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Environmental Protection in War: Beyond Humans and Nature

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War is not just a human tragedy—it is an environmental catastrophe. Across the globe, armed conflicts leave behind oil-slickened rivers, poisoned soils, and forests reduced to barren landscapes. These harms last for generations, but they are not borne equally. The peoples who live most intimately with the land—drawing from it food, water, culture, and identity—suffer the most enduring losses. Their very existence as a people may be put at risk.

This Article asks: How have the laws of war addressed environmental destruction, and, more specifically, what protection do they afford to communities whose very existence is bound to the places where conflicts unfold? For much of their history, the law of armed conflict ("LOAC") have paid limited attention to the natural world. In recent years, international legal scholarship has begun to take the environment seriously as a subject of sustained inquiry. Even so, the scholarship continues to overlook the particular ways in which war harms the relationship of communities and their environment. This Article steps into the rapidly growing conversation about war and the environment with three contributions: It develops a novel typology of the approaches that have historically guided the laws of war, identifies the emergence of a new "ecocultural" approach, and advances a normative justification for its further expansion.

A historical review of the laws and debates on the LOAC since the 19th century reveals two dominant paradigms. The first, which we call the anthropocentric approach, treats nature as property or as a resource for human survival. It has roots in the 19th century but continues to be the dominant paradigm to this day. The second, the ecocentric approach, emerged in the wake of the Vietnam War's environmental destruction. It seeks to protect the "natural environment" without requiring a nexus to human harm.

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In recent practice, however, a third paradigm of LOAC engagement with the environment is emerging: the ecocultural approach. Its animating principle is that maintaining the integrity of relations with the environment is essential to the survival, identity, and dignity of certain peoples. The ecocultural approach appears in recent efforts to connect environmental harm to cultural practices. In 2023, for example, Colombia initiated prosecutions for environmental crimes on Indigenous, Tribal, and peasant territories during a fifty-year armed conflict. They have been lauded as the world's first environmental war crimes indictments. Their goal, however, was not the protection of the natural world, nor the protection of human lives and wellbeing alone. Rather, they aimed to protect the symbolic and material dimensions of the relationship between certain place-based peoples and their environment. The Article argues for further integration of the ecocultural approach into the LOAC and provides guidance for doing so.

Amid growing calls to expand environmental protection during war, this proposed typology provides governments and international organizations with the historical basis and legally grounded conceptual resources to build a heightened regime of protection for the environment and its peoples.

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Introduction

War is not just a human tragedy. It is an environmental catastrophe. Oil spills resulting from attacks on tankers in the Red Sea and pipelines in Colombia; bombardments that poison soil and water across Ukraine and Gaza;[1] the destruction of critical infrastructure like the Kakhovka dam; and the incineration of the forests of Donetsk and Kharkiv[2] all wreak harm that lasts for generations. But these environmental scars are not borne equally. Those who depend most directly on these ravaged landscapes—peoples whose food, livelihoods, culture, history, and future are rooted in a place—are the most vulnerable. For them, war imperils not only immediate survival, but their very continuity as a people.

In the face of this destruction, and as war escalates across the globe,[3] we must ask: What is being done to shield the environment from the fallout of war? And what protections exist for those whose very existence is tied to these lands where armed conflicts unfold? For much of their history, the law of armed conflict ("LOAC") have paid limited attention to the natural world. In recent years, international legal scholarship has begun to take the environment seriously as a subject of sustained inquiry.[4] Yet the scholarship continues to overlook the

1. Rep. of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (2024), transmitted by Letter dated 20 September 2024 from the Secretary-General Addressed to the General Assembly, at 33–39, U.N. Doc. A/79/363 (Sept. 20, 2024).

2. *See generally* Roberto Cazzolla Gatti et al., *An Early Warning System Based on Machine Learning Detects Huge Forest Loss in Ukraine During the War*, Glob. Ecology & Conservation, Jan. 2025, at 1.

3. The past three years have witnessed the most state-based conflicts since the end of World War II. *See* Sira Aas Rustad, Conflict Trends: A Global Overview, 1946–2023, at 7 (2024), https://perma.cc/4YZB-AWXR; *see also* Inst. for Econ. and Peace, Global Peace Index 2024 5 (2024), https://www.visionofhumanity.org/wp-content/uploads/2024/06/GPI-2024-web.pdf [https://perma.cc/R27A-LUVQ] (finding that "[t]he world has become less stable in the past 17 years with substantial increases in political instability, number of conflicts, deaths from conflicts and violent demonstrations"). The Geneva Academy reports that, as of February 2025, the Middle East & North Africa is the region with the most armed conflicts (45), followed by Africa (35), Asia (21), Europe (7), and Latin America (6). *See The Rule of Law in Armed Conflict*, Geneva Academy, http://www.rulac.org/ [https://perma.cc/XF4N-2BU4].

4. *See infra* Part I.B.

particular ways in which war harms the relationship of communities and their environment. This Article addresses these questions.[5] It develops a novel typology of approaches to environmental protection in the history of the laws of war, within which it also identifies an emergent type, the *ecocultural approach*, which seeks to subvert traditional separations between humans and nature.

The historical review of the LOAC in this Article reveals that two paradigms have traditionally defined protection of the environment. The first, which dates to the late 19th century, we call the *anthropocentric approach.* It protects the natural world if it is classified as property, if it provides necessary material resources for human survival, or if its destruction poses an immediate danger. In the 1970s, growing concern over the damages war causes to the environment gave rise to what we call the *ecocentric approach.* It imposes the obligation to protect the natural world independently of its exchange or use values. The 1977 amendments to the Geneva Conventions, for example, extended protection to the "natural environment" without requiring a nexus to human harm.[6] Ukraine's ongoing investigations of Russian environmental war crimes, including fifteen investigations into the crime of ecocide, provides another example of actors pursuing the ecocentric approach.[7]

This Article also identifies for the first time an emerging third approach: the *ecocultural approach.* The animating principle of the ecocultural approach is that the relationships of certain peoples to the place they inhabit is essential to their identity, dignity, and survival, even if they are not premised on property or use. These relationships deserve a distinct, heightened regime of legal protection in both their ecological and cultural dimensions. Rooted in human rights and environmental law, elements of the ecocultural approach can now also be found in the International Law Commission's ("ILC") Draft Principles on the Protection of the Environment in Relation to Armed Conflict ("PERAC")[8] and

5. *See infra* Part I.C.

6. Protocol Additional to the Geneva Conventions of 12 Aug. 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 35(3), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I] ("It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.").

7. Ukrainian prosecutor Andriy Kostin announced on January 8, 2024, on X (formerly Twitter): "To date, we are investigating 280 criminal cases of environmental war crimes, including 15 cases of ecocide. Together with our partners, we are developing innovative approaches to evidence collection and assessing ecological harm." Andriy Kostin (@AndriyKostinUa), X (Jan. 8, 2024, at 02:32 PM ET), https://twitter.com/AndriyKostinUa/status/1744456969228832891 [https://perma.cc/LK8G-KWH7].

