

INDEX

Abu Bakr, 20 Abu Garda, Bahr Idriss, 300 Accomplice testimony, problems with reliance on, 188 Additional Protocol I to the Geneva Conventions (1977) generally, 281 Article 8(2)(b)(iv) and, 94, 314-15 civilians, attacks on, 122 civilian objects, attacks on, 116, 122 - 3, 124collateral damage and, 110-11 environmental harm and, 17-18 international armed conflict and, 95 International Court for the Environment (ICE) approach compared, 340 'long-term damage' under, 101 nuclear weapons and, 98-9 proportionality principle and, 110-11, 112 reprisals and, 111 starvation and, 279 war crimes and, 91 'widespread, long-term, and severe damage' generally, 349 Additional Protocol II to the Geneva Conventions (1977) International Court for the Environment (ICE) approach compared, 340 non-international armed conflict and, 95 proportionality principle and, 112 Adjudicative coherence test generally, 132 evidence and, 50-2 exogenous testing, 51 in the ICC, 49-52, 158-9

in international criminal law, 49-52 jurisdiction and, 311-12 procedural framework of the ICC and, 203, 312-13 substantive framework of the ICC and, 132, 311-12 victim participation and, 227 Admissibility of evidence generally, 65-6 bars to, 67-8 bar table motions, 166-7 contemporaneous assessment, 164 documentary evidence, 162 exclusionary rules, 167-8 flexibility in, 156-7, 161-3 hearsay evidence, 164-5 probative value, assessment of, 163-4 witnesses, authentication, and admission of documents through testimony, 165-6 Advocate for the environment domestic law analogies, 236 as expert witness, 235 reparations, role in, 235 victim participation, role in, 233-4, 235 African Charter on Human and Peoples' Rights, 83-4, 216-17 African Commission on Human and Peoples' Rights, 85, 264-5 African Court on Human and People's Rights forcible transfer and, 82, 87, 297, 298 media reports, problems with reliance on, 180-1 toxic dumping and, 270 Agent Orange, 18, 20, 22, 97-8, 126-7, 281. See also Chemical defoliants in Vietnam War



INDEX 357

Aggression, environmental harm as international humanitarian law generally, 71-2, 335 (IHL), anthropocentric nature of, Gulf War, environmental harm during, 130, 255 procedural framework of the ICC, historical basis of aggression, 334-5 anthropocentric nature of, 313-14 Islamic State, environmental harm proportionality principle, by, 256 anthropocentric nature of, 114 as substantive crime, 128-31 status quo approach and, 6-7 symbolic value of, 41 substantive framework of the ICC, Al-Bashir, Omar, 77, 81, 82, 123, 276-7, anthropocentric nature of, 131, 279-80, 282, 296 132-3, 313-14 Ali Abd-Al-Rahman, Ali victims, anthropocentric nature of, Muhammad, 300 211, 226-7, 232-3, 313 Al-Majid, Ali Hasan ('Chemical Ali'), war crimes, anthropocentric nature 36-7, 249-50 of, 92 Apartheid, 89 Amendment approach generally, 7-9, 317-18 Appeals Chamber Article 8(2)(b)(iv), extension to admissibility of evidence in, 163 non-international armed expeditious proceedings, ensuring, conflict, 318 158, 205-6 ecocide, proposed addition of (See expert witnesses in, 198 Ecocide) reparations and, 217-18 factors mitigating against, 333-7 Trust Fund for Victims and, 222 incremental amendments, 4, 7-8 victim participation, 213-14 procedural problems, 8 Appropriation of property. See procedure for, 318 Destruction or appropriation of proposed additional crime of property environmental harm (See Arab Charter of Human Rights, Proposed additional crime of Arab Convention for the Suppression environmental harm) shortcomings of, 7-9 of Terrorism (1998), 53-4 American Convention on Human Arctic Council, 62-3 Armed conflict Rights, 83-4, 216-17 environmental harm during, 21-2, Angola, wildlife exploitation in, 90-1, 239-41 Animals, reparations and, 223 International Court for the Antarctica, UN Security Council Environment (ICE) approach, delinking from armed conflict, 339 referrals and, 62-3 Anthropocentrism proposed additional crime of attacks on civilians, anthropocentric environmental harm limited to, nature of, 123 crimes against humanity, toxic dumping during, 263-4 anthropocentric nature of, 79 wildlife exploitation and, 292-3 defined, 12-13 Armenia genocide, anthropocentric nature ecocide in, 322-3 Turkey, massacre of Armenians of, 72-3ICC, anthropocentric nature of, 3-5, by, 77-8 310-11 Arrest warrants, 153-4



358

Article 8(2)(b)(iv) generally, 93-5 'attack' construed, 96-9 chemical defoliants in Vietnam War and, 97-8 Gulf War, environmental harm during, 251-3 international armed conflict, applicability to, 95-6 Islamic State, environmental harm by, 255 'long-term' construed, 101-2 mens rea and, 104-6, 190 'natural environment' construed, 99 negligence and, 105, 253 non-international armed conflict, extension to, 318 nuclear weapons and, 98-9 proportionality principle and, 106–14 (See also Proportionality principle) proposed additional crime of environmental harm, overlap with, 322 recklessness and, 105, 253 'severe' construed, 102-4, 251 'widespread' construed, 100-1 'widespread, long-term, and severe damage' generally, 99-100 wilful blindness and, 105, 114, 253 Assistance mandate, 222-3 Attempted ecocide, 348 Austin, Jay, 140 Australia, precautionary principle and, 171

Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (1991), 270Bangladesh, Rohingya people in, 59, 61 Bar table motions, 166-7 Basel Convention on the Control of

Bamako Convention on the Ban of the

Transboundary Movements of Hazardous Wastes and their Disposal (1989)

INDEX

generally, 30, 265, 330 adoption of, 267 covered materials, 268 ecocide and, 349 International Court for the Environment (ICE) approach compared, 340 not part of any legal framework, 270 prohibited conduct, 268 proof of environmental harm under, 177, 190 state criminalization of conduct required, 268, 273 Belarus, ecocide in, 322-3 Bemba Gombo, Jean-Pierre, 300 Berlin Rules on Water Resources (2004), 32, 280Bolivia, environmental protection in Constitution, 16 Bonn Convention on the Conservation of Migratory Species of Wild Animals (1979), 14–15, 294, 299 Bosnia ICTY searches in, 152-3 mass killings, aerial images of, 184 - 5Bosnian War Crimes Chamber, 199 Bribery, inter-linking with environmental harm, 145 British Petroleum, 341 Bruch, Carl, 140 Burden of proof, 9, 168-70

Cambodia

Bushmeat, 290, 299

But/for test, 219, 229

crimes against humanity in, 82 tigers, exploitation of, 290 Cambridge Dictionary, 325 Canada communal harm and, 231 indigenous peoples in, 231, 260 reparations and, 231, 260 Case studies generally, 238-9 Gulf War, environmental harm

during (See Gulf War,

environmental harm during)



INDEX 359

Islamic State, environmental harm by (See Islamic State, environmental harm by) toxic dumping (See Toxic dumping) wildlife exploitation (See Wildlife exploitation) Cassese, Antonio, 2 Causation but/for test, 219, 229 challenges of, 205 in Elements of Crimes, 181 genocide, proof of causation, 75 Gulf War, environmental harm during, 253, 258 Islamic State, environmental harm by, 256-7 NATO bombing of Serbia and Kosovo and, 258 prima facie standard, 229-30 proof of, 181-5 proximate cause, 219, 229 reparations and, 219, 229-30 victim participation and, 213, 257 - 8Central African Republic, UN Security Council referrals regarding, 64 Chain of custody, 141-2 Chemical defoliants in Vietnam War generally, 18 Article 8(2)(b)(iv) and, 97-8 environmental harm and, 12, 20, 22 mens rea and, 105-6 war crimes and, 90-1, 281 'widespread damage' and, 100 Chevron, 56-8, 265 China ICC, not party to, 334 rhinoceros poaching and, 288-9 tigers, exploitation of, 290 wildlife exploitation and, 186 Circumstantial evidence establishing mens rea, 188-9 CITES Convention. See Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973) Civilian objects, attacks on as war

