior to 1 July 2002.[36] Importantly, the crimes it can prosecute are strictly outlined which has one provision[37] which is circumscribed by serious damage to the environment with qualifications that makes it inapplicable to all but the most extreme form of environmental destruction.[38] Therefore, for international criminal law to realize its potential, a *sui generis* crime against the environment is needed. In explicating the nature of *sue generis* crimes against the environment, one of the resolutions from the congresses of international association of penal law states that, 'core crimes against the environment, that is crimes that are *sui generis* and do not depend on other laws for their content...'.[39] And again, 'core crimes against the environment affecting more than one national jurisdiction or affecting the global commons outside any national jurisdiction should be recognized as international crimes under multilateral conventions'.[40] Thus, it is a stand-alone crime. Though that 'governments are not at present ready to accept significant new obligations in this field'[41] but the necessity of adopting a comprehensive and innovative treaty and putting an end to the current controversy in identifying the threshold of environmental damage amounting to a breach of international law cannot be overemphasized.[42]

Argument has been advanced for extending the International criminal court mandate to encompass environmental damage during peace time[43] but there are enormous challenges in making the ICC an appropriate medium for environmental adjudication because it will stretch its capacity. Expanding the mandate of international criminal court to crimes against the environment would unduly strain its ability to deliver justice competently and timely.[44] Calls have equally been made that creating an international environmental court would be better for centralized adjudication of environmental matters.[45]But past experience has showed the difficulty in creating international courts, for instance, the creation of International criminal court was first muted during the Paris Peace Conference in 1919, it took over half a century for its realization in 2000.[46] Again, suggestions and proposals for an international court for the environment were first made in 1980 but nothing has been done in that regard.[47] For instance, particulars of issues in the 1992 draft Convention for the Establishment of an International Court for the Environment made within the umbrella of the National Academy of Lincei in Rome.[48]

One of the means in which the issue of capability and competency of the present international criminal court could be taken into consideration is through 'the establishment of a specialized environmental chamber and department within the prosecutor's office'.[49] This type of restructure and institutional organization could guarantee that critical

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[34] Rome Statue Supra, Article 8 (2)(b)(iv)
[35] Matthew Gillett, *op cit* 333
[36] *Ibid*
[37] Article 8(2)(b)(iv) *Supra*
[38] Matthew Gillett, op cit 333
[39] International Association of Penal Law, Resolution 21 of the XVth International Congress on Penal Law (1995) 66 (1) (2) *International Review of Penal Law* 52; See also Jose Luis De La Cuesta (ed), *Resolution of the Congresses of the International Association of Penal Law* (1926 – 2004) (Toulouse: International Association of Penal Law 2009) 153
[40] *Ibid* Resolution 23.
[41] P.C Szasz, 'Environmental Destruction as a Method of Warfare: International Law Applicable to the Gulf War', (1992) 15 *Disarmament* 151-153
[42] R. J Parsons, The Fight to Save the Planet: U.S Armed Forces, Green Keeping and Enforcement of the Law Pertaining to Environmental Protection during Armed Conflict' (1997-1998) 10 *Geo. Int'l Envt'l. L Rev* 460
[43] Rosemary Mwanza, 'Enhancing Accountability for Environmental Damage under International Law: Ecocide as a Legal Fulfillment of Ecological Integrity' (2018) 19 (2) *Melbourne Journal of International Law* 586
[44] *Ibid.*
[45] Tim Stephens, *International Courts and Environmental Protection* (Cambridge: Cambridge University Press 2009) 17
[46] Report of the Commission on the Responsibilities of the Authors of the War on Enforcement of Penalties for Violations of the Laws and Customs of War, Conference of Paris (New York: Carnegie Endowment for International Peace, Division of International Law 1919); Reprinted in (1920)14 *American Journal of International Law 95*; see also Harry M. Rhea, 'Paris 1919 and Rome 1998: Different Treaties, Different Presidents, Different Senates and the Same Dilemma' (2011) 20 *Translational Law & Contemporary Problems* 411 - 412
[47] Tim Stephen, *op cit* 56 - 62;
[48] Peggy Rodgers Kalas, 'International Environmental Dispute Resolution and the Need for Access by Non-State Entities' (2001) 12 *Colorado Journal of International Environmental Law and Policy* 232 - 40; See also Kenneth F. McCallion, 'International Environmental Justice: Rights and Remedies' (2003) 26 *Hastings International and Comparative Law Review* 427.
[49] Rosemary Mwanza, *op cit* 22; See also Paul Garlick, 'The Supranational Environmental Justice Foundation in Venice: A Not So New Kid on the Block' (2013) 4 *New Journal of European Criminal Law* 506

examination and adjudication of all forms of allegations of crimes against the environment are sorted out. As has been suggested that similar to 'many environmental adjudication forums at the national, regional and international levels, the international criminal court's environmental competence would be improved incrementally within the proposed environmental chamber'.[50]