8. Int'l L. Comm'n, Text and titles of the draft principles provisionally adopted by the Drafting Committee on first reading on Protection of the Environment in Relation to Armed Conflicts, draft princs. 4, 5, 14, 18, U.N. Doc. A/CN.4/L.937 (June 6, 2019) [hereinafter PERAC Principles].

proposals for codification of the crime of ecocide, as well as in the innovative practices of Colombia's peace court (Special Jurisdiction for Peace, or "JEP").[9]

Additionally, this Article makes the case for the further development of the ecocultural approach within the LOAC. This proposal comes at a time when key players in the international space are seeking new ways of protecting the environment in armed conflict. There has been "a groundswell of momentum over the last decade" in the effort to expand environmental protection during armed conflict.[10] In 2019, the ILC published the PERAC Principles; in 2020, the International Committee of the Red Cross ("ICRC") issued its revised Guidelines on the Protection of the Natural Environment in Armed Conflict ("ICRC Guidelines");[11] and in 2022, the United Nations ("U.N.") General Assembly formally took note of PERAC.[12] Wars in Ukraine and Gaza are further fueling the push for environmental war crimes accountability. The International Criminal Court ("ICC") has announced that it will issue a new policy on prosecuting environmental crimes,[13] and a group of ICC member states have joined the call to add the crime of ecocide to its jurisdiction.[14] Each of these initiatives is

9. The acronym JEP stands for the tribunal's name in Spanish, *Jurisdicción Especial para la Paz.*

10. Helen Obregon Gieseken & Vanessa Murphy, *The Protection of the Natural Environment Under International Humanitarian Law: The ICRC's 2020 Guidelines,* 105 Int'l Rev. Red Cross 1180, 1185 (2023) (also noting that "Resolutions and discussions in the UN General Assembly, the UN Environment Assembly and the UN Security Council have dedicated more attention to the topic, as have the UN Secretary-General's annual reports on the protection of civilians").

11. Int'l Comm. of the Red Cross [hereinafter ICRC], *Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations Relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary* (2020), https://www.icrc.org/sites/default/files/document_new/file_list/guidelines_on_the_protection_of_the_natural_environment_in_armed_conflict_advance-copy.pdf [https://perma.cc/N42S-MFPZ] [hereinafter ICRC, *Guidelines*].

12. G.A. Res. 77/104, annex, Protection of the environment in relation to armed conflicts (Dec. 7, 2022).

13. Office of the Prosecutor, *The Office of the Prosecutor Launches Public Consultation on a New Policy Initiative to Advance Accountability for Environmental Crimes Under the Rome Statute*, Int'l Crim. Ct. [ICC] (Feb. 16, 2024), https://www.icc-cpi.int/news/office-prosecutor-launches-public-consultation-new-policy-initiative-advance-accountability-0 [https://perma.cc/WJ7H-S2VX].

14. Rachel Panett, *What is Ecocide and Could It Become an International Crime like Genocide?*, Wash. Post (Sept. 10, 2024), https://www.washingtonpost.com/climate-environment/2024/09/10/ecocide-law-crime-genocide-icc/ [https://perma.cc/6JSB-5BLN] (reporting on request for state parties to add crime of ecocide to Rome Statute); *see also* Isabella Kaminski, *Growing Number of Countries Consider Making Ecocide a Crime*, The Guardian (Aug. 26, 2023), https://www.theguardian.com/environment/2023/aug/26/growing-number-of-countries-consider-making-ecocide-crime [https://perma.cc/D2TA-9KTE]. At the international level, most prominently, Stop Ecocide has published a proposed amendment to the Rome Statute. *Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text*, Stop Ecocide Foundation (Jun. 2021), https://www.stopecocide.earth/legal-definition [https://perma.cc/MN9R-2VHJ]. Kate Mackintosh (who participated in the Stop Ecocide project) and Lisa Oldring write, "a growing number of States and other stakeholders—including parliamentarians, corporate investors, global youth, the United Nations Secretary General and others—believe

premised on a particular understanding of the nature, scope, and underlying value of the protected entity, be it called nature, the environment, or ecosystems, and about why it matters.[15] It is time to broaden that understanding. The LOAC should view itself as not only about protecting humans on the one hand and the environment on the other, but also about protecting *types of relationships* between humans and their environments.

The argument makes three significant contributions to current debates over the environment in the laws of war. The first is conceptual. The Article creates for the first time a typology of approaches to environmental protection in the LOAC: the anthropocentric, ecocentric, and ecocultural approaches. This typology allows us to analyze the continuities and ruptures in the recent environmental turn in the LOAC and helps to compare the various objectives that this body of law has sought in its protection of the natural world.[16] The typology is also significant because it allows us to see the LOAC's recent change not simply as a turn toward greater protection of the environment but toward the protection of a broader range of relations forged between different human groups and the natural world. It reveals that the LOAC is—and always was—a body of law that protects not only humans as such, but also certain ties between humans and the natural world.

The second contribution is a normative proposal. The Article shows why and how the ecocultural approach should be adopted more broadly within the LOAC.

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that ecocide should also be defined as a crime under international law, alongside genocide, crimes against humanity, war crimes, and the crime of aggression." Kate Mackintosh & Lisa Oldring, *Watch This Space: Momentum Toward an International Crime of Ecocide*, Just Security (Dec. 5, 2022), https://www.justsecurity.org/84367/watch-this-space-momentum-toward-an-international-crime-of-ecocide [https://perma.cc/U2EZ-EGYV]. The scholarly output on the criminalization of ecocide in the Rome Statute is voluminous, with a simple Google Scholar search pulling up over fifty scholarly articles from around the world that focus on this question published since 2019. *See* "Criminalization of Ecocide AND Rome Statute," Google Scholar (last visited Oct. 26, 2025) (providing 1,920 results).

15. *See* ICRC, *Guidelines*, *supra* note 11. The terminology is challenging. The terms "nature," "the natural world," and even "the environment" are often used in contradistinction to the human, implying that human beings are somehow not part of nature. But that is precisely the dichotomy that Indigenous and other social movements discussed here are questioning. Many scholars use the term "non-human" to refer to that which is neither human nor "made" by humans. It does not carry the implication that humans are outside of "nature" or "the environment." But it has the disadvantage that it is not in widespread use, and it is not a legal category, whereas the LOAC *does* speak of "the environment" and "nature." This Article will use the terms "the environment" or "natural world" when referring to the non-human world. *See generally* Eduardo Kohn, How Forests Think: Toward an Anthropology Beyond the Human (2013); Locating Nature: Making and Unmaking International Law (Usha Natarajan & Julia Dehm eds., 2022).

16. For a discussion of the use of typologies as a method of analysis, see Max Weber, Economy and Society 20–22 (Guenther Roth & Claus Wittich eds., Univ. Calif. Press 2013) (1921).

Since its modern origins, the laws of war reflected the worldviews and interests of the West and were created to protect "civilized" peoples, which mostly excluded those of non-European descent.[17] This exclusion made the suffering of Indigenous peoples in war invisible to humanitarian law, facilitating the plunder of their land.[18] To this day, many Indigenous and Tribal peoples hold relationships with their immediate environment that make them especially vulnerable to environmental harm caused by war, especially as they inhabit the areas of the world with the greatest rates of biodiversity.[19]

By protecting what in human rights law is called the "special relationship" between certain peoples and their traditional territory,[20] the LOAC takes a step toward correcting this history of exclusion while enriching its approach to the protection of the environment. Our claim, however, is not that this is a "win-win scenario"—a win for the environment and also, coincidentally, for Indigenous

17. *See, e.g.*, Antony Anghie, Imperialism, Sovereignty and the Making of International Law 3–9, 32–100 (2005); Martti Koskenniemi, The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960, at 11-88, 98–132 (2002); International Law and Its Others 22–31 (Anne Orford ed., 2006). *See generally* S. James Anaya, Indigenous Peoples in International Law (2d ed. 2004) (discussing the historical injustices faced by Indigenous peoples, including colonization, displacement, and cultural suppression); B. S. Chimni, The Third World and International Order: Law, Politics, and Globalization (2017).

18. For a study of the ways Indigenous peoples were excluded from the laws of war in the United States, see generally Helen M. Kinsella, *Settler Empire and the United States: Francis Lieber on the Laws of War*, 117 Am. Pol. Sci. Rev. 629 (2023). The situation was different in the colonization of other parts of the world. Certainly, Francisco de Vitoria strongly defended the applicability of the *jus ad bellum* and the *jus in bello* in the wars of the Spanish crown against the Indigenous peoples of its colonies. However, the application of this *corpus juris* was selective and depended on the extent to which Indigenous peoples were susceptible to religious conversion. *See* Ricardo José Cuéllar Real, Francisco de Vitoria y las cuestiones de Indias [Francisco de Vitoria and the Questions of the Indies] 188–96 (2015).