Civilians, attacks on anthropocentric nature of, 123 crimes against humanity, as underlying crime for purposes of, 78-9, 273-4 Elements of Crimes and, 274 in international armed conflict, 121 - 5in non-international armed conflict, 121 - 5toxic dumping as, 274 as war crime, 121-5 wildlife exploitation as, 296 Climate change as common concern of humankind, 38-9 domestic law and, 347-8 Colombia, toxic dumping in, 268-9 Common-but-differentiated responsibilities, 174 Communal harm, 231 Compensation as reparations generally, 215, 216 calculation of, 261-3, 307-8 Gulf War, environmental harm during, 261 individual versus collective reparations, 221 International Court for the Environment (ICE) approach and, Islamic State, environmental harm by, 261 toxic dumping and, 284-5 transitional justice and, 217 wildlife exploitation and, 307 Complementarity generally, 34-5 domestic law and, 66, 67, 68-9, policy options, 346-8 'positive complementarity', 347 regional approaches and, 347 Confirmation hearing, 154-5 Congo, Democratic Republic of crimes against humanity in, 80 environmental harm and, 300-2 Garamba National Park, 80, 292-3

crime, 121-5



360 INDEX

Congo, Democratic Republic of (cont.) UN Security Council referrals regarding, 64 Virunga National Park, 80

Conventional Weapons Convention (1981), 349

Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999), 53–4

Convention on Biological Diversity (1992), 14, 294, 349, 353

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)

generally, 29

assessment of unlawfulness, 293–4 crimes against humanity and, 179 ecocide and, 349

gorillas, exploitation of, 290 illegal trade of animals and, 291

International Court for the Environment (ICE) approach

compared, 340 State criminalization of conduct required, 293–4, 307–8

tigers, exploitation of, 290

Convention on Long-Range Transboundary Air Pollution (1979), 349

Convention on Prevention of Pollution from Ships (1973), 349

Convention on the Law of the Non-Navigational Uses of International Watercourses (1997), 32

Convention on the Law of the Sea (UNCLOS) (1982), 29–30, 171

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), 271–2, 349

Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques (ENMOD) (1977) Article 8(2)(b)(iv) and, 94–5, 314–15 environmental harm and, 18 'long-term damage' under, 101 'widespread damage' under, 100 'widespread, long-term, and severe damage' generally, 18, 349

Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971), 294

Corporations

ecocide, corporate liability for, 327, 336

ICC jurisdiction, exclusion from, 9, 59–60

International Court for the Environment (ICE) approach, corporate liability and, 10, 342

international criminal law, corporate liability as gap in, 42 proposed additional crime of

environmental harm, corporate liability for, 321, 336

Corruption, inter-linking with environmental harm, 145

Côte d'Ivoire, toxic dumping in, 238, 272–3, 275–6, 321

Council of Europe, Convention on the Protection of the Environment through Criminal Law (1998), 341

Court-ordered reparations, 222 COVID-19 pandemic, environmental

effects of, 1–2 Crimes against humanity, environmental harm as generally, 71–2, 77–8

anthropocentric nature of, 79 attacks on civilians as underlying crime, 78–9, 273–4, 296

contextual elements, 78–9 defined, 77

deportation as underlying crime, 81–3, 256

extermination as underlying crime, 81, 275–6

forcible transfer as underlying crime, 81–3, 256

Gulf War, environmental harm during, 254

historical basis of crimes against humanity, 334–5



INDEX 361

indigenous peoples and, 87-8, 275 inhumane acts as underlying crime, 87-8, 179, 182-3, 275, 297, 304-5 Islamic State, environmental harm mass displacement as underlying crime, 276-7 mens rea and, 277-8 murder as underlying crime, 79-81, 275 - 6other crimes, 88-9 persecution as underlying crime, 83-6,277status quo approach and, 6-7, 315 - 16toxic dumping, 273-8 underlying crimes, 79-89 wildlife exploitation, 296-8, 304 - 5Croatia Peruca Dam, 96-7 war crimes in, 96-7 Cryer, Robert, 48, 66 Cultural heritage, harm to, 230-1 Customary international law as source of law in the ICC, 45-6 Dam-de Jong, Daniëlla, 293, 302-3 Darfur environmental harm in, 240 UN Security Council referrals regarding, 64 Deepwater Horizon oil spill, 341 **Definitions** anthropocentrism, 12-13 ecocentricism, 13-16 ecocide, 17-19 environmental harm, 12 natural environment, 11 de Guzman, Margaret, 47 Deportation crimes against humanity, as underlying crime for purposes of, 81 - 3, 256Islamic State, environmental harm by, 256

Elements of Crimes and, 115-16 Gulf War, environmental harm during, 120, 253-4 Islamic State, environmental harm by, 255-6 as war crime, 119-21, 299, 300, 304 - 5wildlife exploitation as, 299, 300, 304 - 5Distinction principle, 121-2 Documentary evidence, 162, 186 Dolus specialis, 76-7 Domestic law admissibility of evidence and, 65-6, 67-8 advocate for environment, domestic law analogies, 236 climate change and, 347-8 complementarity and, 66, 67, 68-9, 347 ecocide in, 322-3 precautionary principle in, 171 as source of law in the ICC, 48-9 toxic dumping and, 271 wildlife exploitation and, 193 Draft Code of Crimes Against the Peace and Security of Mankind (1991), 349 Draft Code of Offences against the Peace and Security of Mankind (ILC) Article 8(2)(b)(iv) and, 93-4 civilian objects, attacks on, 124-5 ecocide and, 18-19, 324, 334 proportionality principle and, 112 Draft Protocol on Environmental Warfare (proposed), 17, 339 DRC. See Congo, Democratic Republic of Drumbl, Mark, 40, 336-7, 347 Duress defence, mens rea and, 190-1, 192 - 3Dutch Shell, 347-8

East Timor Special Panels, 37 ECCC. See Extraordinary Chambers in the Courts of Cambodia (ECCC) Ecocentricism defined, 13–16

Destruction or appropriation of

property



362 INDEX

oil extraction in, 56–8
toxic dumping in, 265
Effectiveness, principle, 110
Effects doctrine, 58–9
Effet utile, 110
Electronic sources of evidence, 204–5
Elements of Crimes
attack on civilian population, 274
causation in, 181
destruction or appropriation of
property and, 115–16
genocide and, 74
pillage and, 117, 119
poisonous weapons and, 128
proportionality principle and, 106–7,
108, 109
as source of law in the ICC, 44–5
war crimes and, 91, 92
Elephants, exploitation of, 287–8, 296
ENMOD Convention. See Convention
on the Prohibition of Military or
Any Hostile Use of Environmental
Modification Techniques
(ENMOD) (1977)
Enslavement, 89
Environmental crimes, 24–5, 31
Environmental harm
as aggression (See Aggression,
environmental harm as)
armed conflict, during, 21–2, 90–1,
239–41
Article 8(2)(b)(iv) and (See Article
8(2)(b)(iv))
bribery, inter-linking with, 145
chemical defoliants in Vietnam War,
12, 20, 22
as common concern of
as common concern of humankind, 38–9
humankind, 38-9
humankind, 38–9 corruption, inter-linking with, 145
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i>
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i> Crimes against humanity,
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i> Crimes against humanity, environmental harm as)
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i> Crimes against humanity, environmental harm as) as crime under Rome Statute, 53–4
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i> Crimes against humanity, environmental harm as) as crime under Rome Statute, 53–4 defined, 12
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i> Crimes against humanity, environmental harm as) as crime under Rome Statute, 53–4 defined, 12 environmental crimes and, 24–5
humankind, 38–9 corruption, inter-linking with, 145 as crime against humanity (<i>See</i> Crimes against humanity, environmental harm as) as crime under Rome Statute, 53–4 defined, 12



