By Any Other Name: Expressive Implications of Reconceptualizing an International Crime as Another through the Examples of Ecocide and Aggression

Vera Piovesan

Abstract: The progressive development of international criminal law is part of a long tradition. International criminal norms have evolved in a process focused on expanding the protection of the underlying values of the system and its anti-impunity agenda. This has also implied the strategic classification of ambiguous underlying acts under different crimes depending on prosecutorial or institutional considerations. However, this article observes a different recent trend in academic discourse, in which an international crime is fully reconceptualized as another in order to overcome jurisdictional limitations. Ecocide and aggression are identified as the primary examples emerging in legal literature. In the case of the former, the reconceptualization proposals have been met with support by the International Criminal Court itself. In the case of aggression, the proposals remain very marginal in legal discourse. This article examines this trend through the lens of expressivism, thus exploring its promises and perils in terms of communicative impact, and it argues that such reconceptualization conveys some problematic messages that warrant further analysis.

Keywords: International Criminal Law, Aggression; Ecocide, Expressivism

Dr., European Forensic Institute, Malta - Italy, vera.piovesan@graduateinstitute.ch

https://orcid.org/0009-0005-4453-2871

Balkan Studies Foundation
DOI: http//doi.org/10.51331/A061
Journal of Balkan Studies, 5, Special Issue, 2025
balkanjournal.org

Received:23.03.2025
Revision:19.05.2025
Accepted:20.05.2025

Introduction

In recent years, an observable trend has emerged in the literature calling for the reconceptualization of international crimes as different, separate ones. Reviewing academic legal discourse, this article identifies two prominent examples, ecocide and aggression. In both instances, the main driver appears to be pragmatic urgency. In other words, when limits to the exercise of the jurisdiction by the International Criminal Court (ICC) are present and the violations are in need of urgent redress, suggestions have been made to reconceptualize each crime, or some or all of its constitutive elements, as another, one which does not face the same limits to prosecution. Indeed, while starting from different stages of development and acceptance -- ecocide is not yet an international crime, while aggression very much is -- both face severe obstacles to prosecution. Whether this approach will be successful is yet to be decided, but recent developments in relation to environmental crime suggest that such reconceptualization might genuinely provide a way forward in the development of international criminal law.

On a practical level, the trend is nothing new. Since its inception, international criminal law has been reactionary in nature, growing through practice (Nouwen, 2016: 738) and shaped by demands of justice that followed some of the vilest examples of criminal behaviour in modern history. It follows that the discipline has developed in a piecemeal fashion, in line with what could be reasonably achieved in *ex-post facto* tribunals limited as to the crimes that could be charged, the defendants that could be prosecuted, and the evidence that could be collected. Therefore, a pragmatic attitude is very much part of the "genetic code," so to speak, of international criminal law. It seems only logical that, even in the present day, the discipline would demonstrate a similar spirit when faced with limitations.

However, such a significant process of strategic classification, almost amounting to "crime-shopping," might also hide some negative effects. Therefore, an evaluation at a more theoretical level is warranted. It has been observed that the employment of the criminal law, and as a result punishment, amounts to an 'intuitive-moralistic' response to violations of fundamental human rights and

rules (Tallgren, 2002: 564). Accordingly, it has been shown that the origins of the international criminal justice project were largely based on faith for the overarching purpose of the system regardless of evidentiary support that the application of criminal law would be effective or efficient (Stahn, 2012: 255)but is increasingly criticized in light of its actual record and impact. This essay examines this journey and, in particular, the role of 'faith' and 'fact' in the treatment and assessment of international criminal courts, through four core themes ('effectiveness', 'fairness', 'fact-finding', and legacy'. In the same vein, other commentators have highlighted that international criminal law is grounded in idealism, persuading itself of a (potentially exaggerated) impact of its activity (Dana, 2013: 110; Koller, 2008). To achieve its (sometimes only hoped) impact, the idealist project is grounded in the performativity of the international criminal trial and the effect that this will have on its audiences. This aspect and interpretation of international criminal law's operativity is encapsulated in expressivism. Expressivism therefore offers an apt framework within which to read the trend and examine its potential benefits and drawbacks. In this light, this analysis suggests that reconceptualization, pursued for pragmatic reasons, may signal deeper structural challenges within international criminal law, which cannot be resolved solely through jurisdictional expansion, but require broader reflection on the system's coherence and capacity.

This article will first acknowledge the piecemeal evolution of international criminal norms. In part 2, it will recall how international crimes and their underlying offences have been interpreted expansively. In part 3, it will focus on the full reconceptualization of an international crime as another and offer examples of literature that, for one reason or another, proposes subsuming one crime into another. Finally, in part 4, it will introduce the framework of expressivism and use it to read the examples set in part 3. It will conclude that, when anti-impunity is the name of the game, the consequences envisaged through such reconceptualization proposals may seem not only theoretically welcome as a natural evolution of the discipline, but also practically urgent. However, when interrogating what the effects communicated by this trend are, some shadowy aspects are also identified in terms of the direction of stigmatization, which should be considered further.

