

PROSECUTING ENVIRONMENTAL  
HARM BEFORE THE  
INTERNATIONAL CRIMINAL COURT

The threat of anthropocentric environmental harm grows more pressing each year. Around the world, human activities are devastating the natural environment and contributing to potentially irreversible climate change. This book explores the ways in which the International Criminal Court may effectively prosecute those who cause or contribute to serious environmental destruction. Written by an international lawyer who has prosecuted cases of war crimes, crimes against humanity, and genocide, it provides insights into the procedures, laws, and techniques capable of leading to convictions against those who harm the environment.

MATTHEW GILLETT is a senior lecturer at the University of Essex. He worked in the international courts and institutions for over a decade, investigating and prosecuting war crimes, crimes against humanity, genocide, and other human rights violations. His expertise encompasses atrocity crimes, terrorism, criminal procedure, and environmental law. He has received several awards for his writing, including the inaugural Benjamin Ferencz Essay Prize.

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*University of Essex*



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To my children Eloise and Theodore, who continue to inspire  
me; and to future generations, whom I hope will enjoy  
a healthy natural environment.

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## FOREWORD

As the world wakes up to the pressing threat of environmental harm, the imperative to find collective international solutions is intensifying daily. Despite increasing efforts from civil society and political and economic stakeholders, political negotiations of binding treaty obligations have progressed haltingly. Furthermore, even the negotiated obligations are rarely complied with. Our rapidly expanding scientific and technological capabilities promise breakthrough solutions, but innovations must be rigorously tested before their release to the public. Meanwhile, the human race imposes an ever-increasing toll on the natural environment and the species that inhabit it.

In this context, expanding the search for solutions to encompass a broader range of disciplines is essential. At the same time, the solutions must be workable in the real world, necessitating the intertwining of theoretical knowledge and creativity with practical and professional experience in different industries and disciplines. International law, or more specifically international criminal law, presents a promising framework to provide redress for the infliction of devastation on the environment. In this sense, it is apposite to examine its applicability to attacks on the environment, in order to shine light on the potential of this rapidly emerging area of international justice.

Established in the optimistic international era after the fall of the Berlin Wall until the devastating attacks of 11 September 2001, the International Criminal Court stands as a multilateral institution designed to address some of the most serious collective threats to the human race. Calls have been made, with growing amplitude, for the International Criminal Court to involve itself in matters pertaining to the environment. The Court has acknowledged those calls, including through the Office of the Prosecutor's 2016 Case Selection policy paper, which refers to attacks on the environment, among other related topics. With the Court yet to deal with a purely environmental case, it is important to examine how such events could be charged and

proceeded against within the parameters of the International Criminal Court.

In this timely exposition of the International Criminal Court's ability to address environmental harm, Dr. Gillett draws on both his experience as a practitioner in international criminal law, be it from experiences in building cases in front of international courts and tribunals or from conducting investigations in conflict zones, and his academic prowess in environmental law, peace and security, and international law, to provide a thorough and compelling set of insights. After providing the conceptual foundation for his analysis, including the core concepts of 'anthropocentrism' and 'ecocentrism', Dr. Gillett specifies the nature of the threats facing the environment and the expressive and enforcement functions of international criminal law in this respect. He goes on to discuss a broad range of the crimes under the Statute, as well as the concept, and potential formulation, of the crime of ecocide. Importantly, he matches his examination of the Court's *ratione materiae* with a study of its procedural framework. These operational considerations are critical to understanding the Court's promise, as well as its restrictions.

Serving as a comprehensive, rigorous, and enlightening roadmap for the investigation and prosecution of attacks against the environment, this analysis proves an essential tool for the planning and conduct of any environmentally focused proceedings before the Court. It is hoped, of course, that anthropogenic devastation of the environment will recede into history and no longer rear its head. However, the unfortunate spectre of such misconduct remains a clear and present danger. Although these acts might have gathered more international public attention and a growing disregard and critique is expressed, the tools that international law provides might still be insufficient to address them. By directing his intellectual energies towards strengthening the international architecture capable of redressing attacks on the environment, Dr. Gillett has demonstrated his commitment to confronting the grave crimes that threaten the peace, security, and well-being of the world.

International criminal law addresses issues of concern to the international community as a whole. This is not only a description of the law but expresses a responsibility. There are few issues that are of such grave concern to the international community as the protection of the environment, as an ever-growing number of regions in the world are affected from grave environmental disruptions with devastating consequences. Following this axiom, the protection of the environment

becomes a responsibility of international criminal law. The content of this book provides an important groundwork for the law to develop. Although the academic discussion in this field is far from being exhausted, it is already clear that this work by Dr. Gillett will act as a beacon, to guide the theoretical and practical developments, that environmental protection at the ICC requires. It thus helps the International Criminal Court in fulfilling its purpose and responsibilities, to fight impunity.

Additionally, the academic research done in this book gathers the knowledge necessary to further develop international law to suit the pressing environmental issues. Not only can it influence the future decisions of criminal courts on ways to protect environmental interests in the law already existing, but it also initiates and nudges political debate that influences legislative decision making. Without a doubt, growing international cooperation is necessary to tackle these issues. However, the political and diplomatic discussion required for this cooperation can only be achieved if it relies on a resolute understanding of the nature and scope of the law that pursues environmental protection. It is exactly this understanding that the research done in this book is able to provide, by exploring the possibilities of criminal prosecution before the International Criminal Court. It explores the strengths and weaknesses of existing law in theory and in practice. It further compares and examines the possibilities of future developments and proposals, allowing conclusions towards their feasibility and value. The criminal law that addresses the issue of environmental destruction will soon be faced with a variety of different cases and actions. The case studies provided in this book offer vivid examples of the complexity of hurdles that successfully applying criminal law is faced with and explores ways in which they could be overcome. Such research therefore also provides the foundations on which advancing environmental protection through international criminal law can be built.

This book is a remarkable illustration of how the academic work of global value is accomplished, through consistent research exercised with thoroughness and precision of the highest level. It therefore reveals the key competences of Dr. Gillett, which are necessary to test the academic theories in the practical application of the law. The work furthermore embodies the core values that drive his work, allowing the academic development in theories of international law to flourish, whilst always ensuring the practical impact, that this theoretical analysis can produce in its application. A task that Dr. Gillett accomplishes in this work to the

fullest. This allows the conclusion that this book is exemplary for academic research that will influence the application and development of international criminal law. It takes the international community a step further towards the successful protection of the environment through international criminal law.

*Prof. Dr. Piotr Hofmański*  
*President of the International Criminal Court*

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