INDEX 363

historical background, 20 international humanitarian law (IHL) and, 17-18, 301 NATO bombing of Serbia and Kosovo, 35-6, 240 non-military causes, 24 other crimes, inter-linking with, 145 proof of elements of (See Proof of elements of environmental harm) proposed additional crime of environmental harm (See Proposed additional crime of environmental harm) reparations, applicability of generally, 224 (See also Reparations) Rome Statute, under, 18, 19, 35 variety of, 238-9 victim participation, applicability of generally, 224, 232 (See also Victim participation) as war crime (See War crimes, environmental harm as) weak regulatory protection, effect of, 22-3 Environmental impact assessments, 112 - 14Erika oil spill, 16, 307, 341 Eritrea-Ethiopia Claims Commission, 231 European Convention on Human Rights, 216–17, 284–5 European Council, 329, 340 European Court of Human Rights environmental protection and, fundamental rights and, 85 ICC compared, 56 margin of appreciation in, 352 qualification of victims, 283 reparations in, 284-5 as source of law in the ICC, 49 toxic dumping and, 266-7, 284 - 5European Parliament, 329, 340 European Union Directive 2008/99/EC, 329, 340

Directive on the Protection of the **Environment through Criminal** Law (2008), 349 environmental protection in, 59-60 Evidence generally, 161 adjudicative coherence test and, 50-2 admissibility of (See Admissibility of evidence) bar table motions, 166-7 burden of proof, 168-70 chain of custody, 142 circumstantial evidence establishing mens rea, 188-9 databases as, 165 documentary evidence, 162, 186 electronic sources of, 204-5 exclusionary rules, 167-8 expert witnesses (See Expert witnesses) hearsay evidence, 164-5 in situ evidence, collection of, 139 - 42judicial involvement in obtaining, 146 order of presentation of case, 174-5 precautionary principle (See Precautionary principle) proof of elements of environmental harm (See Proof of elements of environmental harm) reasonable doubt standard, 168-70, 312 - 13State cooperation in obtaining, 150 - 1victims offering, 214 Exclusionary rules, 167-8 Expeditious proceedings, ensuring, 157-9, 205-6 Expert witnesses generally, 194-5 advocate for environment as, 235 challenges of, 204 deference to scientific field, 202 defined, 196-7 facilitation of judicial assessments, 200 - 2fact-finding and, 200-1



364

Expert witnesses (cont.) International Court for the Environment (ICE) approach, under, 10 judicial order to appear, 146-7 legal concepts versus scientific concepts, 201-2 as neutral interlocutors, 198-200 panels of experts, 236, 260, 261-2 as partisan witnesses, 198-200 probative value, assessment of, 196 proof of elements of environmental harm and, 185 role of, 198-200 subject matter of testimony, 197-8 usefulness of, 195-6 wildlife exploitation, 195 Extermination as underlying crime for purposes of crimes against humanity, 81, 275-6 Extraordinary Chambers in the Courts of Cambodia (ECCC) establishment, 35 expert witnesses in, 199 jurisdiction, 37 reparations in, 216 victim participation in, 156, 208 Exxon Valdez oil spill, 243, 341

Fact-finding, 200–1
Falk, Richard, 17, 123–4, 324, 339, 345
Forcible transfer
crimes against humanity, as
underlying crime for purposes of,
81–3, 256
Islamic State, environmental harm
by, 256
Forensic examinations, 187
Framework Convention on Climate

Framework Convention on Clima Change (1992), 38, 349 France on Additional Protocol I, 98–9 case law on environmental protection, 16 environmental associations in, 236, 307

moral harm in, 231–2 organizations as victims in, 212

INDEX

Fraud, inter-linking with environmental harm, 145 Freeland, Steven, 319–22, 343

Galston, Arthur, 17 Garrett, Joseph G. III, 13 Gaza, conflict in, 240-1 Geneva Conventions (1949) Additional Protocols (See Additional Protocol I to the Geneva Conventions (1977); Additional Protocol II to the Geneva Conventions (1977)) destruction or appropriation of property and, 115, 120 International Court for the Environment (ICE) approach compared, 340 war crimes and, 91-2, 334 wildlife exploitation and, 295 Geneva Protocol on Gas, Chemical and Bacteriological Warfare (1925), 127 - 8

Genocide, environmental harm as generally, 71-3 anthropocentric nature of, 72-3 causation, proof of, 75 circumstantial evidence and, 76 defined, 72 dolus specialis, 76–7 Elements of Crimes and, 74 Gulf War, environmental harm during, 254 historical basis of genocide, 334-5 indirect evidence and, 76 Islamic State, environmental harm by, 256 Marsh Arabs and, 254-5 scorched-earth tactics, 77 specific intent, 76-7 status quo approach and, 315 targeted groups, 76-7 toxic dumping, 282 underlying acts, 73-4 wildlife exploitation, 295-6 Genocide Convention (1948), 17, 60,

254–5, 323–4 Geographic jurisdiction, 58–9



INDEX 365

Georgia, ecocide in, 322-3 Gorillas, exploitation of, 290, 299 Gravity assessment, 69-71 Greene, Anastacia, 325 Grotius, Hugo, 1 Gulf War, environmental harm during generally, 20-1, 238, 241 as aggression, 130, 255 as Article 8(2)(b)(iv) offence, 251 - 3burning of oil fields, 241-2 causation and, 253, 258 compensation as reparations, 261 condemnation of, 244 as crime against humanity, 254 as destruction or appropriation of property, 120, 253-4 discharge of oil, 242-3 as genocide, 254 heavy metals, impact of, 243 knowledge and, 252-3 mens rea and, 104, 105 military strategy and, 243-4 proportionality principle and, 107-8, 253 prosecution attempts, 249-50 qualification of victims, 257-8 rehabilitation as reparations, 261 reparations and, 259-60, 261-3 restitution as reparations, 261 as 'severe damage', 102, 103, 251 UN Compensation Commission (See United Nations Compensation Commission (UNCC)) unlikelihood of successful prosecution, 251 UN Security Council referrals regarding, 64 victim participation and, 259 volition and, 251 as war crime, 251-4

Hague Regulations (1899), 17–18, 91, 334 Hague Regulations (1907), 91, 127–8, 301, 334 Haiti, toxic dumping in, 265–6 Harun, Ahmad Muhammad, 300 Hazardous substances. See Toxic dumping Head of State immunity, 60-1 Hearsay evidence, 164-5 Heinsch, Robert, 148 Higgins, Polly, 325-7 High seas, UN Security Council referrals and, 62-3 High Seas Fishing and Conservation Convention (1958), 63 Holistic approach, 5 Human Rights Commission, 260 **Human Rights Committee** fundamental rights and, 85 ICCPR and, 345 as source of law in the ICC, 49 toxic emissions and, 88 Human Rights Council, 15, 267 Hussein, Saddam. See also Gulf War, environmental harm during generally, 20-1 Marsh Arabs and, 74, 244, 254-5, 321 prosecution of, 249

ICC. See International Criminal Court (ICC)

ICCPR. See International Covenant on Civil and Political Rights (ICCPR) (1966)

ICE. See International Court for the Environment (ICE) approach

ICESCR. See International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

ICJ. See International Court of Justice (ICJ)

ICRC. See International Committee of the Red Cross (ICRC)

ICTR. See International Criminal Tribunal for Rwanda (ICTR)

ICTY. See International Criminal Tribunal for the former Yugoslavia (ICTY)

IHL. See International humanitarian law (IHL)