Brief Introductory Remarks on the Evolving Nature of International Criminal Norms

Since its very inception, the progress of international criminal law has rested on an evolving understanding of its constituent norms, the perimeters of which have been constructed through time. This evolution has affected every aspect of the construction of an international crime for the purposes of prosecution.

It is a well-known fact the underlying conducts of mass atrocity crimes replicate ordinary offences under national law. It is the context in which an underlying act, or – most often -- a series of acts, take place that modulates the nature of the offence and converts its juridical label into an international crime (Akhavan, 2012: 30). Depending on the crime, the context may amount to different sets of events, ranging from armed conflict or attacks targeting the civilian population to concerted efforts to exterminate a group (Stahn, 2019: 22). The extent and specific modalities in which each context constitutes a legal ingredient of international crimes varies, and so too vary the opinions on the level and kind of planning that each requires to be a crime (see e.g. Schabas, 2008). However, it remains that the exceptional odiousness of an international crime inhabits this aspect of the crime rather than the underlying acts themselves – which, to be sure, are deplorable all the same.

As a result, it is not a new phenomenon that the variable geometry with which underlying offences coalesce under each of the contexts will constitute distinct international crimes, or potentially multiple international crimes resting on the same set of underlying offences (on the practice of cumulative charges, see illustratively Majola, 2015; Sácouto, 2011). After all, significant overlap among the offences is due to their conceptual development. For instance, crimes against humanity were *ab origine* meant to ensure that offences against civilians not covered by war crimes were still criminalized (Luban, 2004: 93), thus rendering the overlap inescapable.

The decision to prefer an interpretation of the underlying offences at hand over another will be chiefly based on the evidence available, but may also be dependent on further policy considerations that account for the highly divisive circumstances and the fragile contexts of mass atrocities (Mettraux, 2006: 315 ff).

At the ICC, for example, the Office of the Prosecutor (OTP) can exercise a significant amount of discretion in selecting the charges (see Badagard & Klamberg, 2016). To clarify its decision-making process, under then-Chief Prosecutor Fatou Besouda, a 'Policy paper on case selection and prioritization' (2016, update under review in 2025) was published, which states: 'Consistent with regulation 34(2) of the Regulations of the Office of the Prosecutor, the charges chosen will constitute, whenever possible, a representative sample of the main types of victimisation and of the communities which have been affected by the crimes in that situation' (para. 45). More broadly, the Policy Paper situates the choices regarding the selection of charges within the anti-impunity agenda of the ICC (para. 46).

When it comes to classifying facts as crimes, a further problem has historically arisen as it pertains to the availability of a suitable vocabulary to describe the facts as indictable offences. While the issue is not unique to the international legal arena, the classification of underlying acts into the criminal categories in this field has been more challenging than in its domestic counterparts. Very famously, despite the fact that images of the Holocaust are the first to be conjured in the minds of many at the mention of genocide, the offence as such was not within the jurisdiction of the International Military Tribunal at Nuremberg (IMT) (Robinson et al., 2024: 194). By the time of the operation of the Tribunal, the notion had barely entered international legal discourse. Indeed, the term itself had just been coined (Lemkin, 1944: 79) and, while it was used in the indictment and in prosecutorial discourse (Schabas, 2009: 17), it did not formally feature as an offence.

The issue of vocabulary is not the only one relevant to classification. At other times, in fact, it was the interpretation of the overall circumstances and effects of the underlying offence that expanded the meaning of existing vocabulary. An example of this emerged in relation to the evolution of the offence of rape. Despite the lack of a provision to this effect in the Charter of the International Military Tribunal for the Far East (IMTFE), rape was nonetheless prosecuted in that context. The novelty was incorporated in the law of the International Criminal Tribunal for the Former Yugoslavia (ICTY) but only limitedly to crimes

against humanity. It is in the case-law that rape was deemed to also potentially constitute a war crime (see McDonald, 2001: 474ff). Similarly, in the case against Jean-Paul Akayesu at the International Criminal Tribunal for Rwanda (ICTR) (para. 731), the Trial Chamber recognized for the first time that the underlying offence of rape could constitute genocide when committed 'with the specific intent to destroy, in whole or in part, a particular group [the Tutsi], targeted as such' (MacKinnon, 2006: 942).

While some would argue that not all exercises of judicial creativity are virtuous in light of the potential lack of compliance with the principle of legality (Swart, 2010: 485), these contributions to the progressive development of international criminal law have propelled forward the field of international criminal justice and established a legacy that far exceeds the activity of the tribunals themselves (see Darcy & Powderly, 2010).

It is clear from this brief overview that the theoretical conceptualization and practical characterization of offences have always been part and parcel of the development of international criminal law. What if, though, an international crime is subsumed into another? If a crime in its totality, and not only some of its constitutive offences, is conceptualized as another, would that lead to potentially more complicated consequences? A recent trend in the literature is suggesting going in this direction. The reasons, broadly speaking, appear to be mostly ones of expediency, chiefly to circumvent limitations of jurisdiction at the ICC. Two examples will be presented below, ecocide and aggression, to exemplify the trend and its promises.