19. *See* Ann M. Mc Cartney et al., *Indigenous Peoples and Local Communities as Partners in the Sequencing of Global Eukaryotic Biodiversity*, NPJ Biodiversity, Apr. 2023, at 1 (importantly noting that globally, Indigenous peoples care for a disproportionately large percentage of remaining forestlands, protected areas, and endangered species). There are over 476 million Indigenous people living in ninety countries. That amounts to around five percent of the world's population, most of whom live in rural areas, and, as noted by the United Nations ("U.N.") Permanent Forum for Indigenous Peoples in its 2016 meeting on "Conflict, Peace, and Resolution," Indigenous peoples tend to live in rural areas where many of the world's armed conflicts unfold. *Id.*

20. *See* Organization of American States [OAS], General Assembly Res. 2888, American Declaration on the Rights of Indigenous Peoples art. XXV(1), OAS Doc. XLVI-O/16 (June 14, 2016); G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, art. 25 (Sept. 13, 2007); International Labor Organization [ILO] Convention (No. 169) Concerning Indigenous and Tribal People in Independent Countries art. 13(1), June 27, 1989, 1650 U.N.T.S. 383; *see also* Charlotte Renglet, *The Recognition of the Special Relationship of Indigenous Peoples with Their Environment Under International Law: A Potential Advantage in Climate Litigation?*, 29 Int'l J. Minority & Group Rts. 720, 723–26 (2022) (showing the evolution of human rights law on the relationship between Indigenous peoples and their land).

peoples.[21] Rather, it is that culture and the environment are entwined in ways that the LOAC has hitherto failed to acknowledge explicitly. This Article's proposal extends beyond Indigenous peoples to encompass peoples who depend on their land for both material subsistence and cultural endurance.[22]

The Article's third contribution is to deepen the interdisciplinary character of scholarship on the LOAC and broaden its geographic scope. During the U.N. General Assembly discussions of PERAC in 2019, representatives of various states emphasized the need to open the LOAC to other areas of international law, such as international environmental law, human rights law, international criminal law, and the law of the sea.[23] The gradual inclusion of environmental protections in the LOAC indeed has opened the discipline to other areas of law, but also of environmental science, and to Indigenous and Tribal systems of knowledge. LOAC instruments, such as PERAC, acknowledge that concepts like nature, ecosystems, and habitats are closely related to culture, and that nature and culture are not isolated domains—ideas that are drawn from human rights and environmental law. This Article pushes the LOAC further in this direction.

Moreover, it does so by delving into the practice of a court in the Global South.[24] LOAC scholarship tends to pay less heed to the practice of developing states. But this oversight has impoverished the field.[25] It is essential to broaden the horizons of this field of study beyond the practice and developments of powerful states. The Article provides a case study of Colombia's peace court as an example of a creative legal practice from the Global South that is enriching

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21. *See* Giulia Sajeva, *Environmentally Conditioned Human Rights: A Good Idea?*, *in* Rights of Nature: A Re-examination 85, 85 (D. P. Corrigan & M. Oksanen eds., 2021) (critiquing the approach that makes Indigenous peoples' rights contingent on their sustainable use of the environment).

22. *See* discussion *infra* note 26.

23. *See* Stavros Pantazopoulos, Report: 2019's UN General Assembly Debate on the Protection of the Environment in Relation to Armed Conflicts § 2.1 (Dec. 2, 2019), https://ceobs.org/report-2019s-un-general-assembly-debate-on-the-protection-of-the-environment-in-relation-to-armed-conflicts [https://perma.cc/RN6L-PY7N].

24. The term "Global South" is used here in its geographical sense to refer to economically disadvantaged states, once referred to as the "Third World." *See* Anne Garland Mahler, *Global South*, *in* Oxford Bibliographies: Literary and Critical Theory (2017), https://www.oxfordbibliographies.com/view/document/obo9780190221911/obo-9780190221911-0055.xml [https://perma.cc/58H8-FBY6].

25. *See, e.g.*, Kenneth Wyne Mutuma, *The Silence of Africa in the International Humanitarian Law Debate*, 2021 Afr. Y.B. Int'l Humanitarian L. 134, 134 (2021) (arguing for greater integration of Africa into debates on international humanitarian law). For arguments that the practice of developing states has been overlooked in the study of international law more generally, see Koskenniemi, *supra* note 17, at 415–20. *See generally* Chimni, *supra* note 17; Liliana Obregon, *Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America*, *in* International Law and Its Others (Anne Orford ed., 2006).

the LOAC by putting it into conversation with human rights law, environmental law, and hybrid legal doctrines born of legal pluralism.[26]

Part I provides a brief history of the approach to the environment in the laws of war since the latter part of the 19th century, arguing that in recent years, the LOAC has expanded beyond a merely anthropocentric approach: It now includes the ecocentric paradigm in its toolbox. Even this expanded repertoire, however, fails to capture the complex ways that human societies relate to the environment. Part II makes the case for the emergence of the ecocultural approach in the LOAC and juxtaposes it with the prior approaches. It also considers and dispels arguments that the ecocultural approach misconstrues or encumbers the work of humanitarian law, and that it is unfair to offer heightened protections only to certain peoples as all humans have a "special relation" to the environment. Part III argues for the further incorporation of the ecocultural approach into the LOAC and provides examples of how it could work. After discussing the world's first environmental war crimes indictments issued by Colombia's peace court, it presents ways to incorporate the ecocultural approach before, during, and after armed conflict. The Article concludes by proposing next steps in law and scholarship on war and the environment.

I. The Environment in the Law of Armed Conflict

This Part provides a brief history of the protection of the natural world in the laws of armed conflict, emphasizing changes during the latter parts of the past two centuries. The account does not pretend to be a comprehensive historical overview of the LOAC in this period, nor does it seek to fully uncover the forces driving historical change. It relies on existing scholarship supplemented by archival research to document how specific junctures have changed the identity of the laws of war and how such changes have affected its approach to the natural world.[27]

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26. Legal pluralism, briefly, involves a "multiplicity of legal orders" overlaid and intermingling across communities, regimes, and polities. Brian Z. Tamanaha, Legal Pluralism Explained 1, 4 (2021); *see also* Yuri Alexander Romaña-Rivas, *Legal Pluralism, Transitional Justice, and Ethnic Justice Systems: The Story of How Colombia is Building a Transitional Justice System Observant of Legal Pluralism*, 2 McGill GLSA Rsch. Series 24, 24 (2022); Raquel Yrigoyen Fajardo, *Hitos del reconocimiento del pluralismo jurídico y el derecho indígena en las políticas indigenistas y el constitucionalismo andino* [*Milestones of the Recognition of Legal Pluralism and Indigenous Law in Indigenous Politics and Andean Constitutionalism*], Pueblos indígenas y derechos humanos [Indigenous Peoples and Human Rights] 537, 537 (Mikel Berraondo López ed., 2006) (arguing that "legal pluralism is a theoretical perspective that allows us to recognize the coexistence of various legal systems in the same geopolitical space; a space in which, therefore, multiple conflicts of inter-legality occur").

27. Original research included review of archives of historical treaties, treaty drafts, records of the preparatory works for the treaties, and soft law instruments discussed in this Article.

During the latter part of the 19th century, the laws of war shifted from a state-centered focus to a humanitarian focus on the amelioration of human suffering. Under this anthropocentric approach, the environment was protected primarily as property, as a thing of danger, or a resource. In the 1970s, the LOAC expanded its aim to include protection of the environment as understood in the natural sciences, with an emphasis on ecosystems. But this ecocentric approach, like the anthropocentric approach, contained gaps that left certain peoples and their lands particularly vulnerable to armed conflict. Part I closes by showing the limits and blind spots of each approach.

