

Crimes against the environment: the silent victim of warfare

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In 1991 Iraq forces set fire to Kuwait oil fields. By Jonas Jordan, United States Army Corps of Engineers [Public domain], via Wikimedia Commons

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Acts perpetrated during the course of warfare have, through the ages, led to significant environmental destruction. These have included situations in which the natural environment has intentionally been targeted as a “victim”, or has been manipulated to serve as a “weapon”.

On Friday the United Nations marked the “International Day for Preventing the Exploitation of the Environment in War and Armed Conflict”.

Throughout history the environment has been a silent victim of human conflict. The problem is ongoing. It is time we properly recognised crimes against the environment and made those responsible for such crimes fully accountable.

Scorched earth tactics

In the 5th century BC, the retreating Scythians poisoned water wells in an effort to slow the advancing Persian army. Roman troops razed the city of Carthage in 146 BC, and poisoned the surrounding soil with salt to prevent its future fertilisation. The American Civil War in the 19th century saw the widespread implementation of “scorched earth” policies.

In August 1945, we witnessed the destructive capability of weapons technology, when the United States detonated atomic bombs over Hiroshima and Nagasaki, resulting in massive loss of life and

environmental destruction.

During the Vietnam War, the United States implemented Operation Ranch Hand to devastating effect to destroy vegetation used by the enemy for cover and sustenance, through the use of chemicals such as Agent Orange. Attempts were also made to deliberately modify the environment to create floods along vital supply routes utilised by the North Vietnamese forces.

More recently still, who can forget the haunting images of more than 700 burning Kuwaiti oil well heads, which had been deliberately ignited by retreating Iraqi forces during the Gulf War in 1991 – a scene that was likened to Dante’s Inferno.

Over the following ten years, the Saddam regime built barriers and levees to drain the al-Hawizeh and al-Hammar marshes in southern Iraq, an area some believe is the site of the biblical Garden of Eden. This effectively destroyed the livelihood of the 500,000 Marsh Arabs who had inhabited the area of this unique ecosystem.

Actions such as these demonstrate how the deliberate despoliation of the environment can have catastrophic effects, not only on human populations, but also in ecological terms. For example, nuclear, biological and chemical weapons, as well as having the potential to kill many thousands of people in a single attack, have effects that may persist in the environment, in some cases indefinitely.

The devastating effects of environmental warfare can continue long after the conflict is resolved, jeopardising or destroying the lives and livelihoods of those reliant on the natural environment.

Resource wars

Moreover, access to natural resources – or the lack of access – can itself be the trigger for conflict.

Approximately five million people were killed during the 1990s in armed conflicts relating to the exploitation of natural resources such as timber, diamonds, gold and oil. The United Nations Environment Programme (UNEP) has found that, over the last 60 years, at least 40% of all internal conflicts have been linked to the exploitation of natural resources.

Recent conflicts in Sierra Leone, the Democratic Republic of Congo, Liberia and Angola were not only fought over natural resources, but the exploitation of those resources in turn funded the combating parties to acquire weapons. This has given rise to the phenomena of “conflict resources”, where natural resources commercialise and prolong conflict. It becomes a vicious self-perpetuating cycle.

Defending the environment

Environmental degradation and exploitation can thus be both a cause and a consequence of armed conflict. The International Court of Justice has clearly recognised that damage to its environment may constitute an “essential interest” of a state. Such recognition will only increase as the world gains further insights into the broader state of the global environment, including the disastrous effects of climate change.

Despite all of the evidence, however, deliberate environmental destruction during warfare is still largely regarded, as rape once was, as an unfortunate consequence of war.

The existing rules under international humanitarian law, international environmental law and international criminal law purporting to limit deliberate environmental destruction have largely been ineffective and inappropriate. The impact of environmental destruction has paled when measured against perceived military advantages. The United Nations International Law Commission is currently looking at this issue in an attempt to establish the relevant applicable principles.

It is, of course, true that war and armed conflict are inherently destructive of the environment. But that is no reason to allow leaders to deliberately or recklessly target the environment in order to achieve their military goals. Deliberate destruction is no longer acceptable, particularly given the ongoing development of weapons capable of widespread and significant damage.

There is therefore much more that should be done. Just as international law has made great strides forward by classifying rape during armed conflict as a war crime, a crime against humanity, or even genocide in certain circumstances, we should recognise that intentional environmental destruction

can also constitute an international crime. Proper modes of accountability should be incorporated into the mechanisms of international criminal justice.