Conceptualizing an International Crime as Another: Two Sets of Examples

Based on an overview of current academic discourse, the idea that a full reconceptualization should occur has emerged most clearly in the cases of ecocide and aggression.

To be sure, plentiful examples can be found of the classification of ambiguous underlying acts to comply with limited jurisdiction. One example would be the situation in Bangladesh/Myanmar, where the ICC has found that it can exercise

its jurisdiction over crimes whose conduct is only partially committed in the territory of a state party (ICC-01/19-27, para. 42ff). However, the crucial distinction is that no abstract reconceptualization of the crime at hand, which could potentially be genocide in Myanmar (see Van Schaack, 2019), is underway. Instead, the decision is much more modest: the Court asserts its own jurisdiction over those parts of the overall conducts of individuals in Mynamar which spill over onto the territory of a state party, which in this specific case allegedly amount to crimes against humanity of deportation and persecution in the territory of Bangladesh.

The discourse surrounding ecocide and aggression, however, goes further. It suggests that a clearly identifiable crime whose prosecution is impossible or unviable may be entirely rethought as another, thus reframing its underlying acts as amounting to an entirely different crime not because they are ambiguous but because such reframing is the only viable option for prosecution at a certain point in time. Each crime presents distinct challenges that have led to their reconceptualization. Indeed, ecocide is not yet unequivocally recognized as a crime under international law, and it is not one of the core crimes within the material jurisdiction of the ICC. By contrast, aggression is a recognized crime under international law. Yet, the ability of the ICC to prosecute it is severely hampered by restrictive jurisdictional rules. Below, the challenges leading to the process of reconceptualization in the literature are described.

The Example of Ecocide

One example of the trend to conceptualize one crime as another is that of ecocide. As the first of two examples, ecocide sits at the intersection of urging judicial creativity in the pursuit of a desired goal and full reconceptualization under another international crime.

Ecocide entered public discourse in the 1970s when the term was coined by Arthur Galston to describe the defoliation effects of the massive use of Agent Orange in the Vietnam War (see Zierler, 2011; O'Brien, 2021). Soon thereafter calls followed for the criminalization of ecocide (see Falk, 1973). Such calls have become more insistent with time, as both the literature and the public at large

became increasingly preoccupied with intentional environmental destruction (see, illustratively, Berat, 1993 - discussing a proposal for a crime of 'geocide'; Gray, 1996). Afterwards, scholars have started assessing the issue and questioning what role global criminal law (see Cho, 2000) or the newly established ICC could plausibly play in the prosecution of ecocide (see Weinstein, 1995), in particular as it related to the already existing (albeit circumscribed) prohibition applicable in wartime (see Drumbl, 2009; Lawrence & Heller, 2007; Lopez, 2007). The possibility of inclusion of a separate fifth crime of ecocide within the material jurisdiction of the ICC has garnered a lot of attention (see for example Higgins et al., 2013; Smith, 2013; Taggart, 2014; Greene, 2019) and critical engagement has boomed in recent years (see Cusato & Jones, 2024; Gillett, 2024; Minkova, 2023, 2024). This trajectory has culminated in the June 2021 drafting of the 'Legal Definition of Ecocide. Commentary and Core Text' prepared by an Independent Expert Panel, convened by the Stop Ecocide Foundation, which explicitly hopes that 'the proposed definition might serve as the basis of consideration for an amendment to the Rome Statute of the International Criminal Court' (p. 2). The Panel defines ecocide as 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.' An official call to include the crime in the Statute followed in 2024 (See Sterio, 2024: 229)

However, the prospect of the introduction of a separate crime of ecocide in international law is still far from realization. Alternative proposals have therefore emerged, suggesting the reconceptualization of the entire concept of ecocide or of specific acts of environmental destruction as one of the existing crimes.

In a recent article on the potentiality of prosecuting mass deforestation as a crime against humanity, Martini and others explore the possibility of using Articles 7(1)(h) and (k) on persecution and 'other inhumane acts' as a challenging but viable option (see Martini et al., 2023). In a daring reframing, Lauren Eichler maintains that 'the destruction of nonhuman animals, land, water, and other nonhuman beings constitute forms of genocide according to Indigenous metaphysics' (Eichler, 2020: 104). Flipping the script on other critiques on current

definitions of environmental harm as excessively anthropocentric, Eichler demonstrates that it is the very notion of genocide to be excessively anthropocentric to begin with. Other work has drawn attention to the intricacy of genocidal acts and environmental harm intrinsically embedded in economic development and extractivism (see, e.g., Crook & Short, 2021; Wise, 2021).

