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The Role of The International Court of Justice ICJ in Redressing the Environmental Damages Caused by States During Wartime

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Abstract

Over the past century, it has been more evident that one manifest consequence of conflict is the detrimental impact on the environment. Although there has been beneficial growth in international environmental law, the environment has nonetheless suffered from following international armed conflicts, including the Kosovo conflict, the Iraq war, the Israel-Lebanon war, and Ukraine. In fact, there has been no legal responsibility imposed on any State for violating the responsibilities outlined in Articles 35 and 55 of Additional Protocol I. Remarkably, the International Court of Justice ICJ has acknowledged that environmental damage is eligible for compensation and to take "active restoration measures". the main problem is that the environmental damage persists even after the war has ceased. This article attempts to analyze the strengths and weaknesses of the State responsibility for environmental damage during wartime before the ICJ. This article shows the significant contributions from ICJ to protect the environment but while also showing the ambiguity related to the development of reparation for the damage caused during wartime. The purpose of this article is to examine the extent to which international law could apply to environmental damage in wartime. How much environmental damage needs to happen how much reparation must be deliberated? The article explores a methodology for evaluating environmental damage caused during a conflict by the ICJ and takes the lessons learned from the jurisprudence of the ICJ to determine the appropriate amount of compensation for such damage. This article examines the ineffectiveness of the current international legal framework for dealing with environmental damage during wartime. It provides an overview of the historical context of environmental damage in armed conflicts and a review of existing customary and conventional laws.

Keywords: *ICJ, Responsibility, Wartime, Environment, and Damages*

INTRODUCTION

The environment has always suffered greatly during armed conflicts. Furthermore, the emergence of the new technology has significantly altered the landscape of warfare, impacting how conflicts are conducted and executed.(Albakjaji, 2020; Almarzoqi, 2023; Jaffal, 2018, p. 77) Environmental destruction, which was only seen as an unfortunate and unavoidable repercussion, has now become an integral component of military strategy.(Low & Hodgkinson, 1994, p. 406) The widespread, purposeful change of the environment was employed as a tool of armed conflict in Norway, Vietnam, Kuwait, Kosovo, Israel-Lebanon, and Ukraine.(Weinstein, 2004, p. 698) These States have experienced exceptional ecological damage because of the targeting their fuel depots, energy sources, and industrial facilities, resulting in the emission of damage substances into the atmosphere and groundwater. For instance, the devastating flames emitted in the forest cause a high risk of releasing radioactive materials, causing significant danger to biodiversity, climatic stability, and public health.(Gruszczynski, 2023, p. 5)

Despite the ongoing ecological destruction, the international community was unable to effectively hold the States responsible for the environmental damage they have caused, which has resulted in a jurisprudential vacuum.(Weinstein, 2004, p. 698) Such circumstance arises from the lack of a firmly established responsibility for protecting the environment during times of armed conflict. This legal field has been significantly evolving in response to changes in environmental awareness and the nature of conflict.(Schwabach, 2000, p. 123)

Due to the lack of specific judicial guidance on charging States for the environmental damage they have caused to others, the International Court of Justice (ICJ) has indirectly contributed to international environmental law. This contribution is evident in the ICJ's endorsement of the foundational principles of sic utere tuo in the Corfu

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Channel case and obligations erga omnes in the Barcelona Traction and nuclear weapons Advisory Opinion of 1996.

The article asserts that the enforcement of State responsibility for its environmental damage in the context of international conflicts has displayed a lack of uniformity and inefficiency. Following a thorough analysis of the historical context, this article aims to determine how the international law could hold those responsible for environmental damage during times of conflict before ICJ. How much environmental damage needs to happen? How much reparation must be deliberated and how satisfying it is before ICJ?

To answer the research questions, the first section of this paper will be on the legal framework of State responsibility for environmental damage before ICJ where the points of the attribution of the conduct to the State violate an applicable international legal obligation will be discussed. To provide an analytical discussion on the mechanisms that address the legal consequences of environmental damage, the second section will focus on the obligation for reparation and its assessment of environmental damage during wartime by the ICJ.

To support the ideas discussed in this paper, the authors have used legal texts, international conventions, and official reports issued from national and international institutions. Also, authors have used cases to provide an in-depth perspective on the responsibility of the State for the environmental damages caused to the victim State during Wartime before ICJ.