“Crimes against the environment” should therefore be incorporated as a separate crime within the jurisdiction of the International Criminal Court, in order to better protect our most cherished assets for future generations.

Steven Freeland is the author of Addressing the Intentional Destruction of the Environment during Warfare under the Rome Statute of the International Criminal Court published in 2015.



Environmental law International law War Warfare Natural resources Vietnam War
Hiroshima Hiroshima and Nagasaki atomic bombs

As Security Council resolution fails, there is another way to investigate MH17

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Russia vetoed a proposed Security Council resolution to set up a tribunal to investigate the downing of Flight MH17. EPA/Jason Szenes

As expected, on Thursday morning (Australian time), Russia vetoed the proposed United Nations Security Council resolution that sought to set up an ad hoc international criminal tribunal to investigate the downing of Flight MH17 in July 2014.

Three other countries, including China, abstained from voting. While 11 countries supported the resolution, the “niet” from Russia meant that it was not passed.

What now?

As a consequence, the Security Council will not establish any such tribunal, unless and until another similar proposal is ultimately accepted. It seems that this is currently most unlikely, given that President Vladimir Putin and other senior Russian officials expressed their strong opposition to the vetoed resolution.

Russia had previously indicated that it would co-operate in any investigation of the matter. However, it regarded the establishment of a new tribunal as “inexpedient” and “premature”.

Australian Foreign Minister Julie Bishop was highly critical of Russia’s decision. While she has confirmed that various options are being considered, her words seem to suggest that the Russian veto

severely dented the prospects of international justice for MH17's victims and their families.

The draft resolution's defeat does not stop any or all of the interested countries from setting up some form of national criminal inquiry or court, under their own criminal law systems, to investigate the circumstances of the crash. While this will be subject to some jurisdictional issues, this option remains open.

However, it seems that those countries most affected are convinced that an international court is the most appropriate forum for any such investigation. This seems logical given the magnitude and high international profile of the MH17 downing.

There are also the more practical issues of non-co-operation from other countries, and the severe diplomatic criticism regarding impartiality that Russia in particular would raise in respect of any such national criminal process, to consider.

What international law avenues are there?

So, are there any other options at the international level to have this matter properly investigated and – if appropriate – prosecuted by an impartial, independent international court?

There is – in the form of the [International Criminal Court](#) (ICC).

The ICC, situated in The Hague, was established in 2002. It has slowly – and not without some difficulties along the way – built up its expertise and experience in the investigation and prosecution of those crimes that “[shock the conscience of humanity](#)”.

The ICC is mandated to deal with alleged crimes of genocide, crimes against humanity, war crimes and aggression. While we do not have all the facts, the shooting down of a civilian aircraft during the course of an armed conflict could certainly amount to a war crime in particular circumstances.

Under the structure of the ICC Statute, member nations can refer particular situations to the court for possible investigation. This has been the case for a number of African countries.

The ICC Statute also allows for countries that are not members – such as Ukraine and Russia – to ask the court for its assistance. This has also been utilised by various countries – including, most significantly, by [Ukraine](#).

In April 2014, Ukraine lodged a declaration with the court asking its prosecutor, Fatou Bensouda, to investigate alleged crimes committed on its territory from November 21, 2013, to February 22, 2014 – a period when the previous (pro-Russian) government was still in power. This issue is now with Bensouda, who is obliged to consider all of the circumstances to determine whether she wishes to proceed to a formal investigation.

All member nations of the ICC Statute are required to co-operate with the court in this matter, as is the declaring non-member nation (Ukraine).

If it so wished, Ukraine could lodge a further declaration that also included events leading up to and including the MH17 downing. Having undertaken this process once before, it is clear that Ukraine is fully aware of the ICC's role and procedures to allow it to undertake an investigation.

While a referral to the ICC in this manner would not guarantee Russia's co-operation, it would place the MH17 tragedy clearly into the hands of an international criminal tribunal that has already been established – hence no delays and additional establishment costs – and which is specifically designed to deal with war crimes.

Those seeking justice for MH17 and its victims should work closely with Ukraine and encourage it to utilise once again an international justice mechanism that is clearly available to it, irrespective of the machinations of Security Council geopolitics.