Such conceptualizations of environmental crime are particularly topical. In a trend that was partially preceded in the 2016 Policy Paper on Case Selection and Prioritisation, the OTP issued a 'Draft Policy on Environmental Crimes under the Rome Statute' on 18 December 2024. Despite explicit jurisdiction over environmental harm being limited to Article(2)(b)(iv), the war crime of '[i]ntentionally launching an attack in the knowledge that such attack will cause [...] long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated,' the OTP confirms that 'there are numerous provisions in the Statute that are equally applicable to attacks against the natural environment and against humans' (para. 4). Avenues of accountability for environmental harm are then located in each of the mass atrocity crimes within the jurisdiction of the ICC. This Policy Paper is a clear signal that the reconceptualization of offences of environmental harm, amounting to what is generally understood as ecocide in scholarly, activist, and civil society circles, is not only possible but desirable. It must be noted however that the limits of the jurisdiction of the ICC as it stands exist and will necessarily impact those prosecutions, possibly falling short of some of the highest expectations of ecocide proponents.

The Example of the Crime of Aggression

Another example of reconceptualization of an international crime as another has garnered a lot of traction in recent years, that of the crime of aggression. The crime is said to be in need of reconceptualization because of distinct reasons from those at the basis of ecocide. Indeed, aggression is already squarely a crime under international law. The prohibition of the use of force (see Pobjie, 2024) and the criminalization of its most serious violations as aggression are part of customary international law (see Dinstein, 2018; McDougall, 2021), have

been enshrined in UN documents (1974 UNGA Resolution 3314), and have been prosecuted at the international level (IMT, IMTFE). Most importantly, aggression is a crime within the jurisdiction of the ICC as per article 8*bis*.

However, the history of the inclusion of aggression in the Rome Statute is notoriously complicated. While the offence was included in the list of offences in article 5 already at the time of adoption of the Rome Statute in 1998 (Robinson et al., 2024: 187), a definition was agreed upon at a much later date during the Review Conference in Kampala in 2010, with the decision on activation of ICC jurisdiction over the crime following in 2017 (Robinson et al., 2024: 288). As a result, the Court only has temporal jurisdiction on the crime of aggression since its formal activation on 17 July 2018 (Kress, 2018: 15). In addition, as part of the negotiations of such a complex and politicized issue, special jurisdiction rules apply to the crime. Of particular relevance is article 15*bis*(5) which excludes from the jurisdiction of the Court any crime of aggression involving a non-State Party regardless of its role as aggressor or victim (McDougall, 2021: 256), unless the situation is referred by the Security Council per article 15*ter* in which case no comparable limitation is present.

Faced with a set-up featuring significant jurisdictional limitations and animated by the desire to 'narrow the impunity gap' (Ferencz, 2015: 195), a small number of scholars made suggestions to reconceptualize the crime of aggression as a crime against humanity (see e.g. Ventura & Gillett, 2013). The proposals have not been met with nearly as much institutional support as ecocide has. Yet, they are on the whole imaginative ways of reading existing law. Benjamin Ferencz, for example, focused on the massive losses of life that often follow an act of aggression and suggested prosecuting it as a crime against humanity under article 7(1)(k). In his analysis, the reframing would fall squarely within the trend of humanization of humanitarian law (see Meron, 2000, 2006) that has progressively emerged in international law over the last century (Ferencz, 2015: 196-197). Yet, at the time, the idea failed to garner wide support, with some advising against 'compromis[ing] the authoritativeness and credibility of the ICC in the interest of expediency' (Tan, 2013: 164).

Spurred by the Russian invasion of Ukraine (UNGA Resolution, A/RES/ES-11/1; see also Grzebyk, 2023; McDougall, 2022), multiple alternatives have been advanced in the literature, including the proposal to establish an ad hoc tribunal to try aggression (see, inter alia, Dannenbaum, 2022). Concurrently, the idea of finding alternative ways to criminalize an act of aggression within ICC law has reemerged and taken firmer contours in the last two years. The option to try aggression as a crime against humanity of 'other inhumane acts' under article 7(1)(k) of the Rome Statute resurfaced, albeit with different rationales. It has been suggested, for example, that aggression should be framed as a violation of a people's right to self-determination (Pinzauti & Pizzuti, 2023: 1062). A completely different take has been offered by Frederic Mégret. Instead of 'shoehorning' aggression as a listed underlying act of crimes against humanity, he proposes that aggression as such can at times entirely overlap with an attack as understood in crimes against humanity (Mégret, 2023: 479). In such a way, the reconceptualization of aggression is not just done expediently to provide a practical solution for a current problem. Instead, it offers alternative ways of understanding what aggression and crime against humanity are and offers potential pathways for conceptualizing one crime as another.

Reading the Reconceptualization of an International Crime as Another in Light of Expressivism: Perils and Promises

The Notion of Expressivism

Expressivism can be articulated in multiple ways. Often, in recent times, recourse to it has been had in order to justify the enterprise of international criminal justice (Sander, 2019: 852). However, expressivism is also a tool to describe the activity of international criminal justice institutions, to show what they promote and disavow (Sloane, 2007: 71). Such description is possible once the focus is put on the communicative function of trials (Sander, 2018: 200; see also Stahn, 2020). Such function hinges on the notion that law, much like all and any actions, 'carry meanings' (Sunstein, 1996: 2021). Resulting punishment becomes therefore a 'device for the expression of attitudes of resentment and indignation, and