ILC. See International Law Commission (ILC) Illegal logging, 291–2



366 INDEX

Immunities on environmental protection, 15 head of State immunity, 60-1 fundamental rights and, 85 official capacity immunity, 60-1 genocide and, 74 Imprisonment, 89 indigenous peoples and, 87-8, 285-6 Independent Expert Panel, 56, 330-3 as source of law in the ICC, 49 India toxic dumping and, 275 case law on environmental Intergenerational equity, 173-4 protection, 16 Inter-governmental Panel on Climate indigenous peoples in, 87-8 Change, 201 International armed conflict rivers deemed legal persons in, 226 Additional Protocol and, 95 Indigenous peoples communal harm and, 231 Article 8(2)(b)(iv) and, 95-6 crimes against humanity and, civilian objects, attacks on, 121–5 civilians, attacks on, 121-5 87 - 8,275proportionality principle, defined, 297 reparations and, 260 applicability of, 112 toxic dumping and, 275 war crimes, applicability of, 95-6 UN Declaration on the Rights of International Bar Association, 50 International Committee of the Red Indigenous Peoples (2007), 303-4 wildlife exploitation and, 297, 298, Cross (ICRC) 303 - 4Article 8(2)(b)(iv) and, 95 Inferences establishing mens rea, 188-9 civilian objects, attacks on, 124 Inhumane acts civilians, attacks on, 123 crimes against humanity, as environmental impact assessments underlying crime for purposes of, and, 113 87-8, 179, 182-3, 256, 275, 297, international armed conflict 304 - 5and, 95-6 Islamic State, environmental harm nuclear weapons and, 98-9 proportionality principle and, by, 256 111-12, 113, 114 toxic dumping as, 182-3 wildlife exploitation as, 179, 297, reprisals and, 111-12 304-5 self-defence and, 194 Initial hearing, 153-4 starvation and, 126, 279 Initiation of ICC proceedings International Convention for the admissibility of evidence, 65-6, 67-8 Suppression of Acts of Nuclear complementarity, 66, 67, 68-9 Terrorism (2015), 53-4 gravity assessment, 69-71 International Convention on the Crime Office of the Prosecutor, by, 62, 65 of Ecocide (proposed), 17 State referrals, 61-2 International Convention Relating to UN Security Council referrals, Intervention on the High Seas in 62-5, 250Cases of Oil Pollution Casualties Insider witnesses, 144-5, 187-8 (1969), 63In situ evidence, collection of, 139-42 International Court for the Intent. See Mens rea Environment (ICE) approach Inter-American Commission, 85 generally, 9-10, 353 Inter-American Court of Human access to justice and, 342 Rights armed conflict, de-linking from, 339 generally, 317 benefits of, 343-4



INDEX 367

compensation and, 341-2 convention, creation by, 345 corporate liability and, 10, 342 criticisms of, 343 dynamic situation regarding, 338-9 ecocide and, 339 expert witnesses under, 10 increased remedies under, 10 mandate of court, determining, 344-5 mens rea and, 340-1 negligence and, 9-10, 340 penalties, 341-2 political obstacles to, 338 previous attempts at, 338 procedural framework, 342-3 recklessness and, 340 remedies, 341-2 reparations and, 341-2 specific conduct covered by, 340 terminology, 337-8 UN Security Council Resolution, creation through, 345-6 International Court of Justice (ICJ) generally, 211 aggression and, 129, 130 customary international law in, 45 on environmental harm, 55 environmental harm and, 300-2 environmental impact assessments and, 113 international environmental law in, 33 precautionary principle in, 171 International courts and tribunals as source of law in the ICC, 47-8. See also specific Court or Tribunal International Covenant on Civil and Political Rights (ICCPR) (1966) communal harm and, 231 Human Rights Committee and, 345 indigenous peoples and, 231, 260, 303 - 4reparations and, 231, 260 as source of law in the ICC, 49 International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) environmental protection under, 83-4

indigenous peoples and, 303-4 as source of law in the ICC, 49 International Criminal Court (ICC). See also specific topic generally, 2-3, 353 adjudicative coherence test in, 49-52, 158 - 9anthropocentric nature of, 3-5, 310 - 11Appeals Chamber (See Appeals Chamber) Elements of Crimes (See Elements of Crimes) environmental harm, amenability to, 3-5establishment, 34 European Court of Human Rights compared, 56 horizontal relationship with States, 150 initiation of proceedings (See Initiation of ICC proceedings) jurisdiction of (See Jurisdiction of ICC) Office of the Prosecutor (See Office of the Prosecutor) Pre-Trial Chamber (See Pre-Trial Chamber) Rome Statute (See Rome Statute) Rules of Procedure and Evidence (See Rules of Procedure and Evidence) sources of law in (See Sources of law in the ICC) as treaty-based institution, 150 Trial Chamber (See Trial Chamber) International criminal law. See also specific Tribunal adjudicative coherence test in, 49 - 52aggression, environmental harm as (See Aggression, environmental harm as) corporate liability as gap in, 42 crimes against humanity, environmental harm as (See Crimes against humanity, environmental harm as)



368 INDEX

International criminal law (cont.) deterrence function, 39 enforcement function, 41-2 ex post versus ex ante application, 5 expressivist function, 39-41, 132 genocide, environmental harm as (See Genocide, environmental harm as) historical background, 34-8 jurisdictional limitations, 5 limitations of, 5 precautionary principle in, 171-2 retributivist function, 132 utilitarian function, 132 war crimes, environmental harm as (See War crimes, environmental harm as) International Criminal Tribunal for Rwanda (ICTR), 34 generally, 337-8 crimes against humanity and, 78, 334 expert witnesses in, 197 genocide and, 72, 76 ICC Rules of Procedure and Evidence compared, 317 mens rea and, 321-2 persecution and, 86 reparations in, 216 UN Security Council Resolution, creation by, 345 vertical relationship with States, 150 victim participation in, 208 International Criminal Tribunal for the former Yugoslavia (ICTY) generally, 337-8 accomplice testimony, problems with reliance on, 188 causation and, 258 crimes against humanity and, 78, destruction or appropriation of property and, 120 documentary evidence in, 162 duress defence in, 192 environmental harm and, 35-6 establishment, 34 expeditious proceedings, ensuring, 158, 205-6

expert witnesses in, 195, 196, 199-200 genocide and, 72, 76 human being versus State sovereignty-oriented approach, 354 ICC Rules of Procedure and Evidence compared, 317 'long-term damage' and, 101, 169-70 media reports, problems with reliance on, 180 mens rea and, 321-2 military necessity and, 111 persecution and, 85-6 pillage and, 118 proportionality principle and, 108, 253 reasonable doubt standard in, 168 reparations in, 216 searches and, 152-3 UN Security Council Resolution, creation by, 345 vertical relationship with States, 150 victim participation in, 208 International environmental law historical background, 26-33 (See also specific Convention or Organization) proposed additional crime of environmental harm (See Proposed additional crime of environmental harm) as source of law in the ICC, 47 International humanitarian law (IHL) generally, 25-6 anthropocentric nature of, 12-13 distinction principle, 121-2 environmental harm and, 17-18, military necessity, 111, 121, 299 proportionality principle (See Proportionality principle) as source of law in the ICC, 46-7 International human rights law as source of law in the ICC, 49 International Labour Organization, Appeals Tribunal, 337-8