Contemporary discussion of peacetime environmental damage has raised many questions for international criminal law. Yet, limiting the mandate of ICC's to its present position and boundary does not seem to augur well for the security of the global environment. Many of the most wanton environmental destruction tend to occur and elongate over extended periods in countries that enjoy relative peace.[51] The result portray extensive, long-term and in many cases irreversible damage, leading to diminished social and cultural wellbeing and destruction of the ecosystem.[52] The global community should not get marooned in measuring the operational costs in establishing a specialized environmental chamber and department in the prosecutor's office. This approach would not be so expensive and elaborate as that of establishing a separate and specific judicial infrastructure - an international environmental criminal court suggested by many scholars.[53]

This study is tailored to define crimes against Environment in terms that emphasize the importance of protecting the ecosystem *per se* by the codification of a separate and specific stand-alone crime. Possibly, lift it high to unambiguous point to encompass both armed conflict and peace time egregious Environmental destruction. This will remove the protection of the environment from been treated as incidental and minor matter, to be overburdened by the catch phrase of military necessity which has always been used as a defense in the sphere of war crimes, thereby sending a clear message that environmental destruction would no longer be deemed as a spoil of war. The proposed crimes against the environment cast environmental damage as a problem whose consequences lead to both humanitarian and ecological disaster.[54]The proposal looks at the liability envisaged as a crime to be imposed where 'the extensive damage to, destruction of or loss of ecosystem(s)', [55]grievously reduces the peaceful enjoyment of ecosystem by the inhabitants within the territory where the ecosystem is located or in another territory.[56]The concept of protecting non-human life is not new to international law because numerous international treaties impose criminal liability for harm to some species of animals[57]. *Sui generis* crime against the environment as a law will impact the world, change businesses and lives of all in the global community. This would be accomplished through an ecosystem approach to environmental protection rather than a compartmentalization approach that fails to understand the interconnectedness of the whole ecosystem.

3. The Typology of International Environmental Crimes

The umbrella in which crime against the environment should be placed may be an issue- national environmental crime or international crime? The notion of placing crime against the environment under domestic criminal jurisdiction will not serve its intended purpose because of its grave nature and the limitation of domestic criminal laws. In most situations 'States themselves are the most significant destroyers of the environment'.[58] Again, the perennial danger to characterize international crimes as ordinary crimes would impede justice,[59]or proceedings may be designed to shield certain accused person or cases may not be diligently prosecuted to thwart justice.[60]

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[50] Rosemary Mwanza, *op cit* 22

[51] *Ibid.*

[52] Cameron H. Ainsworth et at, 'Impacts of the Deepwater Horizon Oil Spill Evaluated Using End- to- End Ecosystem Model' (2018) 13 *Plos One*; David M. Uhlmann, 'After the Spill is Gone: The Gulf of Mexico, Environmental Crime, and Criminal Law' (2011) 8 (109) *Michigan Law Review* 1413

[53] Steven Freeland. *Addressing the Intentional Destruction of the Environment during Warfare under the Rome Statute of the International Criminal Court* (Cambridge: Intersentia 2015) 230; Peggy Rodgers Kalas, op cit 232.

[54] Rosemary Mwanza, *op cit* 23

[55] Polly Higgins, *Earth is our Business: Changing the Rules of the Game* (London: Shepheard - Walwyn Publishers Ltd., 2012) 3

[56] *Ibid*

[57] Convention on International Trade in Endangered Species (1982) 27 *U.S.T. S* 1087; *T.I.A.S* 8249; See also Agreed Measures for the Conservation of Antarctic Fauna and Flora (signed 1964 Effective 1982, Expired 2011) in Amari Omaka *Nigerian Conservation Law and International Environmental Treaties* (2nd Edn, Lagos: Princeton and Associates Publishing Co Ltd. 2018)565; Bonn Convention on the Conservation of Migratory Species of Wild Animals (1980) 19 *ILM* 15; Convention for the Preservation of Fur (1911) 37 *Stat* 1542; Interim Convention on Conservation of North Pacific Fur Seals (1957) 314 *UNTS* 105