of judgments of disapproval and reprobation' (Feinberg, 1965: 400). In this sense, punishment is understood as an effective tool 'to strengthen faith in the rule of law' (Drumbl, 2007a: 12). In this sense, international criminal law – constituted by its norms, institutions, and related activity in trial and punishment -- contributes to a 'norm-nurturing process' (Amann, 2002: 120) establishing itself as the provider of socio-pedagogical goals. Indeed, trials are a 'ritual performance that takes place in view of the public' (Wringle, 2016: 57), and as such contribute to the nurturing of liberal values in a given society (Osiel, 1997: 2). In this sense, they do not just 'invoke incentives' but 'change norms' (Fisher, 2012: 59) in the pursuit of an intergenerational pedagogical goal (Drumbl, 2007b: 1182). After all, it matters a lot what international criminal law stands for. If we isolate the role of the ICC, with the constraints posed on it by its limited resources, no more than a few 'illustrative' cases will be carried out (deGuzman, 2012: 315). It follows that the significance of the messages it sends is amplified.

Promises and Perils

In accordance with expressive theory, the communicative impact of the law, its norms, and its institutions is fundamental to understanding its role in society. Ascribing the label of international crime to wrongdoing will undoubtedly influence how the actions are perceived, inviting reprobation and legitimizing abhorrence toward them. In an example concerning terrorism as an international crime, Mark Drumbl states that such characterization will effectively 'cast the wrongdoing as a violation of universal norms and of global trust' rather than isolating it as an offence merely toward the affected population (Drumbl, 2007b: 1175). Another example that has received attention is the contours of what gets to be defined as genocide. An increasingly powerful strand of literature has questioned the design of the contours of what we call genocide (See Gurmendi Dunkelberg, 2025). At the same time, however, moving within the perimeters of black letter law, and preserving the meaning of the norm, is also considered an important way to protect the status of the norm (Amann, 2002: 95).

The expansion of criminal categories inevitably entails both positive and negative consequences in an expressive sense. But what happens when this

expansion amounts to a full reconceptualization like the one suggested in the examples in section 3? The examples certainly represent a similar trend but are not the same. The legitimacy and prospects of each trend are not equal.

There are many reasons to be optimistic about the prospects of folding ecocide, or constitutive conducts, under an existing international crime. In its recent Draft Policy on environmental crime, the OTP acknowledges, in a quasi-apologetic tone, the limitations of the jurisdiction of the Court (para. 5). Indeed, it commits to centring environmental harm in the crimes within its jurisdiction as a way to rectify the neglect that such harm has faced so far (p. 3). A sceptical voice might be quick to quip that, if successful, the strategy might have the paradoxical effect of reducing the perception of urgency that surrounds the push for the adoption of a standalone crime of ecocide. At the same time, a pragmatic approach would suggest that, when the stakes are as high as anti-impunity for international crime, a viable compromise is preferable to utopic hope.

The more critical literature surrounding ecocide has mostly concerned the standalone crime. For example, Eliana Cusato and Emily Jones have suggested resisting the instinct of criminalization. In their view, the more pressing issue is identifying and rectifying the extractive and capitalist logic that undergird environmental harm to begin with (Cusato & Jones, 2024: 61). However, this critique would remain true also of the conceptualization of certain underlying conducts as another crime. So too would the critique that underlines the deeply anthropocentric nature intrinsic in contemporary understandings of ecocide (see Minkova, 2023; Winter, 2024). This risk would become even more present in the reconceptualization scenario.

Indeed, the process of stigmatization through reconceptualization sits in an awkward position: on the one hand, it might be the missing link toward a proper inclusion of environmental values as legitimate protected interests in international criminal law – namely, not as an extension or manifestation of global security or human suffering, but as valid in and of themselves. On the other hand, it might contribute to a narrative of environmental harm that stigmatizes some and legitimizes all other.

Fraught with even more issues is the potential reconceptualization of aggression under an international crime. As seen in section 3(b), every suggestion of the conceptualization of aggression as another crime has been directed by pragmatic reasons, with the exception of Mégret's work. In his article, he is careful not to 'portray aggression for what it is not' which would come at a much too high 'expressive cost' (Mégret, 2023: 478). In other words, in his proposal, aggression is reconceptualized into another crime, because, under certain circumstances, it is indeed another crime. Furthermore, in a generous reading of other proposals too, conducts are multifaceted and multi-purpose and therefore may warrant focusing on different underlying harms (such as those to people, central to crimes against humanity, rather than merely peace and security).

However, on an expressive level, the mere fact that these proposals have been revitalized in relation to the Russian invasion of Ukraine make the 'shoehorning' peril hard to look past. Indeed, while accountability in the short term aligns well with international criminal law's anti-impunity mindset (see Sander, 2020), it is hard to imagine that commentators would be suggesting to fold aggression under another international crime if an instance of aggression were to happen in the near future that was fully within the jurisdiction of the Court. This suggests that reconceptualization, when driven by short-term expediency, might not align with the conceptual integrity and systemic coherence of international criminal justice. Unlike the recognition of rape as a war crime and as genocide, discussed in section 2 – where previously overlooked conduct was incorporated in such a way that conceptually reinforced and expanded the existing legal framework --, the reconceptualization trend may reflect deeper structural shortcomings. It may indicate that the system, and in particular the ICC, as currently designed, is fundamentally ill-equipped to respond to certain forms of harm, thus calling for a more comprehensive reflection on the ICC's capacity to fulfil its mandate.