INDEX 369

International law international criminal law (See International criminal law) international environmental law, 26-33 (See also specific Convention or Organization) international humanitarian law (IHL) (See International humanitarian law (IHL)) relevant to environmental harm, 25-6 International Law Association, Water Resources Law Committee, 32, 280 International Law Commission (ILC) aggression and, 129 Articles on the Prevention of Transboundary Harm from Hazardous Activities, 267 Draft Articles on the Protection of the Environment in relation to Armed Conflicts, 319 Draft Code of Offences against the Peace and Security of Mankind (See Draft Code of Offences against the Peace and Security of Mankind (ILC)) Draft Principles on Allocation of Harm, 284 efforts toward environmental protection, 23 on environmental law as 'new branch of law', 30 natural environment defined, 11 International Military Commission. See Nuremberg Tribunal International Residual Mechanism for Criminal Tribunals (IRMCT), 34 International Tribunal for the Law of the Sea, 171, 236 International Union for the Protection of Nature, 27 International Whaling Commission, 29 - 30INTERPOL, 136-7, 291-2 Investigation

insider witnesses, 144-5 in situ evidence, collection of, 139-42 interviewing witnesses, 139 judicial involvement in, 145-9, 160, 312 longitudinal studies, need for, 158, 313 national security objections to, 151-2, 153, 160, 206, 313 need for large number of witnesses, 160, 312 Office of the Prosecutor, 137-9 preliminary examination, 135-7 searches, 152–3 site visits, 148 State cooperation in, 149-53, 160, 206, 313 timeframe challenges, 159-60, 206, 313 witness testimony on environmental harm, 142-4 Iran on environmental harm during Gulf War, 242 UN Compensation Commission, claims with, 179-80, 181, 263 Iran-Iraq War, environmental harm in, 90-1Iran-US Claims Tribunal, 337-8 Iraq. See also Gulf War, environmental harm during; Islamic State, environmental harm by Marsh Arabs, 74, 244, 254-5, 321 UN Security Council referrals regarding, 64 Yazidi people in, 256 Iraqi High Tribunal, 36-7, 249-50 Ireland, rhinoceros poaching and, Islamic State, environmental harm by generally, 21, 238, 241 as aggression, 256 as Article 8(2)(b)(iv) offence, 255 burning of oil fields, 244-6, 247, 257 - 8causation and, 256-7 cessation of governance, impact of,

248 - 9

generally, 135

challenges of, 159-61



370

Islamic State, environmental (cont.) coalition bombing, impact of, 247–8, 249

compensation as reparations, 261

as crime against humanity, 256 as deportation, 256

as destruction or appropriation of

property, 255–6

as forcible transfer, 256 as genocide, 256

gravity assessment and, 69-71

impact of, 248

individuals suffering due to environmental harm as victims,

228-9

as inhumane act, 256

in situ evidence, collection of, 139 prosecution attempts, 250

qualification of victims, 257-8

rehabilitation as reparations, 261 reparations and, 261

restitution as reparations, 261

sabotage, 247

scorched-earth tactics, 245, 255

social media and, 187

State referrals regarding, 62

sulphur stockpiles, burning of,

246-7, 256

UN Security Council referral to ICC,

failure of, 250

US attacks on, 113, 249 victim participation and, 259

as war crime, 255–6

water infrastructure, damage to, 248

Yazidi people and, 256

Israel

Gaza, conflict in, 240-1

Lebanon, conflict with, 103, 241

Italy, toxic dumping in, 266–7 Ivory trade, 288, 291, 299

Janjaweed militia, 276-7, 296

Japan, Law for the Punishment of

Crimes relating to the Environmental Pollution which

Adversely Affects the Health of

Persons, 327

Jödl, Alfred, 75

INDEX

Jordan, claims with UN Compensation

Commission, 181

Jurisdiction of the ICC

generally, 34, 43-4

adjudicative coherence test and,

311-12

corporations, exclusion from

jurisdiction, 9, 59–60

effects doctrine and, 58–9

geographic jurisdiction, 58-9

head of State immunity, 60-1

official capacity immunity, 60–1

personal jurisdiction, 59–60 *ratione loci*, 58–9

ratione personae, 59-60

ratione temporis, 56-8

tate responsibility, lack of, 60

temporal jurisdiction, 56–8

Kampala Review Conference (2010),

41, 127, 317

Karin B (ship), 266

Katanga, Germain 'Simba', 300

Kazakhstan, ecocide in, 322–3

Kenny, Cóman, 62

Kenya

crimes against humanity in, 82 Mau Ogiek people in, 82, 87, 297, 298

NGOs in, 178–9

Al-Khasawneh, Awn, 195-6, 201-2

Khian Sea (ship), 265-6

Kirby, John, 113

Kony, Joseph, 80, 292-3, 300

Koran, war crimes in, 90

Kosovo, NATO bombing of. See NATO

bombing of Serbia and Kosovo

Kosovo Specialist Chambers and

Specialist Prosecutor's Office, 35

Kuwait

UN Compensation Commission,

claims with, 181, 263

UN Security Council referrals regarding, 64

Kyrgyzstan, ecocide in, 322–3

Lafarge, 250

'Land ethic', 13–14

Laos, exploitation of tigers in, 290



INDEX 371

'Launching attack with knowledge it will result in excessive environmental harm.' See Article 8(2)(b)(iv)Law of armed conflict. See International humanitarian law (IHL) League of Nations, 26 Lebanon El-Jiyeh power plant bombing, 241 environmental harm in, 90-1, 241 Israel, conflict with, 103, 241 Leopold, Aldo, 13-14 Lieber Code (1863), 111 Livestock, reparations and, 223 London Declaration (2014), 289 Longitudinal studies, need for, 158, 205 - 6Lord's Resistance Army, 80, 292-3, Malabo Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014), 270, 273, 293, 294-5 Marine pollution, 271-2 Marsh Arabs, 74, 244, 254-5, 321 Martens Clause, 46 Mass displacement, as underlying crime for purposes of crimes against humanity, 276-7 Mau Ogiek people, 82, 87, 297, 298 Media reports, problems with reliance on, 180-1 Mégret, Frédéric, 8, 24, 345 Mens rea Article 8(2)(b)(iv) and, 104-6, 190 chemical defoliants in Vietnam War and, 105-6 circumstantial evidence establishing, 188 - 9crimes against humanity and, duress defence and, 190-1, 192-3

International Court for the Environment (ICE) approach and, knowledge element, 104-5, 252-3 mistake of law and, 193 necessity justification and, 191-2 negligence (See Negligence) precautionary principle, effect of, 172 proof of elements of environmental harm, 188-94 proposed additional crime of environmental harm and, 319-20, 321-2, 335recklessness (See Recklessness) Rome Statute, under, 9 self-defence and, 193-4 three-part test, 104-6, 188 toxic dumping and, 190, 277-8 volition element, 104, 251 wantonness, 331-2 war crimes, environmental harm as and, 104-6 wildlife exploitation and, 190 wilful blindness (See Wilful blindness) Mexico Federal Criminal Code, 269 toxic dumping in, 269 Military necessity, 111, 121, 299 Millennium Development Goals, 32 - 3Mistake of law, mens rea and, 193 Moldova, ecocide in, 322-3 Montreal Protocol on Substances that Deplete the Ozone Layer (1989), 349Moral harm, 231-2 Mozambique, wildlife exploitation in, 291 Muhammad, 20 Murder as underlying crime for purposes of crimes against humanity, 79-81, 275-6 Myanmar rhinoceros poaching and, Rohingya people in, 59, 61

ecocide and, 327, 328-9, 331-2, 335

Gulf War, environmental harm

during, 104, 105 inferences establishing, 188–9



372 INDEX

NATO bombing of Serbia and Kosovo causation and, 258 environmental harm from, 35-6, 240 expeditious proceedings, ensuring, 158, 205-6 extent of damage, proof of, 182 'long-term damage' construed, 101 proportionality principle and, 108, 253 'severe damage' construed, 103-4 Natural environment defined, 11 Necessity justification, mens rea and, 191 - 2Negligence generally, 336-7 Article 8(2)(b)(iv) and, 105, 253 ecocide, 327, 335 International Court for the Environment (ICE) approach and, 9-10,340proposed additional crime of environmental harm, 335 Netherlands climate change and, 347-8 Economic Offences Act, 269 on ILC Draft Code, 19, 324, 334 toxic dumping in, 269 New Zealand case law on environmental protection, 16 precautionary principle and, 171 rivers and parks deemed legal persons in, 225-6 Te Pou Tupua, 225-6 Te Urewera National Park, 225-6 Whanganui River, 225-6 Neyret, Laurent, 328-30 Ngudjolo, Mathieu, 300 Nigeria environmental impact assessments in, 178 Ogoni people, 264-5 toxic dumping in, 264-5, 266, 276 Nigerian National Petroleum Company (NNPC), 264-5 Non-governmental organizations (NGOs), problems with reliance on, 178-9