[58] Anna Alvazzi del Frate et al (eds), 'Environmental Protection at National and International Levels: An Overview of the Empirical Study' in Anna Alvazzi del Frate et al (eds) *Environmental Protection - Potentials and Limits of Criminal Justice: Evaluation of Legal Structures* (Freiburg: Max-Planck Institute 1997)22

[59] Statute of the International Tribunal for the former Yugoslavia Article 10 (2) a in (1993) 14 *Human Rights Law Journal* 211

[60] Statute of the International Tribunal for the former Yugoslavia *supra*, Article 10 (2) b

The question is, crime against the environment will it be well placed under the purview of international criminal jurisdiction? Certain principles have universal validity and application to humanity as a whole.[61] These are rules and principles that reinforce proscription of some kinds of human conduct. An example could be seen in the case of apartheid and genocide whose value systems are hinged on the dehumanization of life, which were later prohibited universally.[62]The United Nations has pointed out and proscribed the most serious of these crimes - Crimes against Peace when it stated: 'Crimes against the peace and security of mankind are crimes under international law and punishable as such, whether or not they are punishable under national law".[63]When 'the existing system fails to prevent what it is set up to protect , the scales of justice falls out of its pendulum and questions will be raised on it rules and procedures. Therefore, a value system based on a lack of regard for all life now needs to be universally outlawed as well'.[64] The question is: is widespread and intentional destruction of environment a threat to the security and peace of mankind? In the case of *Prosecutor v. Tadic*[65] where the appellant was charged with crimes against humanity at the International Criminal Tribunal for the former Yugoslavia (I.C.T.Y), in challenging the primacy of international tribunal over competent domestic courts, the tribunal held that, the Security Council is empowered and mandated by definition to deal with trans-boundary matters or matters which, though domestic in nature, may affect international peace and security… borders should not be considered as a shield against the reach of the law and as a protection for those who trample underfoot the most elementary rights of humanity.[66] So, at the base of prohibiting crime against the environment is protection of *all life* as against only the human life which underpins the current ineffective provisions in the Rome Statute,[67] Geneva Conventions,[68] and ENMOD Convention.[69]

Some commentators may argue that not all environmental destructions merit international opprobrium and 'shock the conscience of mankind' to require a provision within the Rome Statute to warrant international criminal sanction.[70] The need arises to create a practicable mechanism to determine the threshold of gravity which can constitutes such a crime. Already the international community is tilting towards this angle. For instance, the Office of the Prosecutor's (OTP) recent policy goals has shown interest to prioritize crimes committed by means or result in the 'destruction of the environment, the illegal exploitation of natural resources or illegal dispossession of land'.[71] Understandably, the office of the Prosecutor selects its cases based on the seriousness and 'gravity of the crimes and the degree of responsibility of the alleged perpetrators and the potential charges'.[72] Thus, the policy recognizes that the destruction of the environment is worth considering as a crime in itself and it serves as a springboard for the commission of other crimes. One or two elements suggested by Mahmoud Cherif Bassiouni relating to what constitutes the features of international crime[73] are apposite here:

(i) threatens the peace and security of mankind, either directly or indirectly.[74]

(ii) is conduct that is shocking to the conscience of the world community and is thus contrary to its shared values.[75]

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[61] Polly Higgins, op cit 4

[62] Article 1 of Convention on the Prevention and Punishment of the Crime of Genocide (1948) 78 *U.N.T.S* 277 (Adopted by U.N General Assembly at New York on December 9, 1948. G. A. Res. 2670 entered into force on January 12, 1951); Article 2 of International Convention on the Elimination of all Forms of Racial Discrimination (1966) 5 *ILM* 352 (Done at New York on January 7, 1966. Entered into force on January 4, 1969).

[63] Draft Code of Crimes Against the Peace and Security of Mankind Article 1 (2) in Report of the International Law Commission on its Forty-Eight Session (1996) U.N. GAOR, 51st Session, Supp. (10) 9 U.N Doc.A/51/10

[64] Polly Higgins, *op cit.* 4

[65] International Criminal Tribunal for the Former Yugoslavia 1995, Appeals Chamber Case No. IT- 94- 1- AR72. Decision on Interlocutory Appeals on Jurisdiction (1996) 35 *ILM* 32

[66] *Ibid*

[67] Rome Statute *Supra*, Article 8(2)(b)(iv)

[68] Article 35 (3) Protocol 1 Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977) 1125 *UNTS* 3; 16 *ILM* 1391 (opened for signature 8 June 1977 entered into force 7 December 1978)