All in all, the reconceptualization of ecocide and aggression follow different trajectories, as the level of the stigmatization and its acknowledgement in international criminal law is different for each. However, the two examples show a trend that might materialize in the future. This brief analysis has shown that,

from an expressive point of view, both positive and negative outcomes may follow.

Conclusion

The evolution of international criminal law has historically been characterized by gradual adaptation and strategic legal development in response to emerging global challenges. This article has identified a recent shift within academic discourse: the reconceptualization of one international crime as another. While this has appeared as a pragmatic strategy to navigate around jurisdictional limits, it also raises complex questions about the coherence and expressive function of international criminal law.

The reconceptualization of ecocide has gained increasing traction, even receiving cautious support from the ICC. In contrast, efforts to reframe aggression remain on the margins. Both examples reflect a growing sense of urgency, where the desire for short-term accountability pushes legal categories to their interpretive boundaries. Through the lens of expressivism, however, these efforts are not without risk. Strategic reclassification, while potentially advancing short-term accountability goals, may undermine the conceptual clarity and authority of international criminal law. This article has argued that such reconceptualizations, though potentially useful in specific contexts, may signal deeper structural limitations within the international criminal justice framework. It is suggested that addressing these limitations will require a broader re-evaluation of the system's normative coherence and institutional capacity.

References

Akhavan, P. (2012). *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime*. Cambridge University Press.

Amann. (2002). Group Mentality, Expressivism, and Genocide. *International Criminal Law Review*, *2*(2), 93–143.

Badagard, L., & Klamberg, M. (2016). The Gatekeeper of the ICC - Prosecutorial Strategies for Selecting Situations and Cases at the International Criminal Court. *Georgetown Journal of International Law*, *48*, 639–733.

Berat, L. (1993). Defending the Right to a Healthy Environment: Toward a Crime of Geocide in International Law. *Boston University International Law Journal*, *11*, 327–348.

Cho, B.-S. (2000). Emergence of an International Environmental Criminal Law? *UCLA Journal of Environmental Law and Policy*, *19*(1), 11–47.

Crook, M., & Short, D. (2021). Developmentalism and the Genocide–Ecocide Nexus. *Journal of Genocide Research*, *23*(2), 162–188.

Cusato, E., & Jones, E. (2024). The 'Imbroglio' of Ecocide: A Political Economic Analysis. *Leiden Journal of International Law*, *37*(1), 42–61.

Dana, S. (2013). The Limits of Judicial Idealism: Should the International Criminal Court Engage with Consequentialist Aspirations? *Penn State Journal of Law & International Affairs*, *3*(1), 30–112.

Dannenbaum, T. (2022). A Special Tribunal for the Crime of Aggression? *Journal of International Criminal Justice*, *20*(4), 859–873.

Darcy, S., & Powderly, J. (2010). *Judicial Creativity at the International Criminal Tribunals*. Oxford University Press.

deGuzman, M. M. (2012). Choosing to Prosecute: Expressive Selection at the International Criminal Court. *Michigan Journal of International Law*, *33*(2), 265–320.

Dinstein, Y. (2018). *War, Aggression and Self-Defence* (6th ed.). Cambridge University Press.

Drumbl, M. A. (2007a). *Atrocity, Punishment, and International Law*. Cambridge University Press.

Drumbl, M. A. (2007b). The Expressive Value of Prosecuting and Punishing Terrorists: Hamdan, the Geneva Conventions, and International Criminal Law. *George Washington Law Review*, *75*, 1165–1199.

Drumbl, M. A. (2009). The Push to Criminalize Aggression: Something Lost Amid the Gains? *Case Western Reserve Journal of International Law*, *41*(2), 291–319.

Eichler, L. J. (2020). Ecocide Is Genocide: Decolonizing the Definition of Genocide. *Genocide Studies and Prevention*, *14*(2), 104–121.

Falk, R. A. (1973). Environmental Warfare and Ecocide—Facts, Appraisal, and Proposals. *Revue Belge de Droit International*, *9*(1), 1–27.

Feinberg, J. (1965). The Expressive Function of Punishment. *The Monist*, *49*, 397–423.

Ferencz, B. B. (2015). The Illegal Use of Armed Force as A Crime Against Humanity. *Journal on the Use of Force and International Law*, *2*(2), 187–198.

Fisher, K. J. (2012). *Moral Accountability and International Criminal Law*. Routledge.

Gillett, M. (2024). Ecocide, environmental harm and framework integration at the International Criminal Court. *The International Journal of Human Rights*, *0*(0), 1–37.

Gray, M. A. (1996). The International Crime of Ecocide. *California Western International Law Journal*, *26*(2), 215–271. https://doi.org/10.4324/9781315092591-12

Greene, A. (2019). The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative? *Fordham Environmental Law Review*, *30*(3), 1–48.