Non-international armed conflict Additional Protocol II and, 95 Article 8(2)(b)(iv), extension of to, 318 civilians, attacks on, 121-5 proportionality principle, applicability of, 112 North Atlantic Treaty Organization, bombing of Serbia and Kosovo. See NATO bombing of Serbia and Kosovo Novel approach, 5 Nuclear weapons Article 8(2)(b)(iv) and, 98-9 proportionality principle and, 111 war crimes and, 98-9 Nullum crimen sine lege, 340 Nuremberg Tribunal aggression and, 334 crimes against humanity and, 78, 334 documentary evidence in, 162 international criminal law and, 34 scorched-earth tactics and, 75

Odhiambo, Okot, 300 Office of the High Commissioner for Human Rights (OHCHR), 38 Office of the Prosecutor generally, 42-3 evidence, notification to Pre-Trial Chamber regarding, 146 extent of damage, proof of, 182 initiation of proceedings by, 62, 65 in situ evidence, collection of, 139 investigation, 137-9 Policy on Cultural Heritage (2021), 65Policy Paper on Case Selection and Participation (2016), 347 preliminary examination, 135-7 Strategic Plan, 157 Official capacity immunity, 60-1 Ogoni people, 264-5 Old Testament environmental harm in, 20 war crimes in, 90 Ongwen, Dominic, 300 Operation Log, 291–2



INDEX 373

Order of presentation of case, 174–5 Organisation for Economic Cooperation and Development (OECD), Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, 293 Organization of the African Union Convention on the Prevention and Combating of Terrorism	complementarity, 346–8 International Court for the Environment (ICE) approach (See International Court for the Environment (ICE) approach) status quo approach (See Status quo approach) Political considerations, 10–11 Polluter-pays principle, 173 'Positive complementarity', 347
(1999), 53–4 Otti, Vincent, 300	Precautionary principle
	applicability of, 170–2
Outer space, UN Security Council referrals and, 62–3	in domestic law, 171
referrals and, 62–3	impact of, 171–2
Palme, Olof, 27	in international criminal law
Panels of experts, 236, 260, 261–2	generally, 171–2 <i>mens rea</i> , effect on, 172
Paraguay	reasonable doubt standard and,
indigenous peoples in, 275	313
toxic dumping in, 275	Precedent as source of law in the
Paris Agreement (2015), 31	ICC, 47–8
Penalties	Pre-Trial Chamber
international court for the	evidence, notification from
environment (ICE) approach,	Prosecutor regarding, 146
341–2	expert witnesses in, 199
limited nature under Rome Statute,	NGOs, problems with reliance on,
5, 9	178–9
Pereira, Ricardo, 79	pillage and, 300
Persecution	Pre-trial proceedings, 155
crimes against humanity, as	Preventive principle, 173
underlying crime for purposes of,	Procedural framework of the ICC
83–6, 277	generally, 135
ICTY and, 85-6	adjudicative coherence test and, 203,
toxic dumping as, 277	312–13
Personal jurisdiction, 59–60	anthropocentric nature of, 313-14
Pillage	arrest warrants, 153–4
Elements of Crimes and, 117, 119	challenges of, 202-3, 207
as war crime, 117-19, 295, 298-305	confirmation hearing, 154-5
wildlife exploitation as, 295, 298-305	evidence (See Evidence)
Poaching. See Wildlife exploitation	expeditious proceedings, ensuring,
Poisonous weapons	157-9, 205-6
Elements of Crimes and, 128	expert witnesses (See Expert
toxic dumping and, 279	witnesses)
as war crime, 127–8, 279	fact-finding, 200-1
Policy options	initial hearing, 153-4
generally, 309–10, 314	investigation (See Investigation)
amendment approach (See	longitudinal studies, need for, 158
Amendment approach)	pre-trial proceedings, 155
- -	



374 INDEX

Procedural framework (cont.) proof of elements of environmental harm (See Proof of elements of environmental harm) trial proceedings (See Trial proceedings) Proof of elements of environmental harm generally, 176 accomplice testimony, problems with reliance on, 188 aerial images, 184-5 binary standard, problems with, 206 - 7causation, 181-5 documentary evidence, 186 environmental impact assessments, 178 expert witnesses and, 185 extent of damage, 181-5 forensic examinations, 187 insider witnesses, 187-8 media reports, problems with reliance on, 180-1 mens rea, 188-94 (See also Mens rea) military documents, 177, 186 nature of wrongful act, 176-81 NGOs, problems with reliance on, 178 - 9responsible persons, 185-8 satellite imagery, 179-80 social media, 187 toxic dumping, 177-8 wildlife exploitation, 179 Property, destruction, or appropriation of. See Destruction or appropriation of property Proportionality principle anthropocentric nature of, 114 collateral damage and, 110-11 Elements of Crimes and, 106-7, 108, 109 environmental impact assessments and, 112-14 Gulf War, environmental harm during, 253 international armed conflict, applicability to, 112

military advantage and, 106-8 NATO bombing of Serbia and Kosovo and, 108, 253 non-international armed conflict, applicability to, 112 nuclear weapons and, 111 objective approach, 109 reprisals and, 111-12 scorched-earth tactics and, 110 subjective approach, 109-10 value judgments and, 108-10 Proposed additional crime of environmental harm armed conflict, limited to, 320-1 Article 8(2)(b)(iv), overlap with, 'core crimes' versus, 334-5 corporate liability, 321, 336 expressivist function of, 320 factors mitigating against, 333-7 mens rea and, 319-20, 321-2, 335 negligence, 335 problems with, 320-2 recklessness, 319-20, 321-2, 335 wilful blindness, 319-20, 321-2 Protocol of San Salvador, 83-4 Proximate cause, 219, 229

Ratione loci, 58-9 Ratione personae, 59-60 Ratione temporis, 56-8 Reasonable basis standard, 168 Reasonable doubt standard, 168-70, 312 - 13Recklessness generally, 336-7 Article 8(2)(b)(iv) and, 105, 253 ecocide, 331-2, 335 International Court for the Rnvironment (ICE) approach and, 340 proposed additional crime of environmental harm, 319-20, 321-2, 335Rehabilitation as reparations generally, 215 Gulf War, environmental harm during, 261



INDEX 375

rehabilitation as (See Rehabilitation
as reparations)
requirements for, 217–18
restitution as (See Restitution as
reparations)
as restorative justice, 215–16
restrictions on, 220–1
toxic dumping and, 283-6
as transitional justice, 217
Trust Fund for Victims (See Trust
Fund for Victims)
wildlife exploitation and, 306-8
Reprisals, 111–12
Restitution as reparations
generally, 215, 216
Gulf War, environmental harm
during, 261
individual versus collective
reparations, 221
Islamic State, environmental harm
by, 261
transitional justice and, 217
wildlife exploitation and, 307
Restorative justice, reparations as,
215–16
Rhinoceros, exploitation of, 288–9, 307
Riesel, Daniel, 68–9
Rio Declaration on Environment and
Development (1992), 30–1, 83–4,
170-1, 227, 309, 353-4
Robinson, Patrick, 49–50
Rohingya people, 59, 61
Rome Statute. See also International
Criminal Court (ICC); specific
topic
adoption, 35
aggression under, 41
amendment approach (See
Amendment approach)
Article 8(2)(b)(iv) (See Article 8(2)
(b)(iv))
'chapeau' clause, 92
ecocide, proposed addition of (See
Ecocide)
environmental harm under, 18,
19, 35
ex post versus ex ante application
under, 5