The Legal Framework of State Responsibility for Environmental Damage in International Armed Conflict before the ICJ

International law aims to protect against environmental damage during armed conflicts. Multiple conventions and treaties exist that address environmental protection in times of conflict. The International Law Commission (ILC) has classified *"A serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment"* as an act that might potentially lead to an international crime.(*International Law Commission (I.L.C.), Draft Articles on State Responsibility, Part I*, n.d. Art. 19) Nevertheless, it is generally known that State responsibility for environmental protection is somewhat constrained.(Greenwood, n.d., p. 412)

A – A Proper Attribution of Conduct Consisting of Environmental Damage to the State

According to the ILC, *"Every internationally wrongful act of a State entails the international responsibility of that State."*(*Trail Smelter Arbitration (United States v. Canada), Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)*, n.d.) Under Article 2 of the responsibility of States for internationally wrongful acts (ARSIWA), The ICJ explicitly links the creation of international responsibility with the existence of an *"act being attributable to the State and described as contrary to the treaty rights of another State."*(*ICJ, Case Concerning United States Diplomate and Consular Staff in Tehran (United States of America V. Iran) Judgment of 24 May 1980*, n.d., paras. 117–118)

Two elements have been confirmed regarding the attribution. Firstly, the conduct being examined must be attributed to the State according to international law. Objectively, for the State to be held responsible, the conduct must violate an applicable international legal obligation.(*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 21) Secondly, the attribution has been characterized as "subjective" concerning the intention or knowledge of State organs or agents. The determination of whether responsibility is considered "objective" or "subjective" in this context relies on several factors, such as the content of the primary obligation being addressed. (*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 21)

As mentioned earlier, for conduct to be characterized as an internationally wrongful act, it must first be attributed to the State(*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 22) under international law.(*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 50) According to the rules on State responsibility, many important factors are considered when assessing whether an action may be attributed to the State. These factors include the conduct of members of the armed forces, de facto agents, *"levee en masse",* and insurrectional movements. The armed forces are perceived as one of the 'organs' of the State. Thus, the State's armed forces that are acting in their official capacity are related to that State. The ICJ confirms that if

the conduct of the 'State is contrary to an international obligation of the State, then the State is responsible for this violation.'(*Activités Militaires et Paramilitaires Au Nicaragua et Contre Celui-Ci (Nicaragua c. Etats-Unis d'Amérique), Fond, Arrêt. C.I.J. Recueil 1986, p. 14.*, n.d.) Moreover, the ICJ notes that a State must exercise due diligence to prevent actions that violate international law and to take appropriate measures to prosecute and penalize such actions if they do happen.(Sassòli, 2002, p. 411) In its judgment of the *Threat or Use of Nuclear Weapons*(*ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 226*, n.d., p. 226), the ICJ highlights this rule by noting that the parties intend to *"limit the potential danger to mankind from new means of warfare."*(*ICJ, Letter Dated 16 June 1995 from the Legal Adviser to the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, Together with Written Comments of the United Kingdom*, n.d., p. 56)

B- A serious breach of an International Obligation

It is internationally considered wrongful for a State to violate *"an international bilateral obligation of the State or obligations owed to some States or the international community as a whole."*(*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 182; Pinon, 1906) As a preliminary hypothesis, it is essential to inquire about the international treaties or obligations that aim to prevent large-scale environmental devastation during military hostilities. Concerning environmental damage during armed conflict, international law has addressed this matter through two aspects: international warfare law and international environmental law.

For the first aspect, after the Vietnam War, two international conventions explicitly admit the protection of the environment during armed conflict.