A. The Anthropocentric Approach

Until the second half of the 19th century, the laws of war had not been conceived as a means to humanize war, ameliorate suffering, or protect human beings from its evils.[28] Rather, these laws were an Enlightenment project of statecraft that sought to improve the ways in which rulers governed, including in extreme circumstances such as war.[29] As Pablo Kalmanovitz writes, scholars at the time believed there was no inherent tension between humanitarian values and the conception of war as a perfectly legitimate means of dealing with certain political conflicts.[30] The laws of war were a series of enlightened practices in the art of statecraft that sought to rationalize what was considered the otherwise necessary, if undesirable, circumstance of war, by prohibiting its pursuit for certain ends and by forbidding the use of certain means of conducting it. There was dignity in war.[31]

This changed as the laws of war were written into treaty law during the late 19th century. They shifted from being a project of statecraft to a humanistic endeavor that sought to minimize suffering during conflict.[32] Through codification, norm entrepreneurs gradually redefined the identity of this body of laws, imbuing it with two competing objectives: the need to prevent human

28. Pablo Kalmanovitz, The Laws of War in International Thought 127–28 (2020).

29. *Id.*

30. *Id.*

31. Francis Lieber, Manual of Political Ethics 78 (Ulan Press 2012) (1839).

32. Kalmanovitz, *supra* note 28, at 142–50. At the same time, all these preambles adhered to the notion that war was a necessary evil. The Preface to the Oxford Manual on The Laws of War on Land of 1880, drafted by Gustave Moynier of the Institute of International Law with the intention of having member states adopt it into their national legislation, even glorifies war in saying: "War holds a great place in history, and it is not to be supposed that men will soon give it up—in spite of the protests which it arouses and the horror which it inspires—because it appears to be the only possible issue of disputes which threaten the existence of States, their liberty, their vital interests. But the gradual improvement in customs should be reflected in the method of conducting war." Oxford Inst. of Int'l Law, The Laws of War on Land, preface (1880), https://ihl-databases.icrc.org/en/ihl-treaties/oxford-manual-1880/preface [https://perma.cc/C7PS-2F6Q].

suffering and the desire to legitimize military actions.[33] Although some of the initial treaties and instruments of this period did not appeal explicitly to "humanity," humanitarian considerations gradually became the centerpiece. The preamble of the Hague Convention of 1899, for example, clearly states that its purpose is to revise "the laws and general customs of war" in order to serve "the interests of humanity and the ever-increasing requirements of civilization."[34] Of the first treaties, draft treaties, and non-legally binding international instruments written during the late 19th and the early 20th centuries, many focused on the protection of different categories of people in different spatial contexts.[35] The self-described purpose of these regulations was to minimize the

33. Kalmanovitz, *supra* note 28, at 142–50. For a useful conceptualization of the actors promoting these changes as norm entrepreneurs, see generally Giovanni Mantilla, Law-making Under Pressure: International Humanitarian Law and Internal Armed Conflict (2020).

34. Hague Convention (II) with Respect to the Laws and Customs of War on Land pmbl., July 29, 1899, 32 Stat. 1803, T.S. No. 403 [hereinafter Hague Convention II]. Other examples include the Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, which states "[t]hat the employment of such arms would, therefore, be contrary to the laws of humanity." Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Nov. 29/Dec. 11, 1868, 138 Consol. T.S. 297. The Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War states that the parties are "[a]ctuated, accordingly, by the desire to serve *the interests of humanity* and to diminish the severity and disasters of war." Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War pmbl., Oct. 18, 1907, 205 Consol. T. S. 345 [hereinafter Hague Convention IX] (emphasis added).

35. Certain treaties aimed at protecting the sick and the wounded in land; others protected the sick and wounded during maritime warfare. Certain draft conventions sought to protect civilians and prisoners of war through the establishment of safe areas where military operations were prohibited; others focused on the victims themselves, creating, for example, specific protections for prisoners of war. Finally, another group of treaties during that period regulated the use of various means of warfare. *See* Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Aug. 22, 1864, 129 Consol. T.S. 361 [hereinafter 1864 Convention for Amelioration of the Wounded]; Additional Articles Relating to the Condition of the Wounded in War, Oct. 20, 1868, 138 Consol. T.S. 189; The Laws of War on Land, *supra* note 32; Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, July 6, 1906, *available at International Humanitarian Law Databases*, ICRC, https://ihl-databases.icrc.org/en/ihl-treaties/gc-1906 [https://perma.cc/WS72-U6HU]; Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, July 27, 1929, T.S. No. 847; Convention III for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of Aug. 22, 1864, July 29, 1899, 187 Consol. T.S. 443; Convention X for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, Oct. 18, 1907, 36 Stat. 2371, 205 Consol. T.S. 359; Convention XII Relative to the Creation of an International Prize Court, Oct. 18, 1907, *available at International Humanitarian Law Databases*, ICRC, https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-xii-1907 [https://perma.cc/LR42-TX94]; Final Protocol to the Naval Conference of London, Feb. 26, 1909, 208 Consol. T.S. 338; First Draft Convention Adopted in Monaco (Sanitary Cities and Localities), July 27, 1934, *available at International Humanitarian Law Databases*, ICRC, https://ihl-databases.icrc.org/en/ihl-treaties/monaco-draft-conv-1934 [https://perma.cc/53UP-DDDU]; Draft International Convention on the Condition and Protection of Civilians of Enemy Nationality Who

loss of human life whenever it was unnecessary for the attainment of military goals.[36] This humanitarian stance was maintained half a century later, when the laws of armed conflict were once again adapted, codified, and systematized in the four Geneva Conventions of 1949. Each bears the name of the category of victims that it seeks to protect.[37] Indeed, as the preambles of more recent treaties suggest, humanitarianism continues to be a core precept of the LOAC's self-description to this day.[38]

In humanizing war, the 19th century treaties and the Geneva Conventions of 1949 extended their protection of civilians beyond the human body to three additional categories: civilian property;[39] objects the destruction of which would cause severe civilian losses;[40] and objects with a special cultural, religious, scientific, or artistic value.[41] Each category can include aspects of the natural world, that is, those things that are neither humans nor made by humans. Nonetheless, this Article refers to this approach as anthropocentric because the protection it provides to the non-human world turns on its having an exchange value as property, or use value as resources necessary for human survival.[42]

Natural objects, like a valley or a mountain, for example, were protected by the LOAC only to the extent that they could be recast as someone's land by virtue

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Are on Territory Belonging to or Occupied by a Belligerent, 1934, *available at International Humanitarian Law Databases*, ICRC, https://ihl-databases.icrc.org/en/ihl-treaties/tokyo-draft-conv-1934?activeTab=historical [https://perma.cc/E8H2-PEHR]; ICRC, Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War, 1956, *available at International Humanitarian Law Databases*, ICRC,https://ihl-databases.icrc.org/en/ihl-treaties/icrc-draft-rules-1956?activeTab=historical [https://perma.cc/8W3G-SN6N]; Convention Relative to the Treatment of Prisoners of War, July 27, 1929, 75 U.N.T.S. 75.

36. *See, e.g.*, 1864 Convention for Amelioration of the Wounded, *supra* note 35, art. 1.

37. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter Geneva Convention I for Wounded and Sick]; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85 [hereinafter Geneva Convention II for Wounded and Sick].

38. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction pmbl., Apr. 10, 1972, 1015 U.N.T.S. 163 (grounding the treaty "for the sake of all mankind"); *see also* Arms Trade Treaty pmbl., Apr. 2, 2013, 3013 U.N.T.S. 269 (highlighting the protection of "civilians, particularly women and children").

39. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War arts. 33, 52, 53, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV].

40. *See id.* arts. 27, 33, 53; Protocol I, *supra* note 6, art. 56.