376 INDEX

Rome Statute (cont.) Sea, armed conflict at, 92 intergenerational equity and, 173 Self-defence, mens rea and, 193-4 Kampala Review Conference (2010), 41, 127, 317 environmental harm in, 90-1 'launching attack with knowledge it NATO bombing of (See NATO will result in excessive bombing of Serbia and Kosovo) environmental harm' (See Article Sexual violence, 89, 219 8(2)(b)(iv)Shell Petroleum Development 'non-threshold threshold', 92 Corporation (SPDC), 264-5 Preamble, 54-6, 210-11 Simma, Bruno, 195-6, 201-2 proposed additional crime of Simpson, Gerry, 60 environmental harm (See Singapore, exploitation of Proposed additional crime of rosewood, 291 environmental harm) Site visits, 148 Social media, proof of elements of purpose of, 54-6 as source of law in the ICC, 44-5 (See environmental harm and, 187 also Sources of law in ICC) Somalia sources of law, 3 Constitution, 271 toxic dumping in, 271 'widespread, long-term, and severe Sources of law in the ICC damage' generally, 349 Rose, Gregory, 42, 287 generally, 44 Rosewood, exploitation of, 291 customary international law, 45-6 domestic law, 48-9 Rules of Procedure and Evidence Elements of Crimes, 44-5 admissibility of evidence, 162-3 amendments, 317 international environmental law, 47 ICTR compared, 317 international humanitarian law ICTY compared, 317 (IHL), 46-7obstacles in, 207 international human rights law, 49 as source of law in ICC, 44-5 other international courts and tribunals, 47-8 Trust Fund for Victims and, 222 victim participation under, 212, precedent, 47-8 Rome Statute, 44-5 213, 226 Rules of Procedure and Russell Tribunal, 123-4, 130 Evidence, 44-5 Russia treaties, 45-6 ecocide in, 322-3 ICC, not party to, 334 South Africa Kruger National Park, 288-9 rhinoceros poaching and, 288-9 Sands, Philippe, 46 San Remo Manual on International wildlife exploitation in, 291 Law Applicable to Armed South Sudan, Garamba National Park, Conflicts at Sea, 92 292 - 3Saramaka people, 285-6 Special Court for Sierra Leone (SCSL) Satellite imagery, 179-80 destruction or appropriation of Saudi Arabia, claims with UN property and, 120 Compensation Commission, 181 establishment, 35 Scorched-earth tactics, 77 jurisdiction, 37

SCSL. See Special Court for Sierra

Leone (SCSL)

Special Tribunal for Lebanon (STL)

corporations, jurisdiction over, 42



INDEX 377

establishment, 35	genocide, environmental harm as
jurisdiction, 37	(See Genocide, environmental
reparations in, 216	harm as)
victim participation in, 156, 208–9	war crimes, environmental harm as
Special Working Group on the Crime	(See War crimes, environmental
of Aggression, 128	harm as)
Specific intent in genocide, 76–7	Sudan
Srebrenica massacre, 76	environmental harm in, 240
Standards of proof, 168–70	Janjaweed militia, 276–7, 296
Starvation	Sufficient evidence standard, 168
toxic dumping and, 279	Suriname
as war crime, 125–7, 279	Constitution, 286
State referrals to the ICC, 61–2	indigenous peoples in, 285–6
State responsibility, exclusion from	Saramaka people, 285–6
ICC jurisdiction, 60	Sustainable Development Goals, 32–3
Status quo approach	Swaziland, rhinoceros poaching
generally, 6–7	and, 288
anthropocentrism and, 6–7	Syria. See also Islamic State,
crimes against humanity, possibility	environmental harm by
of environmental harm	civil war in, 103
prosecuted as, 6-7, 315-16	environmental harm in, 241
genocide, possibility of	UN Compensation Commission,
environmental harm prosecuted	claims with, 181
as, 315	
problems with, 316–17	Tajikistan, ecocide in, 322–3
shortcomings of, 6–7	Temporal jurisdiction, 56-8
war crimes, possibility of	Terrorism, 53–4
environmental harm prosecuted	Thailand, rhinoceros poaching and,
as, 6–7, 314–16	288-9
Stewart, James, 293	Tigers, exploitation of, 290
STL. See Special Tribunal for	Tokyo Tribunal, 34, 334
Lebanon (STL)	Tomuschat, Christian, 93-4
Stockholm Declaration (1972), 27-8,	Töpfer, Klaus, 103-4
83–4, 173	Torture, 89
Stop Ecocide Campaign, 332–3	Toxic dumping
Substantive framework of the ICC	generally, 238
generally, 11, 71–2	armed conflict, during, 263-4
adjudicative coherence test and, 132,	as attack on civilians, 274
311–12	Basel Convention (See Basel
aggression, environmental harm as	Convention on the Control of
(See Aggression, environmental	Transboundary Movements of
harm as)	Hazardous Wastes and their
anthropocentric nature of, 131,	Disposal (1989))
132–3, 313–14	compensation as reparations, 284–5
crimes against humanity,	as crime against humanity, 273-8
environmental harm as (See	domestic law and, 271
Crimes against humanity,	extent of damage, proof of, 182-3
environmental harm as)	as extermination, 275–6



378

INDEX

Toxic dumping (cont.) expeditious proceedings, ensuring, as genocide, 282 157-9, 205-6 growing threat of, 263-7 inquisitive model, 205 indigenous peoples and, 275 order of presentation of case, 174-5 as inhumane act, 182-3, 275 Trust Fund for Victims in situ evidence, collection of, generally, 236-7 141, 142 assistance mandate, 222-3 as mass displacement, 276-7 court-ordered reparations, 222 mens rea and, 190, 277-8 reparations and, 217 as murder, 275-6 types of victim support, 223-4 as persecution, 277 Turkey, massacre of Armenians poisonous weapons and, 279 in, 77-8 policy of, 274-5 proof of elements of environmental Uganda harm, 177-8 environmental harm and, 300-2 prosecution generally, 273 Lord's Resistance Army, 80, qualification of victims, 282-3 292 - 3,300reparations and, 283-6 pillage in, 300 Ukraine, ecocide in, 322-3 starvation and, 279 targets of investigation and UNCC. See United Nations prosecution, 269 Compensation Commission victim participation and, 283 (UNCC) as war crime, 278-81 UNEP. See United Nations water resources and, 280-1 Environmental Programme witness testimony on environmental (UNEP) United Kingdom harm, 143 Trafigura, 238, 272-3, 275-6, 321 on Additional Protocol I, 98-9 Trail Smelter Arbitration (1938), chemical defoliants and, 90-1 26, 155 on ecocide, 324 on ILC Draft Code, 19, 324, 334 Transitional justice, reparations as, 217 Royal Society for the Prevention of Cruelty to Animals, 234 ICC as treaty-based institution, 150 as source of law in the ICC, 45-6 toxic dumping in, 286 Trial Chamber 2004 Military Manual, 192 admissibility of evidence in, 162, wildlife exploitation in, 308 United Nations. See also specific body; specific Convention expert witnesses in, 199 judicial involvement in obtaining on armed conflict and environmental harm, 240 evidence, 146 order of presentation of case in, Committee of the United Nations War Crimes Commission, 295 174 Conference on the Conservation and pillage and, 300 Trial proceedings Utilisation of Resources (1949), 27 generally, 155-7 Conference on the Environment and adversarial model, 155-6 Development (UNCED) (1992), challenges of, 203 30, 31 combination of common law and Declaration of Basic Principles of civil law features, 155 Justice for Victims of Crime and