A closer look should be taken at *"Protocol I of 1977 additional to the Geneva Conventions of 1949"* and *the "Convention on the Prohibition of Environmental Modification Techniques ENMOD Convention"*(Afriansyah, 2008, p. 40) as two legal instruments for the protection of environmental damage. The ENMOD is a significant international convention that explicitly bans any acts causing damage to the environment during times of armed conflict(*ICRC, Advisory Services on International Humanitarian Law*, n.d.). The ENMOD disallows States from employing hostile environmental modification techniques that have *"widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party."*(*ENMOD Convention, "Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, May 18, 1977"*., n.d. art. 1) Presumably, the ENMOD prohibits the use of environmental modifications as a weapon against other members.(Schmitt, 1999, p. 280) Contrary to the ENMOD, *Protocol I of 1977* has two distinct articles that prohibit certain conduct committed by individuals. Article 35 of *Protocol I of 1977* prohibits intentional or expected destruction of the environment with the legal standard of a reasonable person that *"causes superfluous injury or unnecessary suffering"* and causes "*widespread, long-term and severe damage to the natural environment."*(*Protocol I, "Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977"*., n.d. art. 35(3)) The terms outlined in this article indicate that Article 35(3) works as a *"continuum."*(Schmitt, 2000, p. 92) On the other hand, Article 55 of *Protocol I of 1977* notes that "*Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods and means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population".*(*Protocol I, "Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977"*., n.d. art. 55) In addition, Article 55 asserts that the environment is a protected entity and acknowledges the connection between the environment and human survival.(Schmitt, 1999, p. 275) There remains a weakness in the system regarding when the damage should reach the level of being *"widespread, long-term and severe,"* and when the means and methods of warfare become prohibited.(Schmitt, 2000, p. 92) In addition, Article 55 works on a *"continuum"* by strictly requiring *"the environmental damage prejudice the health or survival of the population."* As seen earlier, the effect of Article 55 (1) depends on how much the environment is affected.(Walayat, 2020, p. 481) Another major point to consider is that Protocol I seems largely restricted to the parameters of the ENMOD. Even though Protocol I differs from ENMOD in that it imposes a cumulative norm, none of these protocols allows for the defense of military necessity.(Weinstein, 2004, p. 701) However, the narrowness of the ENMOD rests in the fact that the environment does not need to be damaged or destroyed for it to occur. Rather, for the Convention to be infringed, it is sufficient to demonstrate that the environmental alterations result in "widespread, long-lasting, or severe effects."(Walayat, 2020, p. 481)

A weakness lies in Protocol I, where Articles 35 and 55 prohibit only the *"most extreme forms of environmental destruction,"* or, in other terms, the treaties stipulate the gravity of destruction and could not be applied in *"normal situations."*(Roberts, 2000, p. 62) The constraints on Protocol I can be seen when seeking that the environmental damage be "widespread, long-term and severe" eliminate several "small and short-term" environmental damage."(Roberts, 2000, p. 62) In light of the narrowness of the terms used in the treaties, the law generally underestimates the destruction of endangered or even normal species in the environment that will seriously affect nature's life cycle. The ICJ has stated that the *"environment is under daily threat"* and that it *"is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn."*(*ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 226*, n.d., para. 241) According to ENMOD, to hold any State causing any damage accountable, two principal elements should be compounded. First, it is crucial to view such actions as an "environmental modification technique," which requires a State to aim 'deliberately' to change the "earth's natural process." The second element is connected to the impact period of the war, invasion, or armed conflict, where the action should result *in 'widespread, long-lasting or severe effects.'*(Albakjaji, 2022, p. 96)

Customary international law also serves to restrict environmental destruction in armed conflict by limiting military force with the principles of proportionality and necessity.(Caggiano, 1993, p. 499) As clearly seen, any *"excessive environmental damage may be excused if it reasonably appeared necessary to the decision maker at the time the action was undertaken."*(Weinstein, 2004, p. 703) Having a precise answer with many details requires those who plan a military attack to take all possible precautions to minimize loss of life and collateral destruction.(Leibler, 1992, p. 99) In regards to the environment, although these two principles help to restrict causing any damage, they will not help address the responsibility of the State for their subjectivity parameters.

Concerning the jurisprudence of the ICJ, in its advisory opinion concerning the legality of the threat or use of nuclear weapons in 1996,(*ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 226*, n.d.) the court fully recognizes the existence of the general obligation of States to respect the environment of other States or areas beyond national control. This is the main principle of international law relating to the environment.(*ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 226*, n.d., para. 29) Although the court recognizes that the precautionary principle is customary, the international environmental law must be reflected in the law of armed conflict(Bothe et al., 2010, p. 575). In addition, the court is precise about environmental protection by States *"which must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives".*(Afriansyah, 2008, p. 43) Moreover, the ICJ recalls that *"while the existing international law relating to the protection and safeguarding of the environment ..that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict".*(*ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports (1996) 226*, n.d., para. 33) It scrupulously refers to all relevant international instruments, whether they are direct provisions like the Hague Convention of 1907 or implicit or indirect provisions to environmental protection such as Additional Protocol I of 1977 to the Geneva Conventions of 1949 and the ENMOD.(Afriansyah, 2008, p. 43) The ICJ has also firmly maintained the line of jurisprudence when the Court strengthened the possibility of using international instruments for environmental protection during armed conflict. In its judgment of the *Case Concerning Armed Activities on the Territory of the Congo*, the court noted that both Article 47 of The Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949 should be respected. The court further observes that a violation of the *jus in bello* has occurred, which forbids a foreign army from carrying out such acts within the territory it occupies.(*ICJ, Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) Judgment of 19 December 2005*, n.d., para. 245)