[69]Article 1 of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, (1976) 1108 *UNTS* 151; 16 *ILM* 88 (opened for signature 10 December 1976 entered into force 5 October 1978, Hereafter ENMOD Convention)

[70] Steven Freeland, *op cit* 235

[71] Office of the Prosecutor, 'Policy Paper on Case Selection and Prioritization' (2016) *International Criminal Court* 10; See also Irina Florenta Cristescu , 'The Challenges of Prosecuting the Destruction of the Natural Environment as a War Crime before the International Criminal Court and Preferable Alternative' , Unpublished Llm Dissertation presented to the School of Law, University of Essex 11th September 2019, P. 40

[72] *Ibid* 10

[73] Mahmoud Cherif Bassiouni (ed), *A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal* (Dordrecht: Martinus Nijhoff Publishers 1987)36 - 40

[74] *Ibid*

[75] *Ibid*

b) A transnational element in that it
(iii) is transnational in nature, affecting public safety and economic interests in more than one State, involves citizens of more than one State, and transcends national borders[76] or
c) A necessity of international cooperation element[77], in that it;
(iv) Requires International Cooperation for its Prevention, Suppression and Control.[78]

It is unarguable that egregious destruction of environment meets all the characteristic elements outlined by Bassiouni above. And therefore, pose a threat to international peace and security which is strongly established element of a theory of international criminal law.[79] This justifies the view that believes crimes against the environment exhibits the features that are ordinarily connected with certain class of international crimes, and therefore suitable for inclusion as a *sui generis* crime in the Rome Statue.[80] Creation of the crimes against the environment[81]creates a pre-emptive duty to act responsibly before damage or destruction of a given territory takes place. The reason for seeking international recognition for crimes against the environment emanates from the evolutionary nature of international law as it responds to the dynamics of the changing world. Thus, the extent of ecosystem destruction with global consequences urgently requires principles and legal recognition on a par with genocide. Corporate-related destruction and pollution clean-up determined by voluntary governance, has manifestly failed.[82] One may ask, what are the criteria necessary for raising a degree of threshold for environmental damage in determining when (environmental damage) it should be criminalized? The International Congress on Penal Law, at its 15th Congress in 1994 adopted a resolution concerning the concept of crimes against the environment.[83] Its outlook and discussions were broader in not differentiating between crimes occurring during armed conflict and those committed in times of peace. Though that the resolutions majored on prosecution under national laws, has the following provision in one of its paragraphs: 'Core crimes against the environment affecting more than one jurisdiction or affecting the global commons outside any national jurisdiction should be recognized as international crimes under multilateral conventions'.[84]

In a study commissioned by the United Nations, 'environmental degradation that leads to large-scale death or lessening of life chances was identified as one of the main threats to international security especially due to its potential to undermine States as the basic unit of the international system'.[85] In sum, it is submitted that intentional actions perpetrated which threatens the security of the ecosystem in well-deserved cases are crimes against the environment which should be prosecuted at the international criminal court. The Rome Statute should include the new offence of grave crimes against the environment. The pattern used in detailing crimes in the Rome Statute[86]should be applied; the new offence should list specific prohibited results whose causation leads to criminal liability.[87]

4. The Ecology of International Environmental Crimes

The interconnectedness of the environment as a global resource makes it imperative for the development of a framework to reassess the anthropocentric impacts of environmental destruction at international level.[88] The philosophy undergirding the protection of the earth's environment seeks to promote a protection ethic to confront situations that put the integrity of the environment at risk.[89]The present anthropocentric approach to international environmental protection imbedded in the Rome Statute[90]falls short of deterring the destruction of environment.

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[76] *Ibid*
[77] *Ibid*
[78] *Ibid*
[79] Steven Freeland, op cit 237.
[80] Ibid
[81] Polly Higgins, op cit 10 has argued for a name of ecocide instead of crime against the environment. But the name does not really matter so long as the substance of the concept remains the same to define extensive intentional destruction of the environment both in peacetime and wartime.
[82] *Ibid*
[83] International Association of Penal Law, *supra.*
[84] *Ibid* Paragraph 23
[85]Anand Panyarachun et al, 'A More Secure World: Our Shared Responsibility - Report of the Secretary - General's High-Level Panel on Threats, Challenges and Change,' (2004) 59th Session Agenda Item 55, *UN Doc* A/59/565, 12
[86] Articles 6 - 8 supra.
[87] Regina E Rauxloh, 'The Role of International Criminal Law in Environmental Protection' in Francis N. Botchway (ed) *Natural Resource Investment and Africa's Development* (London: Edward Elgar Publishing 2011) 447
[88]Rosemary Mwanza, *op cit* 6
[89]Christopher C. Joyner & James T Kirkhope, 'The Persian Gulf Oil Spill: Reassessing the Law of Environmental Protection and the Law of Armed Conflict' (1992) 24 *Case Western Reserve Journal of International Law* 29
[90] Article 8 (2)(b)(iv) *supra*