> INDEX 379

Abuse of Power (1985), 215-16, 221, 233, 236-7 Declaration on the Rights of Indigenous Peoples (2007), 303-4 Development Programme, 241 Disaster Assessment and Coordination (UNDAC) Commission, 272, 276 Economic and Social Council (ECOSOC), 264, 289, 335, 341-2 Fact-Finding Mission on the Conflict in Gaza, 240-1 on including ecocide in Genocide Convention, 324 Office of the High Commissioner for Human Rights (OHCHR), 38 roots of international environmental law and, 26 Stockholm Conference (!972), 27 United Nations Charter individuals suffering due to environmental harm as victims, 229 lack of environmental provisions in, 26-7 UN Security Council referrals and, 63-4 United Nations Compensation Commission (UNCC) calculation of compensation, 261-3 causation and, 258 claims with, 250, 259-60 expert witnesses, 185 extent of damage, proof of, 181, 183-4, 185 panel of experts, 236, 260, 261-2 qualification of victims, 283 reparations and, 231 satellite imagery and, 179-80 'severe damage' construed, 103 site visits, 148-9 UN Security Council Resolution, creation by, 345 United Nations Environmental Programme (UNEP)

on environmental harm, 238 on environmental harm by Islamic State, 246, 248 environmental impact assessments, 178 extent of damage, proof of, 182 longitudinal studies, 158 mens rea and, 190 precautionary principle and, 170 preliminary examination and, 136-7 on 'severe damage', 102 on toxic dumping, 265 on wildlife exploitation, 288, 290, 292-3, 299 United Nations General Assembly on aggression, 334 on armed conflict and environmental harm, 240 on biodiversity, 15 on climate change, 38-9 on El-Jiyeh power plant bombing, 241 on environmental crimes, 31 environmental protection resolutions, 27, 31 Resolution 1803 on Permanent Sovereignty over Natural Resources, 29, 302-3 on wildlife exploitation, 42, 55, 287, 289-90 United Nations Security Council on armed conflict and environmental harm, 240 ICTR created by Resolution of, 345 ICTY created by Resolution of, 345 International Court for the Environment (ICE) approach, creation of court by Resolution, 345-6 international criminal tribunals and, 34 jurisdiction of the ICC and, 5 referrals to the ICC by, 62-5, 250 **UN Compensation Commission** created by Resolution of, 345 United States on Additional Protocol I, 98-9 Alien Tort Claims Act, 97-8

generally, 23-4

creation, 28

Balkans Task Force, 103-4



380

INDEX

United States (cont.) Alien Tort Statute, 97-8 Army Department Field Manual, 281 chemical defoliants and (See Chemical defoliants in Vietnam War) Department of Defense, 281 Endangered Species Act, 307-8 on environmental harm during Gulf War, 243 ICC, not party to, 334 on ILC Draft Code, 19, 324, 334 Islamic State, attacks on, 113, 249 Lacey Act, 307 wildlife exploitation in, 307-8 Universal Declaration of Human Rights (1948), 49

Verduzco, Deborah Ruiz, 63 Victim participation generally, 210 adjudicative coherence test and, 227 advocate for environment, role of, 233-4, 235 anthropocentric nature of victims, 211, 226-7, 232-3, 313 causation and, 213, 257-8 collective suffering due to environmental harm, 229 common legal representatives, 234 criticisms of, 209 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), 215–16, 221, 233, 236-7 definition of victim, 211-12, 225 environmental harm, applicability to generally, 224, 232 environment as victim per se, 225-8, 233, 313 evidence offered, 214 Gulf War, environmental harm during, 259 increased focus on, 209-10 individuals suffering due to environmental harm as victims, 228 - 9

by, 259 judicial proceedings, limited to, 213 link between harm suffered and crime alleged, 213, 257-8 methods of, 213 natural persons as victims, 211, 212 non-prejudicial, 212 organizations as victims, 211-12 panels of experts, role of, 236 in Preamble, 210-11 prominent role of victims in the ICC, 208 restrictions on, 214 rivers and parks deemed legal persons, effect of, 225-6 toxic dumping and, 283 wildlife exploitation and, 225, 306 Vienna Convention on the Law of Treaties (1969), 44-5, 54 Vienna Declaration and Programme of Action (1993), 277 Vietnam ecocide in, 322-3 rhinoceros poaching and, 288-9 tigers, exploitation of, 290 wildlife exploitation in, 186, 291 Vietnam War aggression and, 130 chemical defoliants in (See Chemical defoliants in Vietnam War) civilians, attacks on, 123-4 as ecocide, 27 Operation Ranch Hand, 17, 97-8, 126 - 7poisonous weapons and, 127-8 starvation and, 126-7 Voigt, Christina, 331

Islamic State, environmental harm

Wantonness, 331–2
War Crime Research Office (WCRO), 215–16
War crimes, environmental harm as generally, 71–2, 90–1 anthropocentric nature of, 92
Article 8(2)(b)(iv) (See Article 8(2) (b)(iv))
'attack' construed, 96–9



INDEX 381

Wildlife exploitation

attacks on civilians as, 121-5 chemical defoliants in Vietnam War and, 90-1, 281 civilian objects, attacks on, 121-5 destruction or appropriation of property, 119-21, 299, 300, 304-5 Elements of Crimes and, 91, 92 Gulf War, environmental harm during, 251-4 historical basis of war crimes, 334-5 international armed conflict, applicability to, 95-6 Islamic State, environmental harm by, 255-6 'launching attack with knowledge it will result in excessive environmental harm' (See Article 8(2)(b)(iv)'long-term damage' construed, 101-2 mens rea and, 104-6 'natural environment' construed, 99 nuclear weapons and, 98-9 other war crimes generally, 115-17 pillage, 117-19, 295, 298-305 poisonous weapons, 127-8 proportionality principle and, 106–14 (See also Proportionality principle) 'severe damage' construed, 102-4 starvation, 125-7, 279 status quo approach and, 6-7, 314 - 16toxic dumping as, 278-81 'widespread, long-term, and severe damage' generally, 99-100 'widespread damage' construed, 100 - 1wildlife exploitation, 298-304 War Crimes Chamber of the State Court of Bosnia and Herzegovina, 35 Watercourses Convention (1997), 280 Water resources, toxic dumping and, 280 - 1Weinstein, Tara, 315 Westing, Arthur, 327 Whitaker, Benjamin, 324

generally, 238 armed conflict and, 292-3 assessment of unlawfulness, 293-5 as attack on civilians, 296 bushmeat, 290, 299 CITES Convention (See Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)) compensation as reparations, 307 corruption and, 289 as crime against humanity, 296-8, 304 - 5defined, 287 as destruction or appropriation of property, 299, 300, 304-5 difficulty in combating, 291-2 domestic law and, 193 elephants, 287-8, 296 expert witnesses, 195 extent of, 290, 291 foreigners committing, 302 as genocide, 295-6 gorillas, 290, 299 illegal logging, 291-2 illicit trafficking of wildlife, 42, 55, 186 indigenous peoples and, 297, 298, 303-4 as inhumane act, 179, 297, 304-5 in situ evidence, collection of, 141, 142 ivory trade, 288, 291, 299 mens rea and, 190 organized crime and, 289 as pillage, 295, 298-305 policy of, 296 problem of, 287-93 proof of elements of environmental harm, 179 prosecution generally, 295 qualification of victims, 225, 304-6 rebel groups committing, 302-3 reparations and, 306-8 restitution as reparations, 307 rhinoceros, 288-9, 307 rosewood, 291



382

INDEX

Wildlife exploitation (cont.) State committing, 304 tigers, 290 types of offences, 287 victim participation and, 225, 306 as war crime, 298-304 witness testimony on environmental harm, 143-4 Wildlife Justice Commission, 186, 291 Wilful blindness Article 8(2)(b)(iv) and, 105, 114, 253 proposed additional crime of environmental harm, 319-20, 321 - 2Wilfulness, 348 Wily, Liz Alden, 87 Witnesses authentication and admission of documents through testimony, 165-6 challenges of, 203-4

expert witnesses (See Expert witnesses) insider witnesses, 144-5, 187-8 interviewing, 139 need for large number of, 160, 312 testimony on environmental harm, 142 - 4World Charter for Nature (1982), 29-30 World Conference on Human Rights (1993), 277World Heritage Convention (1972), 14, 62 - 3,349World Heritage List, 28-9 World Trade Organization (WTO), Appellate Body, 202 World War II environmental harm in, 90-1 nuclear weapons in, 111

Yazidi people, 256