This Court's conclusion deserves to be underlined because both States were parties to Protocol I of 1977 and therefore bound by Articles 35, 3, and 55. However, the court did not refer to these articles to assign the responsibility to Uganda. Instead, it adhered to regulations whose operational conditions are less controversial.(Dagnicourt, 2017, p. 92) Finally, these two treaties can be the legal framework for environmental damage in wartime. However, they can also be the source of ambiguity when more proof is required, as their terms lack clarity.

Regarding the current international declarations and conventions, Russia has violated Principles 6,7,21,22 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992. These are international instruments that are binding on all States, including non-State members. Russia has violated these principles by invading Ukraine.(Albakjaji, 2022, p. 98) In fact, Russia has threatened Ukraine's green spaces,(Albakjaji, 2022, p. 91) and violated environmental agreements such as the UNES Convention and the Protocol on Water and Health(Albakjaji, 2022, p. 91). Nonetheless, Russia has flagrantly breached the basic principles of international human rights, environmental law, nuclear security, and world peace. (Albakjaji, 2022, p. 92) In addition, Russia has destroyed significant areas of priceless natural resources in Ukraine without a military justification, in violation of articles II and III of the World Charter for Nature.(Albakjaji, 2022, p. 93)

Finally, the absence of clarity in the framework and its limitations are detrimental. However, the ICJ undeniably plays a significant role in improving environmental protection, despite any ambiguity. The main advantage of this contribution is its recognition of the ENMOD and the protocol as a legal framework in the context of armed conflict.

The Lack of Mechanisms to Address the Legal Consequences of Environmental Damage before the ICJ

Many believe that the only States that are affected by the consequences of a violation of international law are those that have been damaged as a direct result of the violation. The Chorzow Factory Judgment of the Permanent Court of International Justice(*P.C.I.J.,Factory at Chorzów (Claim for Indemnity – Jurisdiction), Judgment of 26 July 1927, P.C.I.J. Series A, No. 9*, n.d., p. 21) outlines the judgment presented as the cornerstone of international claims for reparation in the case of a violation of international law between the responsible State and the injured State.(Shelton, 2002, p. 835) Following the State responsibility rules, part A requires the substantiation of the existence and scope of environmental damage, as well as the establishment of the causal nexus between the unlawful act and the alleged damage, to determine the appropriate reparations for the State that has been injured before the International Court of Justice. But part B ought to focus on the difficult process of determining the level of environmental damage in the context of armed conflict.

A- The Obligation for Reparation

According to the ILC, the obligation of 'full reparation'(*ILC's Articles on the Responsibility of States for International Wrongful Acts (Adopted by the ILC on 10 August 2001)*, n.d. art. 30) entails the effort to '*wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.'*(EL Baroudy, 2023, p. 229; Gaspard & Faure, 2019, p. 11) It is important to be more realistic in the expectations for getting the reparation. The environmental damage, regardless of the technique of reparation, is extremely tough to repair, and it is technically challenging to get the damage to be restored and to be monetized.(Payne, 2016, p. 353)

In the Iron Rhine case, the term "environment" encompasses several elements *"including air, water, land, flora and fauna, natural ecosystems and sites, human health and safety, and climate,"* as stated by the Permanent Court of Arbitration. (*Permanent Court of Arbitration, Award in the Arbitration Regarding the Iron Rhine Railway between the Kingdom of Belgium and the Kingdom of the Netherlands, 24 May 2005, UNRIAA 27*, n.d., para. 58) However, restitution is usually expensive.(Kong & Zhao, 2023, p. 16) For instance, in the Gabčíkovo-Nagymaros Project case, (*Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, n.d.) the ICJ notes that restitution is often either not accessible or not sufficient when it comes to environmental damage, mainly because this damage is irrevocable.(*ICJ, Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, n.d., para. 140)