41. Geneva Convention IV, *supra* note 39, arts. 27, 56.

42. *See generally* Natalia Riabykh et al., *Challenges of Anthropocentrism in Wartime: A Legal and Normative Perspective*, 4 Salud, Ciencia y Tecnología 1503, 1503 (2025) (arguing that the laws of war have been too anthropocentric, and should instead become human-centric, by which she means more focused on the harms suffered by the human person, including through environmental destruction).

of a legal fiction.[43] Those parts of nature that cannot, or otherwise have not been appropriated, could not be protected as property by the laws of war during this era. This meant that a significant part of the natural environment was not protected from the consequences of war. Then, as now, the protection of property was limited by the principle of proportionality, which means that an attack is legal if the military advantage obtained outweighs the damage caused.[44]

Apart from property, the protection of certain objects from military attacks was based on whether the objects were things of danger.[45] Objects may entail a risk for human life in case of attack, either because they contain dangerous forces or because they have been designated as safe havens for civilians or wounded and sick combatants. This protection was directed toward different forms of infrastructure, such as nuclear plants and hydroelectric dams,[46] as well as hospitals,[47] medical vehicles,[48] schools, prisoner camps,[49] and places of worship.[50] Infrastructure is protected inasmuch as it helps to prevent indiscriminate or unnecessary death and human suffering.[51] For similar reasons, some treaties protect certain objects such as water sources, fields, and crops, whether or not they are made by humans.[52] The reason for this protection is that their destruction or damage can produce starvation and spread disease,[53] but the

43. Here, the protection awarded to property is anthropocentric in the sense that it depends on whether the object is a commodity or susceptible of appropriation, that is, an object that despite not being a commodity, can be turned into one through a legal fiction, what Polanyi calls "fictitious commodities." Karl Polanyi, The Great Transformation: The Political and Economic Origins of Our Time 75–76 (2d. ed. 2001).

44. *See* Geneva Convention IV, *supra* note 39, art. 53; Protocol I, *supra* note 6, art. 35(1)–(2).

45. Geneva Convention IV, *supra* note 39, art. 53.

46. *Id.* art. 56(1).

47. *See id.* arts. 14, 18.

48. *See id.* arts. 18, 21–23; Protocol I, *supra* note 6, arts. 12, 21–30; Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts art. 11, June 9, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II].

49. *See* Geneva Convention (III) Relative to the Treatment of Prisoners of War art. 23, Aug. 12, 1949, 75 U.N.T.S. 135 [hereinafter Geneva Convention III].

50. *See* Hague Convention (IV) Respecting the Laws and Customs of War on Land, art. 27, Oct. 18, 1907, 1 Bevans 631; Protocol I, *supra* note 6, arts. 53, 56; Protocol II, *supra* note 48, art. 15. However, similar rules were already established in the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War of 1956. *See* IRCR, *supra* note 35.

51. Article 56 of Protocol I and Article 15 of Protocol II protect works and installations containing dangerous forces. For an explanation of these articles, see Claude Pilloud et al., Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 Nos. 1444-62, Nos. 1444-62, 2124-41 (1987), https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-15/commentary/1987 [https://perma.cc/U2L7-SFZ8] [hereinafter ICRC Commentary of 1987].

52. Protocol I, *supra* note 6, art. 54(2).

53. *See* ICRC Commentary of 1987, *supra* note 51, Nos. 4817-21.

effects on the natural objects themselves, or the ecosystems of which they are a part, do not play a role in the rationale behind their protection.

LOAC treaties of this era also sought to protect the culture of human beings from the effects of war. This form of protection is not based exclusively on preserving human life and health. Rather, it is symbolic: It is based on the meaning that these objects have for people.[54] Cultural property treaties of this era, however, did not seek to protect all human culture, but only what anthropologists call *material* culture, or objects such as artworks that are made by humans.[55] Early to mid-20th century LOAC treaties on cultural heritage erected a clear line between human culture and nature, failing to acknowledge that the environment has cultural meaning.[56] Moreover, the underlying notion of culture was universalist, as the protection is limited to objects that are part of the "cultural heritage of every people."[57]

The 1949 Geneva Conventions say nothing about the protection of nature or the environment for its own sake or for the cultural meaning it holds.[58] Indeed, the very words "nature" and "the environment" in reference to the natural world are entirely absent. Nature seems to dissolve into the abstract classification of the theaters of war, useful simply as a way to classify the type of space in which humans conduct armed conflicts and are awarded protection (such as land, sea, or air).[59] Its destruction is thus easily justified as a military objective. The General Counsel of the U.S. Department of Defense defended the use of Agent Orange to destroy forests in the Vietnam War (1961–1971) by claiming that the prohibition of certain poisonous weapons hinged on the

54. *See* Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention art. 1, May 14, 1954, 249 U.N.T.S. 215 [hereinafter Convention for the Protection of Cultural Property] (defining cultural property in relation to human development and importance).

55. *Id.*

56. Hague Convention II protects "edifices" and "buildings" devoted to religion, art, science, charity, and hospitals. Hague Convention II, *supra* note 34, art. 27; *see also* Hague Convention IX, *supra* note 34, art. 5 (protecting "sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected"). *But see* Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact) pmbl., April 15, 1935, 167 L.N.T.S. 289 (stating "in order thereby to preserve in any time of danger all nationally and privately owned immovable monuments which form the cultural treasure of peoples").

57. Convention for the Protection of Cultural Property, *supra* note 54, art. 1 (defining cultural property as "property of great importance to the cultural heritage of every people" and continuing the definition with a list exclusively containing human-made objects).

58. *See* Geneva Convention I for Wounded and Sick, *supra* note 37; Geneva Convention II for Wounded and Sick, *supra* note 37; Geneva Convention III, *supra* note 49; Geneva Convention IV, *supra* note 39.

59. *See* Geneva Convention I for Wounded and Sick, *supra* note 37; Geneva Convention II for Wounded and Sick, *supra* note 37. While terms like sea and field are used in the title of these Conventions, the terms classify the theater of where this Convention applies and not the nature itself.

direct, immediate effects on human health, regardless of their effects over the environment or the sustainability of different forms of life in a territory that had been poisoned in this way.[60]

The anthropocentric approach, sketched here in the broadest terms, has been the traditional rule since the end of the 19th century. Of the three paradigms described here, it is still inscribed the most deeply in the LOAC.

1. The Environment in the Israel-Gaza War

The ICC's response to environmental harm in Gaza exemplifies the anthropocentric approach. The war has transformed the Gazan landscape. Bombs and bulldozers have destroyed olive tree groves, strawberry fields, and other agricultural farms, significantly reducing Gaza's agricultural capacity.[61] Attacks have contaminated water sources, facilitating the emergence of illnesses like polio, respiratory diseases, and diarrhea.[62] Finally, the attacks have damaged ecosystems and contributed to rodent and insect infestations.[63] Despite the environmental nature of these harms, the arrest warrants issued by the ICC in November 2024 do not address environmental harm directly.[64] Instead, they adopt a clear anthropocentric approach to harm, accusing Israeli leaders of the crime of starvation of civilians as a method of warfare and starvation as

60. The official position of the U.S. Department of Defense has been that the 1925 Protocol does not prohibit the use of herbicides that damage plants and crops. *See* Letter from J. Fred Buzhardt to Senator J. William Fullbright (Apr. 5, 1971), in Richard Falk, *Environmental Warfare and Ecocide—Facts, Appraisal, and Proposals*, 4 Bull. Peace Propos. 80, 86 (1973). *See generally* Jeanne Mager Stellman et al., *The Extent and Patterns of Usage of Agent Orange and Other Herbicides in Vietnam*, 422 Nature 681 (2003).

61. Noor Bardi, *Ecocide in Gaza: Israel's Genocide in Gaza Will Create an Unprecedented Environmental Health Crisis*, UC Global Health Institute (June 4, 2024), https://ucghi.universityofcalifornia.edu/news/ecocide-gaza-israels-genocide-gaza-will-create-unprecedented-environmental-health-crisis [https://perma.cc/R79P-DX8M].