There is a need for paradigm shift because the crime of crimes against the environment is a damage to the environment and all who inhabit it. Human damage can be and often is secondary.[91]Ecocentric and ecological integrity introduces broader level aimed at a ground law based on a value system that recognizes ecological limits to economic, political and social institutions.[92]Some scholars have stated various positions for environmental governance, thus, 'the rule of ecological law',[93]'ecological sovereignty',[94] 'ecocentric rule of law',[95]and 'global environmental constitutionalism'.[96] These efforts are undergirded by the understanding amongst scholars that 'law cannot continue to rest still on foundations that evolved under the (harmonious reality or recent whole) harmonious Holocene'.[97]Deeply assessed, these ideas and perspectives show the constraints of international law in its inability to respond effectively to global environmental challenges.[98] The linkage and similarity within these concepts is the recognition of the importance to reform international (criminal) law in a way that is responsive to the present global environmental challenges.[99] Their differences inhere in the divergent approaches used in addressing the limitations of both international law and environmental law.[100]Klaus Bosselmann suggests 'a realignment of policy objectives to be served by environmental governance such that the environment is universal and comes first, human social organization exists within it and comes second and economic modeling only exists within both, neither in parallel nor above them'.[101] Many scholars have proposed the concept of ecological integrity as a framework in analyzing the adequacy of substantive legal reforms within international criminal law and the extent to which it can support an argument in favor of the feasibility of ecocide.[102]

Ecological integrity as a structure adopted here is seen as the continued healthy or proper functioning of global and local scaled ecosystems and their ongoing provision of renewable resources and environmental services.[103] One may ask how international criminal law can respond to the ecology question. International Criminal law has greater role in ensuring compliance of protecting commonly shared certain social values and according to Frederic Megret it 'reinforce the general perception of the environment as a prized externality that deserves to be protected adequately'.[104]It is added that this is done through international penal sanctions. The underlying value system of current international criminal law is anthropocentric in nature. It has features that perceive the natural environment as a passive body that subsists for human existence.[105]There is no denying the fact that the major focus of law is human protection, but the problem of anthropocentrism is its disregard that humans cannot be separated from the environment. The dualistic view of anthropocentrism in relation to environment and humans, overlook the fact that humans cannot be protected in isolation from environment.[106] 'Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients'.[107]

The concept of ecological integrity as a norm in international criminal law is structured for reassessing and rethinking the penal law's competence to respond to current global environmental problems. It is employed as a mirror to reflect and analyze the degree in which international criminal law maintains norms embodied by the

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[91] Polly Haggins, *op cit* 13

[92] Rakhyun E Kim & Klaus Bosselmann, 'Operationalzing Sustainable Development: Ecological Integrity as a Grundnorm of International Law' (2015) 24 *Review of European Comparative & International Environmental Law* 194

[93] Geoffrey Garver, 'The Rule of Ecological Law: The Legal Complement to Degrowth Economics' (2013)3 *Sustainability* 316 - 337

[94] Peter Boulot & Helen Sungaila, 'A new paradigm: Towards a Jurisprudence Based on Ecological Sovereignty' (2012) 8 (1) *Macquarie Journal of International and Comparative Law* 1

[95] Louis J Kotze & Duncan French, 'The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene' (2018) 7 *Global Journal of Comparative Law* 5

[96] Louis J Kotze, *Global Constitutionalism in the Anthropocene* (London: Hart Publishing 2016) 2

[97] *Ibid* 7

[98] Klaus Bosselmann, 'Losing the Forest for the Trees: Environmental Reductionism in the Law' (2010) 2 *sustainability* 2425

[99] Rosemary Mwanza, *op cit* 8

[100] *Ibid*

[101] Klaus Boselmann, 'The Rule Law Grounded in the Earth: Ecological Integrity as a Grundnorm' in Laura Westra and Mirian Vilela (eds), *The Earth Charter, Ecological Integrity and Social Movements* (London: Routledge 2014) 3