Similarly, the ICJ's lack of compensation for the environmental damage is a pressing issue. According to Article 36 of the ILC, compensation is considered a secondary form of reparation. This means that a State is obligated to provide compensation for damage that cannot be fully repaired through restitution. Compensation includes any "financially assessable damage," including loss of profits, as long as it can be proven, to exclude compensation for what is commonly referred to as "moral damage" to a State. Therefore, compensation encompasses all types of reparation that can be provided in the form of money or goods.(Gruszczynski, 2023,

p. 16) The ICJ's concern is not to punish the responsible State, nor to have an expressive or exemplary character.(Jorgensen, 1998; *Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 384) Therefore, compensation comprises all forms of restitution, which may be supplied in the form of monetary payment or other physical assets other than monetary compensation.(Gruszczynski, 2023, p. 16) Furthermore, war reparation will include economically assessable loss, including lost opportunities, corresponding to the gravity of the breach and the circumstances of each case. The court may pay Lucrum cessans resulting from the destruction and Damnum emergens material damages and loss of profits, including material damages and loss of earnings, including loss of earning potential.(Gruszczynski, 2023, p. 16) In addition, the environmental damage compensation has been directed to reimbursing the injured State for reasonable pollution prevention, remediating costs, or reducing the value of polluted property. (*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 388; *Trail Smelter Arbitration (United States v. Canada), Arbitral Trib., 3 U.N. Rep. Int'l Arb. Awards 1905 (1941)*, n.d., p. 1911)

Furthermore, the examination of this particular obligation by the ICJ is completed based on the Compensation claims for environmental costs that have been addressed by the United Nations Compensation Commission (UNCC).(*UNSC Res. 687, 3 April 1991, Created in 1991, the UNCC Is Mandated with Processing Reparation Claims Related to Iraq's 1990–91 Invasion of Kuwait*, n.d., para. 35) Furthermore, the term *"direct environmental damage"* was not explicitly defined in UN Security Council Resolution 687; the UNCC acknowledges claims for a comprehensive range of losses or expenses related to environmental damage "*and the depletion of natural resources … as a result of its unlawful invasion and occupation of Kuwait".*(*Security Council Resolution 687, S.C. Res. 687, U.N. SCOR, 45th Sess., U.N. Doc. S/RES/687 (1991)*, n.d.) Despite this, in regards to the *Certain Armed Activities cases*(*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., paras. 41–42), the ICJ has made the right decision by noting that both parties had referenced the UNCC environmental panel's approach.(Payne, 2020, p. 124) In addition, the ICJ confirms that damage to the environment- including *'the consequent impairment or loss of the ability of the environment to provide goods and services'*, specifically the loss of biodiversity and carbon sequestration, for removal of trees, other vegetation and soil- is compensable under international law.(*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., paras. 41–42) However, the ICJ's judgment is unclear regarding what factors should be examined when adopting compensation as the exclusive remedy for material damage, and it also did not specify what principles should be used to establish the amount of compensation. For example, *Costa Rica* presents an *"ecosystem services approach,"* whereas Nicaragua has a replacement cost approach to compensation. In addition, in the absence of any guidance from the court, the ICJ has adopted a mixture of both methods.(Silva & Introduction, n.d., p. 1425) Thus, damage caused to environmental values is equally devastating and deserving of compensation as damage to property, (*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 390) although a challenge lies in quantifying the precise aspects of compensation, such as capital value, loss of profits, and incidental expenses.(*Materials on the Responsibility of States for Internationally Wrongful Acts, ST/LEG/SER.B/25/Rev.1*, 2012, p. 388) The restrictive approach taken by the ICJ has faced much criticism. First, the reparations cannot be separated from the violations committed by the State and should not only restore the damage, but they should also offer incentives to prevent future damage. Second, the reparations, which may involve compensation, might hold an exemplary aspect. The notion of *"exemplary reparations"* is becoming increasingly important within the context of human and environmental protection regimes and in recognition of environmental damages, such as in the "*cas d'espece.*"(Silva & Introduction, n.d., p. 1426) However, when deciding the legal consequence of the breach to develop this exemplary aspect, it is important to account for all possible measures of reparations and to decide on the most suitable one, depending of each case because there is no hierarchy between them.(Silva & Introduction, n.d., p. 1426) For example, the ICJ granted compensation for environmental damage and treated it as any other material damage for the first time in the Costa Rica decision. (Silva & Introduction, n.d., p. 1426)

