ADDRESSING THE INTENTIONAL DESTRUCTION OF THE ENVIRONMENT DURING WARFARE UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Steven Freeland
Addressing the Intentional Destruction of the Environment during Warfare under the Rome Statute of the International Criminal Court

Steven Freeland

© 2015 Intersentia
Cambridge – Antwerp – Portland
www.intersentia.com | www.intersentia.co.uk

Cover illustration: Francisco de Goya (1746-1828), Etching, Plate 41 from 'Los desastres de la guerra'

ISBN 978-1-78068-314-0
D/2015/7849/54
NUR 824


No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.
CONTENTS

Introduction ................................................................................................................. 1

Chapter One
The Imperative to Regulate the Intentional Destruction of the Environment during Warfare under International Criminal Law ................................. 5

1.1. Introduction – Intentional Environmental Destruction as a part of Warfare ........................................... 5
1.2. Impact of Environmental Destruction on Human Security and Conflict .................................................. 8
1.3. Intentional Targeting of the Environment during Warfare and the Development of International Criminal Justice ...................................................... 14
1.4. The Need for Legal Regulation ................................................................................................................. 23
   1.4.1. National Law ................................................................................................................................. 25
   1.4.2. Regional Law ............................................................................................................................... 27
   1.4.3. International Law, Armed Conflict and the Environment .......................................................... 29
1.5. International Criminal Law as a Regulatory Mechanism ................................................................. 34
1.6. Could State Criminal Responsibility Apply? .......................................................................................... 36
   1.6.1. State Criminal Responsibility? ........................................................................................................ 37
   1.6.2. Individual Criminal Responsibility ............................................................................................... 43
1.7. Key Questions ................................................................................................................................. 45

Chapter Two
Regulation of the Intentional Destruction of the Environment during Warfare under Treaty Law ................................................................. 47

2.1. Introduction – Treaties under International Law ................................................................................. 47
2.2. International Humanitarian Law (Jus in Bello) – Relevant Treaty Provisions ........................................ 49
   2.2.1. 1868 St. Petersburg Declaration ...................................................................................................... 59
   2.2.2. 1899 Hague Conference Conventions and Declarations .......................................................... 60
   2.2.3. 1907 Hague Convention IV Respecting the Laws and Customs of War on Land ....................... 62
   2.2.4. 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous and Other Gases, and of Bacteriological Methods of Warfare ........................................................................ 65

Intersentia
Chapter Four
Regulation of the Intentional Destruction of the Environment during Warfare under the Existing Rome Statute Regime

4.1. Introduction – The Core International Crimes in the Rome Statute
4.2. Finalization of the Rome Statute and Establishment of the ICC
4.3. Jurisdiction of the Court – A Brief Overview
4.4. Applicability of the Rome Statute to the Intentional Destruction of the Environment during Warfare
   4.4.1. Intentional Destruction of the Environment as Genocide?
   4.4.2. Intentional Destruction of the Environment as a Crime against Humanity?
   4.4.3. Intentional Destruction of the Environment as a War Crime?
      4.4.3.1. Article 8(2)(b)(iv)
      4.4.3.2. Other War Crimes within Article 8 of the Rome Statute
4.5. Conclusion

Chapter Five
Incorporating Crimes against the Environment into the Rome Statute

5.1. The Need for a Sui Generis Crime of Crimes against the Environment
   5.1.1. Revisiting the Imperative to more effectively Address the Intentional Destruction of the Environment during Warfare under International Criminal Law
   5.1.2. A Sui Generis Crime – Crimes against the Environment
      5.1.2.1. Why a Stand-Alone Crime?
      5.1.2.2. Why ‘During Armed Conflict’?
5.2. Crimes against the Environment – An International Crime?
5.3. Crimes against the Environment – A Definition for the Rome Statute
   5.3.1. The Applicable Approach to Defining Crimes against the Environment
   5.3.2. Definition of Crimes against the Environment
      5.3.2.1. Proposed article 8 ter of the Rome Statute
      5.3.2.1.1. Discussion
      5.3.2.1.1.1. Paragraph 1 (article 8 ter(1))
      5.3.2.1.1.2. Paragraph 2 (article 8 ter(2))
      5.3.2.2. Associated Amendments to the Rome Statute
      5.3.2.3. Associated Amendments to the Elements of Crimes
         5.3.2.3.1. Amendment to the Explanatory Note
         5.3.2.3.1.1. Discussion
         5.3.2.3.2. Proposed Elements of Crimes for Crimes against the Environment
            5.3.2.3.2.1. Discussion
5.4. Comparison with article 8(2)(b)(iv) – ‘Righting the Wrongs’ .... 282
5.5. Procedure for Amending the Rome Statute and the Elements of Crimes. ............................................................... 283
5.6. Final Reflections – A ‘Work in Progress’ ...................... 285

Appendix I ................................................................. 289
  5.3.2.2. Associated Amendments to the Rome Statute.............. 289
  5.3.2.2.1. Amendment to article 5(1) ............................... 289
  5.3.2.2.2. Amendment to article 8(2)(b)(iv) and the Associated Elements of Crimes ................................................. 289
  5.3.2.2.3. Amendment to article 9(1) ................................. 290
  5.3.2.2.4. Inclusion of article 15 quater ............................. 290
  5.3.2.2.5. Amendment to article 20(3) ............................ 291

Appendix II ............................................................. 293
  5.3.3. Paragraph 3 – Not Included in Final Version of article 8 ter .. 293
  5.3.3.1. Discussion ..................................................... 293

Bibliography ............................................................ 297
Curriculum Vitae ....................................................... 353