Grzebyk, P. (2023). Crime of Aggression against Ukraine. *Journal of International Criminal Justice*, *21*(3), 435–459.

Gurmendi Dunkelberg, A. (2025). How to Hide a Genocide: Modern/Colonial International Law and the Construction of Impunity. *Journal of Genocide Research*, 1–24.

Higgins, P., Short, D., & South, N. (2013). Protecting the Planet: A Proposal for a Law of Ecocide. *Crime, Law, and Social Change*, *59*, 251–266.

Koller, D. S. (2008). The Faith of the International Criminal Lawyer. *New York University Journal of International Law and Politics*, *40*, 1019–1069.

Kress, C. (2018). On the Activation of ICC Jurisdiction over the Crime of Aggression. *Journal of International Criminal Justice*, *16*(1), 1–17.

Lawrence, J. C., & Heller, K. J. (2007). The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric Environmental War Crime. *Georgetown International Environmental Law Review*, *20*, 1–40.

Lemkin, R. (1944). *Axis Rule in Occupied Europe: Laws of Occupation—Analysis of Government—Proposals for Redress*. Carnegie Endowment for International Peace.

Lopez, A. (2007). Criminal Liability for Environmental Damage Occurring in Times of Non-International Armed Conflict: Rights and Remedies. *Fordham Environmental Law Review*, *18*(2), 231–271.

Luban, D. (2004). A Theory of Crimes Against Humanity. *Yale Journal of International Law*, *29*, 85–167.

MacKinnon, C. (2006). Defining Rape Internationally. A Comment on Akayesu. *Columbia Journal of Transnational Law*, *44*, 940–958.

Majola, B. C. (2015). Cumulative Charges under International Criminal Law. In C. C. Jalloh & A. B. Marong (Eds.), *Promoting Accountability under International Law for Gross Human Rights Violations in Africa. Essays in Honour of Prosecutor Hassan Bubacar Jallow*. Brill.

McDonald, G. K. (2001). The International Criminal Tribunals: Crime & Punishment in the International Arena. *Nova Law Review*, *25*(1), 463–484.

McDougall, C. (2021). *The Crime of Aggression under the Rome Statute of the International Criminal Court* (2nd ed.). Cambridge University Press.

McDougall, C. (2022, March 8). Prosecuting Putin for His Crime of Aggression against Ukraine: Part One. *Oxford Human Rights Hub*. https://ohrh.law.ox.ac.uk/prosecuting-putin-for-his-crime-of-aggression-against-ukraine-part-one/

Mégret, F. (2023). Why Prosecuting Aggression in Ukraine as a Crime Against Humanity Might Make Sense. *Journal of Conflict and Security Law*, *28*(3), 467–499.

Meron, T. (2000). The Humanization of Humanitarian Law. *American Journal of International Law*, *94*(2), 239–278.

Meron, T. (Ed.). (2006). *The humanization of international law*. Martinus Nijhoff.

Mettraux, G. (2006). *International Crimes and the Ad Hoc Tribunals*. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199207541.001.0001

Minkova, L. G. (2023). The Fifth International Crime: Reflections on the Definition of "Ecocide". *Journal of Genocide Research*, *25*(1), 62–83.

Minkova, L. G. (2024). Ecocide, Sustainable Development and Critical Environmental Law Insights. *Journal of International Criminal Justice*, *22*(1), 81–97.

Nouwen, S. (2016). International Criminal Law: Theory All Over the Place. In A. Orford, F. Hoffmann, & M. Clark (Eds.), *The Oxford Handbook of the Theory of International Law*. Oxford University Press.

O'Brien, E. (2021, June 11). *An International Crime of "Ecocide": What's the Story?* EJIL: Talk! https://www.ejiltalk.org/an-international-crime-of-ecocide-whats-the-story/

Osiel, M. (1997). *Mass Atrocity, Collective Memory, and the Law*. Transaction Publishers.

Pinzauti, G., & Pizzuti, A. (2023). Prosecuting Aggression against Ukraine as an 'Other Inhumane Act' before the ICC. *Journal of International Criminal Justice*, *20*(5), 1061–1083.

Pobjie, E. (2024). *Prohibited Force: The Meaning of 'Use of Force' in International Law* (1st ed.). Cambridge University Press. https://doi.org/10.1017/9781009022897

Robinson, D., Vasiliev, S., Van Sliedregt, E., & Oosterveld, V. (2024). *An Introduction to International Criminal Law and Procedure* (5th ed.). Cambridge University Press.

Sácouto, S. (2011). Amicus Curiae Brief on the Practice of Cumulative Charging Before International Criminal Bodies Submitted to the Appeals Chamber of the Special Tribunal for Lebanon Pursuant to Rule 131 of the Rules of Procedure and Evidence. *Criminal Law Forum*, *22*(3), 409–432.

Sander, B. (2018). Justifying International Criminal Punishment: A Critical Perspective. In M. Bergsmo & E. J. Buis (Eds.), *Philosophical Foundations of International Criminal Law: Foundational Concepts*. Torkel Opsahl Academic EPublisher.