Recently, the first development in monetary award occurred in the ICJ's judgment of the *Costa Rica vs. Nicaragua* case, which has discussed the methodology of environmental damage valuation in the context of an

internationally wrongful act of destroying another State's ecological services. The ICJ has also recognized that environmental damage is both compensable and may require 'active restoration measures' to restore the environment.(*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica, 2 February 2018, Reparations Judgment*, n.d., paras. 41–43)

While the ICJ has made the most frequent application of the principle of *"full reparation,"* it has witnessed an increase in the challenges that can arise when this principle is put into effect. Nevertheless, the Court has not stopped arranging compensation, nor has it renounced the legal foundations that underpin the concept of *"full reparation."* This is because the obstacles that are associated with the precise valuation of damages for evaluating environmental damages, as mentioned in various cases, continue to exist.(Torres, 2021, p. 202) The valuation damage observed by the ICJ provided by the Parties is inevitable, as it is often utilized for environmental damage appraisal in the practice of national and international bodies. Nevertheless, they are not the only approaches that such bodies employ for that goal, nor is their use restricted to the value of damage, since they may also be utilized in establishing public policy. (*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., para. 52-"see for example UNEP, "Guidance Manual on Valuation and Accounting of Ecosystem Services for Small Island Developing States" (2014), p. 4") As a result, these approaches remain important to the job.

B- The Assessment of Environmental Damage during Wartime by the ICJ

The UNCC has enlisted the assistance of experts in relevant scientific disciplines to examine the issues that include cost-effective remediation and restoration procedures and appraise the cost of using such techniques. (Payne, 2020, p. 125) Nevertheless, figuring out whether environmental damage has occurred is challenging during armed conflict and to what extent. The challenges stem from the inherent characteristics of the environment and encompass the following elements: the establishment of the causal nexus, the temporal scale for reparation, and the validation of baseline information. (Kong & Zhao, 2023, p. 11)

Adopting the Causal Nexus by the ICJ

To begin, there is the issue of causation, which refers to the process of establishing a connection between environmental damage and internationally wrongful conduct. It is difficult to find a direct link between an act that is contrary to international law and the damage that is sustained, regardless of whether the conduct is committed during times of peace or conflict. (Cusato, 2017, p. 502)

The ICJ's best interest is to move its attention toward the "principles of causality" that apply to each case and to reject the approach of "foreseeability." (*ICJ, Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, ICJ Reports 2012 (I)*, n.d., para. 14) For this reason, The ICJ remembers that the Parties disagree on whether or not compensation should be restricted to the damage that is directly attributable to a conduct that does not comply with international law, or whether or not it should also encompass the indirect repercussions of that act. Whether or not there is a sufficient causal nexus between the wrongful act and the injury suffered is ultimately within the purview of the Court to determine. (*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) Compensation Owed by the Republic of Nicaragua to the Republic of Costa Rica, 2 February 2018, Reparations Judgment*, n.d., para. 34) Essentially, the claimants have been responsible for proving both the causation and the extent of the damage. The causation is reflected by Security Council resolution 687, which specifically addresses Iraq's responsibility for "direct" damages. Many debate whether the UNCC has strictly adhered to a criterion of 'direct' causation or if it has employed 'proximate' causation.(Payne, 2016, p. 347) However, the Eritrea-Ethiopia Claims Commission has adopted a 'proximate cause' test to determine responsibility. This test assesses whether the specific damage could have been reasonably anticipated by the party responsible for the international wrongdoing. The Commission also acknowledges that the specific language used in the test will create a great difference in the outcomes.(*Eritrea–Ethiopia Claims Commission, Decision 7, 27 July 2007*, n.d., paras. 7–14; Payne, 2020, p. 347)

Further, the ICJ has invoked the *'sufficiently direct and certain causal nexuses*. It was first developed in the 2007 *Bosnian Genocide* case and has been applied consistently in the following decisions concerning reparation:

the 2012 *Ahmadou Sadio Diallo* decision and, more recently, in the *Certain Activities* case (Costa Rica v Nicaragua). (OLino, 2022)