62. Kaamil Ahmed, Damien Gayle & Aseel Mousa, *'Ecocide in Gaza': Does Scale of Environmental Destruction Amount to a War Crime?*, The Guardian (Mar. 29, 2024), https://www.theguardian.com/environment/2024/mar/29/gaza-israel-palestinian-war-ecocide-environmental-destruction-pollution-rome-statute-war-crimes-aoe [https://perma.cc/69VQ-MFJ6]. *See generally* Yordan Gunawan et al., *International Environmental Law Violations Conflict Analysis: Israel v. Gaza in 2024*, 622 E3S Web Conf., no. 1, 2025 (discussing harms such as water contamination and destruction of infrastructure).

63. Al Mezan Center for Human Rights, Ecocide: Israel's Deliberate and Systematic Environmental Destruction in Gaza 25–26 (2024), https://reliefweb.int/report/occupied-palestinian-territory/ecocide-israels-deliberate-and-systematic-environmental-destruction-gaza [https://perma.cc/3TUJ-69J7].

64. Press Release, ICC, Situation in the State of Palestine: ICC Pre-Trial Chamber I Rejects the State of Israel's Challenges to Jurisdiction and Issues Warrants of Arrest for Benjamin Netanyahu and Yoav Gallant (Nov. 21, 2014), https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges [https://perma.cc/TU4J-Y57Q] [hereinafter ICC Warrants].

a crime against humanity according to Article 7(1)(a) and (b).[65] To provide a basis for these accusations, the Appeals Chamber notes that "there are reasonable grounds to believe that both individuals [Israeli Prime Minister Benjamin Netanyahu and Former Defense Minister Yoav Gallant] intentionally and knowingly deprived the civilian population in Gaza of objects indispensable to their survival, including food, water, and medicine and medical supplies, as well as fuel and electricity, from at least 8 October 2023 to 20 May 2024."[66]

The ICC arrest warrants exemplify the anthropocentric approach to the laws of war for two reasons. First, the investigation focuses on the harm caused by the Israeli government to Palestinians by depriving them from both natural and human-made objects necessary for human survival.[67] But it does not consider the harm caused to their natural environment by bombs, missiles, and drones.[68] It centers on how Israel blocked Gaza of external aid but fails to mention the severe, widespread, and long-lasting effects of military attacks on farms and other food and water sources, let alone natural ecosystems.[69] Second, even in considering the deprivation of food and water, as far as it became public, the arrest warrant does not regard the environmental harm that initially caused these scarcities, such as the destruction of farms and contamination of rivers. Rather, it focuses on the criminal nature of blocking externally provided food and aid. Eventual reparations for such a crime would therefore focus on the deaths caused by this conduct but would not include the need to repair the damaged ecosystems or reestablish Palestinians' relationship to their lands.

B. The Ecocentric Approach

A different approach emerged in the 1970s. From a model that constantly sought to balance military needs with the protection of human life, a new generation of instruments turned to depicting nature as something to be protected from the consequences of war. The LOAC continued to place human life and wellbeing at the center of its objectives. However, it also began to protect the natural world beyond its immediate ties to human society as property or resource, given a more complex understanding of ecological relations, and a greater appreciation of the vulnerability of natural systems. We call this the *ecocentric approach*. This approach did not displace humans as an important focus of protection but rather incorporated an understanding that human relations

65. Rome Statute of the International Criminal Court arts. 8(2)(b)(xxv), 7(1)(a)–(b), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute].

66. ICC Warrants, *supra* note 64.

67. *Id.*

68. *Id.*

69. Rome Statute, *supra* note 65, art. 8 (1)(b)(iv) (the war crime of intentionally launching an attack that will cause "widespread, long-term and severe damage to the natural environment").

with the non-human world extend beyond its use as property or resource, and these relations also deserve protection.

During the 1972 U.N. Stockholm Conference on the Human Environment, Swedish Prime Minister Olof Palme used the term "ecocide" to refer to the use of napalm, toxic herbicides, and bulldozers during the Vietnam War.[70] A year later, in May 1973, both New Zealand and Australia filed claims against France for its nuclear tests in the Pacific.[71] A growing consciousness about the destructive power of nuclear armament led countries and civil society around the globe to raise concerns about the need to prevent nuclear weapons proliferation[72] and ban nuclear tests completely.[73] That same year, Professor Richard Falk drafted a proposal for an international convention on the crime of ecocide as an appendix to an influential article.[74] His proposal, which foregrounded the "danger of ecological collapse,"[75] was considered but discarded by the U.N. Sub-Commission on Prevention of Discrimination when it issued a report on the Genocide Convention in 1978.[76]

The ecocentric approach was nonetheless inscribed into positive law with the inclusion of two provisions in the Protocol Additional to the Geneva Conventions of 12 August 1949 ("Protocol I"), adopted in 1977.[77] Article 35(3) contains a prohibition on the use of methods and means of warfare that intend,

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70. Gladwin Hill, *U.S., at U.N. Parley on Environment, Rebukes Sweden for "Politicizing" Talks*, N.Y. Times, Jun. 8, 1972, at 13.

71. *See generally* Nuclear Tests (Austl. v. Fra.), Judgment, 1974 I.C.J. 253 (Dec. 20); Nuclear Tests (N.Z. v. Fra.), Judgment, 1974 I.C.J. 45 (Dec. 20).

72. The Treaty on the Non-Proliferation of Nuclear Weapons, ratified by 191 countries, was signed on July 1, 1968, and entered into force on March 5, 1970. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 729 U.N.T.S. 161; *see also Treaty on the Non-Proliferation of Nuclear Weapons,* U.N. Treaty Collection, https://treaties.un.org/pages/showDetails.aspx?objid=08000002801d56c5 [https://perma.cc/7M89-FHER] (listing ratifying countries).

73. A partial ban on nuclear tests was achieved in 1963, through the ratification of the Partial Nuclear Test Ban Treaty. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water, Aug. 5, 1963, 480 U.N.T.S. 43. Although a complete nuclear tests ban was not achieved, the United States and the Union of Soviet Socialist Republics did sign an underground nuclear test ban in 1974, known as the Threshold Ban Treaty. Treaty on the Limitation of Underground Nuclear Weapon Tests, U.S.S.R.-U.S., July 3, 1974, 1714 U.N.T.S. 29637.

74. Richard A. Falk, *Environmental Warfare and Ecocide—Facts, Appraisal, and Proposals*, 4 Bull. Peace Proposals 80, 91 (1973).

75. *Id.*

76. Nicodème Ruhashyankiko (Special Rapporteur on Prevention and Punishment of the Crime of Genocide), *Study on the Question of the Prevention and Punishment of the Crime of Genocide*, ¶ 467, U.N. Doc. E/CN.4/Sub.2/416 (July 4, 1978) (concluding that ecocide bears too remote a connection to genocide for it to be included in the Genocide Convention).

77. Protocol I, *supra* note 6, arts. 35(3), 55. These changes were first suggested in 1974. *See* U.N. Secretary-General, *Rep. on the First Session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts*, U.N. Doc. A/9669 (Sept. 12, 1974); *see also* Protocol II, *supra* note 48, pmbl. (highlighting "respect for the human person in cases of armed conflict not of an international character").

or might result in, "widespread, long-term, and severe damages to the natural environment."[78] In turn, Article 55 contains a duty to protect the natural environment from "widespread, long-term, and severe damages *and* thereby to prejudice the health or survival of the population."[79] In other words, only Article 55 conditions the prohibition on human harm. The difference has led to debates about whether the concern in Protocol I is protection of "the natural environment itself" as an independent value, or only in its service to humanity.[80]

However, that is not the distinction between the anthropocentric and ecocentric approaches that is being drawn here.[81] The important feature of the ecocentric approach, which both articles share, is the protection of the nonhuman world as an ecosystem. Even though the concept of an "ecosystem" was not included in the final version of Protocol I, it appeared in several drafts and proposals, and the ICRC notes that "[t]he concept of the ecosystem brings us to the essence of Article 35 (and Art. 55) . . . as opposed to the concept of the human environment which forms the subject matter previously considered."[82] Both articles contain a recognition that humans form part of complex ecosystems that must be maintained. This is a claim supported by science and made more evident and pressing by the growing public concern over environmental degradation in the 1970s.[83] Protocol I is thus ecocentric regardless of whether it is understood to protect the environment as valuable in itself or due to its complex ecosystemic connection to humans.[84]

Like Article 55, the Environmental Modification Convention ("ENMOD"), adopted in 1976, describes its motive as "saving mankind from the danger of

78. Protocol I, *supra* note 6, art. 35(3).

79. *Id.* art. 55 (emphasis added).