[102] Polly Higgins, *opcit*; Rosemary Mwanza, *opcit; Klaus Boselmann opcit;* Brendan Mackey, The Earth Charter and Ecological Intergrity – Some Policy Implications'. (2004) 8(1) *Worldviews: Environment, Culture Religion* 76 - 92

[103] Brendan Mackey, 'Ecological Integrity - A Commitment to Life on Earth' in Peter Blaze Corcoran et al (eds), *The Earth Charter in Action: Toward a Sustainable World* (Georgia: University of Georgia Press 2008) 66

[104] Frederic Megret, 'The Case for a General International Crime against the Environment' in Sebastien Jodoin & Marie-Claire C. Segger (eds) *Sustainable Development, International Criminal Justice, and Treaty Implementation* (Cambridge: Cambridge University Press 2013)56

[105] Bryan G Norton, Environmental Ethics and Weak Anthropocentrism' (1984) 6 *Environmental Ethics* 131

[106]Geoffrey Garver *op cit*, 316

[107] Preamble (a)World Charter for Nature (1982) U.N.G.A RES 37/7; (1983) 22 *ILM* 455

ecological integrity structure.[108] The norms are portrayed in the idea of 'ecological limits to economic development and the respect of humans as ecologically embedded beings'.[109] Consequently, it can offer a model to validate reforms to international criminal law which will encapsulate the values it embodies.[110] Ecological integrity demands new rules of responsibility and accountability in international criminal law which will integrate actors that have been excluded to respond to international environmental crimes.[111] The result would be new realignment that will engage States, individuals, corporations and impose duties on them that will require them to abide by ecological rule.[112] This may lead in abandoning strict adherence to restriction that may have been foisted by the traditional understanding of international legal personality.[113]There is need for international Law to embrace principles and norms that are seen to be settled reality, like those that 'insist against accountability for corporations under international law.[114] In addition, ecological integrity requires laws that assess environmental damage in the context of socio-ecological occurrence.[115] Accordingly, for international criminal law to be relevant to environmental protection, it is need to recognize the reality that environmental destruction is not limited to humanitarian disaster but includes non-human inhabitants.[116] This is in sync with international covenant on Environment and Development where 'nature as a whole and all life- forms warrant respect and are to be safeguarded. The integrity of the Earth's ecological systems shall be maintained and where necessary restored'.[117] As a consequence, human beings are rooted in environment, its dependence and survival are interconnected. This requires reform of laws that are anthropocentric to the direction that treats human wellbeing as vital and linked with the wellbeing of the ecosystem.[118]

Furthermore, ecological reliability enhances the worth, dignity and value of human being by developing rules specifically for removal of burdensome bureaucratic and substantive legal hurdles which impede access to proper remedies to environmental damage.[119] The social relationship implicit in human beings requires 'the development of laws that deal with powerful factors whose interaction and exploitation of environmental resources often lead to the dissolution of cultural identities and social fabric of societies which are defined by the societies' relationship with the environment'.[120] This is the more reasons for legal reforms on the responsibilities of both States and non-state actors. Lastly, laws based on ecological reliability allow for the establishment of social structures for active implementation of environmental law.[121]

6. Conclusion

The interconnectedness of the global environment demonstrates a fault line in the current international criminal law in regards to the environmental protection. The Rome Statute has an anthropocentric perspective, thus, disjointing the ecosystem from the humans. This is glaringly seen in the provision for the protection of the environment as an appendage of war crime in Rome Statue instead of a stand-alone crime. Critically important as it is for the world to protect humanity in times of armed conflict, it is equally imperative to protect the environment *per se* because humanity is imbedded in nature. This could be done by elevating international environmental crime as *sui generis* crime to the status of genocide, war crimes, crime against humanity, and aggression.

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[108] Rosemary Mwanza *op cit*, 10
[109] *Ibid*
[110] *Ibid*
[111] *Ibid*
[112] Klaus Bosselmann *op cit*, 3
[113] *Ibid*
[114] Rosemary Mwanza *op cit*. 10
[115] *Ibid.*
[116] *Ibid*
[117] Article 2 Draft International Covenant on Environment and Development in *IUCN Environmental Law Programme,* (4th ed., Washington D.C: International Union for Conservation of Nature 2010)
[118] Rosemary Mwanza *op cit* 11
[119] *Ibid*
[120] Tim Lindgren, 'Ecocide, Genocide and the Disregard of Alternative Life-Systems' (2018) 22 *International Journal of Human Rights* 531; See also Rosemary Mwanza *op cit,* 11
[121] Rosemary Mwanza *op cit*, 11