The question of causation will present challenges because of the difficulty of proving environmental damage in the context of long-standing and large-scale armed conflict; the causal relationship between the internationally wrongful act and the alleged injury must be sufficiently direct and certain to call for reparations. (*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., para. 94) Following the jurisprudence of the Court, it should be noted that the causal nexus required *may vary depending on the primary rule violated and the nature and extent of the injury*".(*ICJ, Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, 9 February 2022*, n.d., para. 93) Therefore, the Court differentiates between the actions and omissions that have taken place in the region that was under the occupation and effective control of Uganda and those that took place in other regions that were not necessarily under Uganda's effective control. This distinction was a necessity to ensure that the Court's decision was accurate. However, Uganda was still obligated to make reparations even though the damage was caused by independent factors.(*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., paras. 95–97) According to the ICJ, Uganda is responsible for any acts committed by its armed forces as well as for failing to exercise due diligence to prevent violations stated by the IHL. Additionally, Uganda is responsible for violating the rules of non-use of force in international relations and the rules of no intervention. (Gruszczynski, 2023, p. 24) As a result, the ICJ appears to have formed and solidified a general concept of causation that is applicable in various areas by using the same test in the case of Armed Activities.

Thus, by invoking the same standard in the *Armed Activities* case, the Court seems to have developed and consolidated a general principle of causality applicable across the board. (OLino, 2022)

With the most recently issued judgment of the ICJ, the criterion was invoked to evaluate the connection between Russia's illegal activities on the border areas with Ukraine and damage to Ukraine's environment. It is believed that the last judgment is to support the Ukrainian government's consideration of filing potential lawsuits against Russia before the ICJ.(*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., para. 32) As mentioned earlier, there are many different variables that contribute to the complex environmental condition in Ukraine. A potential strategy to facilitate the development of a comprehensive impact assessment plan is to conduct a literature study covering the six primary categories. This entails classifying various forms of damage in a broad manner at first, including damage to vital infrastructure, debris, the remains of armed conflict, the disintegration of institutions and governance, and effects on agriculture and significant ecosystems. Each type of damage is then described along with its effects. One limitation of this method is the difficulty for analyzing and presenting for system interconnections and cumulative impacts. (*United Nations Environment Programme (2022). The Environmental Impact of the Conflict in Ukraine: A Preliminary Review. Nairobi, Kenya.*, n.d., pp. 31–32)

The Open-ended Temporal Scale for Environmental Reparation

The environmental damage caused by conflict is constant and cumulative, which raises the question of how long it will take to repair the damage. Environmental damage, in contrast to many other effects of war, may have lasting repercussions even after hostilities have ended. These damages are sometimes permanent and can impede society's successful rebuilding, wipe out untouched regions, and disturb vital ecosystems.(*Preliminary Report on the Protection of the Environment in Relation to Armed Conflicts Submitted by Marie G. Jacobsson, Special Rapporteur, UN Doc. A/CN.4/674, 2014*, n.d., p. 2) The long-term environmental consequences of armed conflicts will not become apparent for several decades; at this point, it will be exceedingly late to apply reparations. As a result, the appropriate remedy for such circumstances requires provisions for keeping reparations open-ended in situations where the full extent of long-term impacts of environmental damage is not immediately apparent. Additionally, there should be the option to revisit the remediation process and implement additional measures if long-term effects emerge over time or are discovered.(Kong & Zhao, 2023, p. 11) One way that the UNCC differentiates itself is by carrying out extensive monitoring and assessment projects to establish the extent of damage. (Kong & Zhao, 2023, p. 11) Monitoring the consequences both

during and after the war can be an effective approach for detecting and analyzing the long-term threats to the environment that are linked with armed conflict. This information can then be utilized to influence the actions that are necessary in the future.(Sand, 2005, p. 246)

Even if the results suggest that no damage has been caused or has occurred, but that remediation or restoration activities are not practicable or advisable under the circumstances, it is still beneficial to consistently monitor and assess the situation. Furthermore, such an action can minimize concerns regarding prospective hazards or damage, as well as prevent taking efforts that are both unnecessary and ineffective to deal with threats that do not exist or are minimal. The UNCC concludes by referring to the invasion of Kuwait by Iraq that "appropriate priority should be given to the processing of the monitoring and assessment claims."(Kong & Zhao, 2023, p. 12; *UNCC, Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of "F4" Claims, UN Doc. S/AC.26/2001/16, 22 June 2001*, n.d., para. 32)

The Limited Baseline Information Assessing the 'Significance' of Baseline Conditions