Sander, B. (2019). The Expressive Turn of International Criminal Justice: A Field in Search of Meaning. *Leiden Journal of International Law*, *32*(4), 851–872.

Sander, B. (2020). The Anti-Impunity Mindset. In M. Bergsmo, M. Klamberg, K. Lohne, & C. B. Mahony (Eds.), *Power in International Criminal Justice*. Torkel Opsahl Academic EPublisher.

Schabas, W. A. (2008). State Policy as an Element of International Crimes. *The Journal of Criminal Law and Criminology*, *98*(3), 953–982.

Schabas, W. A. (2009). *Genocide in International Law. The Crime of Crimes* (2nd ed.). Cambridge University Press.

Sloane, R. D. (2007). The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential of International Criminal Law. *Stanford Journal of International Law*, *43*, 39.

Smith, T. (2013). Creating a Framework for the Prosecution of Environmental Crimes in International Criminal Law. In W. Y. McDermott (Ed.), *The Ashgate Research Companion to International Criminal Law*. Ashgate.

Stahn, C. (2012). Between 'Faith' and 'Facts': By What Standards Should We Assess International Criminal Justice? *Leiden Journal of International Law*, *25*(2), 251–282.

Stahn, C. (2019). *A Critical Introduction to International Criminal Law*. Cambridge University Press.

Stahn, C. (2020). *Justice as Message*. Oxford University Press.

Sterio, M. (2024). Crimes Against the Environment, Ecocide, and the International Criminal Court. *Case Western Reserve Journal of International Law*, *56*, 223–238.

Sunstein, C. R. (1996). On the Expressive Function of Law. *University of Pennsylvania Law Review*, *144*(5), 2021–2053.

Swart, M. (2010). Judicial Lawmaking at the ad hoc Tribunals: The Creative Use of the Sources of International Law and "Adventurous Interpretation". *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht*, *70*, 459–486.

Taggart, J. (2014). Ecocide: A Worthy "Fifth Crime Against Peace"? *The Journal of Law Society of Scotland*, *17*(1), 3–7.

Tallgren, I. (2002). The Sensibility and Sense of International Criminal Law. *European Journal of International Law*, *13*(3), 561–595.

Tan, C. (2013). Punishing Aggression as a Crime Against Humanity: A Noble but Inadequate Measure to Safeguard International Peace and Security. *American University Law Review*, *29*(1), 145–164.

Van Schaack, B. (2019). Determining the Commission of Genocide in Myanmar. *Journal of International Criminal Justice*, *17*(2), 285–323.

Ventura, M. J., & Gillett, M. (2013). The Fog of War: Prosecuting Illegal Use of Force as Crimes Against Humanity. *Washington University Global Studies Law Review*, *12*, 523–538.

Weinstein, T. (1995). Prosecuting Attacks that Destroy the Environment: Environmental Crimes or Humanitarian Atrocities? *Georgetown International Environmental Law Review*, *17*(4), 697–722.

Winter, E. (2024). Stop Ecocide International's Blueprint for Ecocide Is Compromised by Anthropocentrism: A New Architect Must Be Found. *Israel Law Review*, *57*(1), 175–209.

Wise, L. (2021). The Genocide-Ecocide Nexus in Sudan: Violent "Development" and the Racial-Spatial Dynamics of (Neo)Colonial-Capitalist Extraction. *Journal of Genocide Research*, *23*(2), 189–211.

Wringle, W. (2016). *An Expressive Theory of Punishment*. Palgrave Macmillan.

Zierler, D. (2011). *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think About the Environment*. The University of Georgia Press.

Table of Instruments and Cases

Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (adopted 8 August 1945, entered into force 8 August 1945) 82 UNTS 279 (IMT).

ICC, Office of the Prosecutor, 'Policy paper on case selection and prioritization' (15 September 2016, https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf).

ICC, Office of the Prosecutor, 'Draft Policy on Environmental Crimes under the Rome Statute' (18 December 2024, https://www.icc-cpi.int/sites/default/files/2024-12/2024-12-18-OTP-Policy-Environmental-Crime.pdf).

ICTR, The Prosecutor v Jean-Paul Akayesu (Case No. ICTR-96-4-T, Judgement, 2 September 1998).

ICTY, The Prosecutor v. Delalic, (Case No. IT-96-21, Judgment, 16 November 1998)

ICTY, The Prosecutor v. Furundzija (Case No. IT-95-17/1, Judgment, 10 December 1998).

Proclamation by the Supreme Commander for the Allied Powers at Tokyo: Establishment of an International Military Tribunal for the Far East (signed 19 January 1946, amended 26 April 1946) TIAS No 1589 (IMTFE).

Stop Ecocide Foundation, 'Legal Definition of Ecocide. Commentary and Core Text' (June 2021,https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+(1).pdf).

UNGA Resolution 3314 (1974) on the Definition of Aggression (14 December 1974) UN Doc A/Res/3314.

UNGA Resolution 11/1 on Aggression against Ukraine (18 March 2022) Un Doc A/RES/ES-11/1. https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-application-arrest-warrant-situation-bangladesh