80. *See* ICRC Commentary of 1987, *supra* note 51, no. 25 (noting that the preamble to the Protocol is very much about "protecting the victims of armed conflicts"). At the same time, Article 55 also prohibits attack against the environment as a means of reprisal, without requiring a nexus of human harm. Protocol I, *supra* note 6, art. 55(2).

81. *C.f.* Britta Sjöstedt & Karen Hulme, *Re-evaluating International Humanitarian Law in A Triple Planetary Crisis: New Challenges, New Tools,* 105 Int'l. Rev. Red Cross 1238, 1238 (2023) (emphasizing the emergence of views that attribute intrinsic value to the natural world).

82. ICRC Commentary of 1987, *supra* note 51, no. 1444.

83. *See id.* nos. 1444-62, 2124-41 (noting the public concern with the pollution and environmental degradation as a catalyst for greater protection of the environment in the LOAC).

84. Moreover, the ICRC commentaries to the article add that "[e]ven though the formula referring to perturbations of the stability of the ecosystem was rejected, 'as an operative part of the standard', (111) the term 'natural environment' in the Protocol does refer to this system of inextricable interrelations between living organisms and their inanimate environment. (112) This is a kind of permanent or transient equilibrium depending on the situation, though always relatively fragile, of forces which keep each other in balance and condition the life of biological groups." *Id.* no. 1451.

using new means of warfare."[85] Its aim is not to limit environmental modification as such, but only as a military or hostile act.[86] It is motivated by a new sense of the fragility of the environment in the face of human intervention which was not part of the anthropocentric approach.[87] ENMOD conveys an understanding that it is not just property and dangerous objects, or objects necessary for human subsistence, but also "natural processes—the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space" that matter to human life.[88] It renders modification of each of these as off-limits.

Instruments that protect the natural world without specifying a connection to human harm have proliferated as well. For example, the Protocol on Incendiary Weapons prohibits the use of incendiary weapons against forests or other kinds of plant cover, except when used as cover by combatants or used as military objectives, without alluding to direct human suffering.[89] In turn, the Statute of the ICC of 1998 ("Rome Statute") includes knowingly launching an attack that causes "widespread, long-term, and severe damages to the natural environment" as a war crime without making any reference to the consequences over the life and health of humans.[90]

More recently, the United Nations has advanced several non-binding international instruments, establishing a system of norms focused on the protection of the environment during armed conflicts. After the 1990–1991 Gulf War, the U.N. General Assembly requested a report on the ICRC's activities concerning the protection of the environment during armed conflicts.[91] The ICRC subsequently elaborated its 1994 Guidelines for Military Manual and Instructions on the Protection of the Environment in Times of Armed Conflict.[92] Twenty six years later, it issued a new version at the behest of the U.N. Environmental Assembly.[93] In 2022, the U.N. General Assembly took "not[e]" of the ILC's PERAC Principles.[94] The two instruments contain innovative proposals, and some of their provisions

85. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques pmbl., May 18, 1977, 31 U.S.T. 333, 1108 U.N.T.S. 151 [hereinafter ENMOD].

86. *Id.*

87. Joanna Jarose, *A Sleeping Giant? The ENMOD Convention as a Limit on Intentional Environmental Harm in Armed Conflict and Beyond*, 118 Am. J. Int'l L. 468, 469–70 (2024).

88. ENMOD, *supra* note 85, art. II(1).

89. Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) to the Convention on Certain Conventional Weapons art. 2(4), Oct. 10, 1980, 19 I.L.M. 1523.

90. Rome Statute, *supra* note 65, art. 8(2)(b)(iv).

91. G.A. Res. 47/37, ¶ 4 (Feb. 9, 1993).

92. ICRC, *Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict* (1994), *in* U.N. Secretary-General, *Report on United Nations Decade of International Law*, U.N. Doc. A/49/323, annex (Aug. 19, 1994).

93. ICRC, *Guidelines*, *supra* note 11.

94. G.A. Res. 77/104 pmbl. (Dec. 7, 2022).

are better understood as examples of the ecocultural approach, as shall be argued in Part II. However, many of their provisions also reflect the ecocentric approach. Significantly, for example, both instruments classify "the environment" in its entirety—not just in its relation to humans as property or territory—as a civilian object protected from attacks.[95] The Guidelines prohibit using environmental destruction as a weapon or as reprisal and extend the prohibitions of certain means and methods of warfare to include those that damage the environment, without requiring a connection to human harm.[96]

Taken together, these instruments reveal a profound change in the way that the LOAC approaches the natural world. At the basis of the anthropocentric approach lies an understanding of the relation between humans and the natural world according to which nature provides the resources for material sustenance of humans, without humans having to assume any duty toward the natural world. By contrast, the ecocentric approach reflects a growing understanding of the fragility of the environment, and of the complex ways in which humans not only benefit from but also form part of complex ecosystems over time. The point is that humans are part of ecosystems and therefore are in a mutualist, long-term, material relationship with even those parts of the natural world that are not considered property or cannot be directly used as a resource for survival.

As a result, protection provided under the ecocentric approach extends to areas not covered in the anthropocentric approach, including the deep sea, the lithosphere, and the atmosphere. Another difference is that the ecocentric approach relies on a different type of expert knowledge. Whereas the anthropocentric approach relies on human health sciences and legal knowledge about property rules, the ecocentric approach draws on the environmental sciences, biology, and earth, water, and oceanic sciences, as it requires knowledge of ecosystems and other natural systems both to prevent harm and to assess harm when it takes place. Additionally, this approach suggests that remediation of affected ecosystems would be an appropriate form of reparation alongside monetary compensation.

1. The Environment in the War in Ukraine

The recent efforts made by the Ukrainian government to investigate possible environmental crimes committed by Russia during the war illustrate the ecocentric approach.[97] Ukraine's claims are based on the consequences of various alleged attacks by the Russian armed forces, the extensive mining of a

95. However, this approach is still subject to the proportionality principle. ICRC, *Guidelines*, *supra* note 11, r. 18; PERAC Principles, *supra* note 8, princs. 13(3), 14.

96. ICRC, *Guidelines*, *supra* note 11, rs. 2, 19–25.

97. As of September 27, 2024, Ukraine's Office of the Prosecutor General was investigating 221 criminal cases against Russia, fourteen of which were for ecocide. *See Ukraine Probes 14 Cases of Ecocide amid Russian Aggression*, Media Center Ukraine (Sep. 27, 2024), https://mediacenter.

significant percentage of Ukraine's territory, the shelling in its forests, and the damages to agricultural land.[98] But one major event, which Russia denies is attributable to it, accounts for most of the five hundred instances of environmental damages being investigated: the destruction of the Kakhovka dam in southeastern Ukraine.[99]

On June 6, 2023, a bomb broke apart the Kakhovka dam on the Dnipro river, causing damages to thousands of people, killing at least 52 people, and displacing over 4,000.[100] But the tearing of the dam has been analyzed mostly from what Ukrainian authorities believe are long-lasting and extensive damages to the environment.[101] Oil spills from refineries, the release of harmful chemicals from factories, and waste materials have polluted water sources, the soil, wildlife, and vegetation, including vast areas of a national park, European Union ("EU") environmentally protected areas, agricultural land, the estuary ecosystem near the confluence of the Dnipro River and the Black Sea, and the marine ecosystem in the Ukrainian southern coast of the Black Sea.[102] Ukrainian Minister of Environmental Protection and Natural Resources Ruslan Strilets characterized this act as an ecocide, adding that the environment should no longer be "a silent victim of war" and that this was the first conflict in which public attention was focused on nature.[103] In his addresses, Strilets stated that environmental damages might be "the most important" effects of war, and he focused on the impact toward the future and the loss of endemic species, stating that Ukraine has "almost 30% of all [the] biodiversity of Europe."[104] He estimated the cost of environmental damages to be $60.5 billion.[105]

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org.ua/ukraine-probes-14-cases-of-ecocide-amid-russian-aggression [https://perma.cc/T9PK-H9DM].