When determining the extent of negative impacts on the environment, the "baseline condition" is of the utmost importance. The lack of "baseline information" that allows for a comparison between "pre-war and post-war conditions" makes the process of "reparation" more difficult to implement in scenarios involving armed conflict. There have been several occasions in which monitoring infrastructure and equipment have been damaged, and ongoing tensions have made it difficult to collect data by leaving certain locations inaccessible. The lack of clear "baseline data" makes it impossible to ascertain the specific genesis of the environmental repercussions of armed conflicts and the extent to which they have been caused. It is an essential component of both the calculations used to determine the extent of the damage and the "restoration" options that are available. The fact that the environmental resource is a collection of data that includes physical, biological, chemical, social, and economic information is what makes this concept so complicated. Furthermore, this resource is not static; rather, it must be dynamically assessed throughout time by making use of "historical data," reference data, control data, or data on incremental changes. To illustrate, a "baseline assessment of a wetland" describes the type and magnitude of the wetland, as well as its connection with other ecosystems and the services that it offers, such as flood control services and the filtering of pollutants, or the population that could be affected by the wetland.(Gaspard & Faure, 2019, p. 14) For example, the UNCC's proceedings have stated that baseline information on the State of the environment before the Iraq conflict may be inadequate. This makes it difficult to differentiate between damage that can be caused to the conflict and damage that may be due to factors that are unrelated to the conflict or that may only be partially linked by a causal nexus to the conflict. Even though baseline data is essential for accurately describing the conditions that existed before the invasion, the fact that there is insufficient documentation of baseline information does not always rule out the possibility of restoration. Additionally, regarding Certain Activities, the ICJ has granted compensation for environmental damage without prioritizing the presentation of clear proof on solid baseline data. The ICJ provides the primary arguments that oppose the general notion that compensation for the damage that was inflicted is adequate. They contend that it may be difficult to remediate the damage done to the ecosystem. (*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., para. 47) As a result, reparations have to consider the long-term impacts of the illegal activity and offer incentives for the environment in its decision to compensate the exclusive remedy for material loss. The ICJ does not clearly State what factors it has evaluated or what standards have been utilized to establish the amount of compensation.(*ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, n.d., para. 52)

CONCLUSION

This article sets out to critically assess the strengths and weaknesses of environmental damage in wartime before the ICJ. First, the article confronts the treaties and Customary international law principles that provide the protection of the environment in times of armed conflict before the ICJ. The Court has neither established minimum core requirements nor has it provided a definitive rule on what requirements need to be fulfilled to comply with international law. It is vital to understand the level of definitional ambiguity of environmental damage that is not permitted in the rules that specifically address environmental protection during times of

armed conflict. In addition, international action is required to meet certain criteria, such as for "widespread, long-term, and severe," as outlined in Articles 35 and 55 of Additional Protocol I.(Schmitt, 2000, p. 104)

Second, the Court does not offer any guidance regarding the process by which an environmental impact assessment has to be taken.(Silva & Introduction, n.d., p. 1424) When the damage is not just geographically widespread but also temporal, the challenge of discordant value paradigms that this offers for the criminalization of environmental damage is compounded. This is because the damage is not only localized but also spread out over time. And, most crucially, is the multi-factorial genesis of environmental damage.(Cusato, 2017, p. 502) The right purpose of "reparation" for environmental damage caused by conflict should account for the current understanding of the environment, the interaction that occurs within the ecosystem, and the coupling of natural and human systems.(Kong & Zhao, 2023, p. 9) The concept of "compensation" brings up the challenge of determining the extent of the damage done to the environment. It is, therefore, essential to develop specific quantitative guidelines on how to compute the recoverable losses to maintain consistency in choosing the ways of calculating the amount of compensation. This is possible even though no approach to the valuation of environmental damage is universally applicable.

However, it is necessary to take environmental considerations into account in other areas of international law. When determining what is necessary and proportionate in the pursuit of legitimate military objectives, or when determining whether a State can make use of the State of necessity defense as a circumstance that precludes the wrongfulness of a particular action, environmental considerations must be reflected. When military activities are being carried out, it is imperative that every precaution that can be taken to prevent and, at the very least, limit any accidental damage that may be caused to the environment is taken.(Bothe et al., 2010, p. 574) To answer some problems, extra research duties, such as the precautionary principle, are required.

There is a need for binding legal instruments providing remedies for environmental damages during wartime and to supplement provisions relating to the limitation of responsibility for environmental damage to ensure the evaluation of all environmental damages and achieve consistency in the international protection of the environment.

In conclusion, there is a basic uncertainty regarding the environment, which frequently precludes its protection. Following yet another regulation, which States that "methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment," a significant advancement was made.

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