98. Emma Dodd & Caitlin Welsh, *Demining Ukraine's Farmland: Progress, Adaptation, and Needs*, Ctr. for Strategic & Int'l Stud. (Dec. 5, 2024), https://www.csis.org/analysis/demining-ukraines-farmland-progress-adaptation-and-needs [https://perma.cc/6KXK-BBW9].

99. Tim Schauenberg, *Could Russia Be Prosecuted for Environmental War Crimes?*, Deutsche Welle (Aug. 20, 2024), https://www.dw.com/en/is-russias-war-in-ukraine-an-environmental-war-crime/a-69859017 [https://perma.cc/6DU9-Q7C3].

100. U.N. Environment Programme, Rep. on Rapid Environmental Assessment of Kakhovka Dam Breach, at 6 (Oct. 25, 2023), https://wedocs.unep.org/20.500.11822/43696 [https://perma.cc/6CP8-RQWX].

101. *See* Schauenberg, *supra* note 99.

102. *See* Richard Stone, *Ukrainian Scientists Tally the Grave Environmental Consequences of the Kakhovka Dam Disaster*, Science, Jan. 2025, at 18–19.

103. *See generally* Janine Natalya Clark, *Environmental Harms and Entangled Lifeworlds in the Russia-Ukraine War: A Relational Reframing of Transitional Justice*, J. Intervention & Statebuilding, at 1 (forthcoming 2025) (describing the environmental harm in Ukraine, and proposing a move toward a transitional justice model that is able to encompass relational harm that also repairs environmental damage).

104. *See* Schauenberg, *supra* note 99.

105. Kyiv Independent, *Ecology Minister on Russia's Crimes Against Environment*, at 2:13 (YouTube, May 1, 2024), https://youtu.be/ujBK2xe_z40?si=0MaANg Elvh6jIkn7 [https://perma.cc/E92D-AVEZ]. Other sources speak of $14 billion, at least $6.4 billion of which correspond

C. Limits of the Ecocentric and Anthropocentric Approaches

Even as the ecocentric approach extends protection to aspects of the natural world that were previously excluded, its coverage contains important gaps. In significant ways, both approaches fail to consider the relationship between culture and the environment. As a result, the two approaches do not adequately protect the territories of Indigenous and Tribal peoples, and others whose material subsistence and cultural endurance as a people is closely connected to a particular place.

One of the more influential insights to emerge from environmental studies is the need to pay greater attention to how culture has historically shaped human interactions with ecosystems, from prehistoric migrations and early agricultural societies to the present day.[106] Culture plays a critical role in shaping consumption patterns, lifestyles, and our resilience and adaptability to environmental change, just as the environment shapes our historical trajectory and cultures. The idea that culture both shapes and is shaped by our interactions with ecosystems has led scholars and practitioners to ask an ontological question: What exactly are we protecting when we protect the environment?

The point is not only that the interaction between humans and nature is culturally embedded. It is that the very categories of human and nature vary among peoples. Even the most fundamental categories through which we make sense of, and construct our world are not universal. Anthropologists who use the approach of relational ontology urge us to view the worldviews of Indigenous peoples not as mere beliefs but as a different understanding of the nature of beings—a different ontology—such that ethnography becomes a more balanced form of philosophical inquiry.[107] That is why, for anthropologist Marisol de la

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to ecosystemic services. Office of the U.N. Resident Coordinator, United Nations in Ukraine, *The Post Disaster Needs Assessment Report of the Kakhovka Dam Disaster* (Oct. 17, 2023), https://ukraine.un.org/en/249742-kakhovka-dam-destruction-inflicted-us14-billion-damage-and-loss-ukraine-government-ukraine [https://perma.cc/FEN5-Z2V9].

106. *See generally* Timothy K. Earle, How Chiefs Come to Power: The Political Economy in Prehistory (1997); Mark Williams et al., *The Anthropocene Biosphere*, 2 Anthropocene Review 196 (2015); William Cronon, Changes in the Land: Indians, Colonists, and the Ecology of New England (1983); Alfred W. Crosby, Ecological Imperialism: The Biological Expansion of Europe 900–1900 (1986); Richard Grove, Green Imperialism (1994); Questioning Collapse: Human Resilience, Ecological Vulnerability, and the Aftermath of Empire (Patricia A. McAnany & Norman Yoffee eds., 2009).

107. Eduardo Viveiros de Castro, Cannibal Metaphysics: For a Post-Structural Anthropology 12 (Peter Skafish ed., 2014); Arturo Escobar et al., Relationality: An Emergent Politics of Life Beyond the Human 94 (2024). *See generally* Marisol de la Cadena, Earth Beings: Ecologies of Practice Across Andean Worlds (Robert J. Foster & Daniel R. Reichman eds., 2015); Kohn, *supra* note 15; Daniel Ruiz Serna, When Forests Run Amok: War and Its Afterlives in Indigenous and Afro-Colombian Territories (2023). Beyond Latin America, Bruno Latour and Philippe Descola are important

Cadena, struggles over oil and mining projects are not only conflicts over land-use.[108] They are also conflicts over different ontologies.[109] For the people whose land is at stake, the territory "constitute[s] a space which is, at the same time, geographical and social, symbolic and religious, of crucial importance for their cultural self-identification, their mental health, their social self-perception."[110] The conflict, therefore, is also a conflict over the meaning of the territory, and of the relationships that are being disrupted.[111] For de la Cadena, these conflicts are sites where two different ontologies meet.

It is on this point that anthropocentric and ecocentric approaches fall short. Even without realizing it, they rely on universalistic assumptions rooted in Western ontology and the natural sciences about how humans interact with,

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theorists in this stream. *See, e.g.*, Philippe Descola, Radcliffe-Brown Lecture in Social Anthropology at the British Academy: Beyond Nature and Culture (Mar. 31, 2005).

108. Marisol de la Cadena, *Runa: Human But Not Only,* 4 J. Ethnographic Theory 253, 258 (2014) (explaining how conflicts over mining are not only about land-use but about different ontologies).

109. Anthropologists of the so-called "ontological turn," including Viveiro de Castro and de la Cadena (even if she has quibbles with the designation), argue that these disputes are not about "culture" but rather over actual different worlds. *See generally* Eduardo Viveiros de Castro, The Relative Native: Essays on Indigenous Conceptual Worlds (2015); Marisol de la Cadena, *Indigenous Cosmopolitics in the Andes: Conceptual Reflections Beyond "Politics,"* 25 Cultural Anthropology 334 (2010). This Article stays with the multicultural concept of "culture," but we nonetheless draw on the insights of these anthropologists as they have done so much to unsettle Western categories so as to allow a deeper engagement with Andean, Amazonian, and other ontologies.

110. Mayagna (Sumo) Awas Tingni Commun. v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 5 (Aug. 31, 2001) (joint separate opinion by A. Cançado Trindade, M. Pacheco Gómez & A. Abreu Burelli, JJ.).

111. Indigenous peoples in Colombia have struggled to re-signify the concept of territory so that it incorporates their ontologies, or cosmovisions. It is an important site of contestation. *See, e.g.*, Belkis Izquierdo Torres & Lieselotte Viaene, *Una im-posibilidad legal: El Territorio—ser viviente, víctima del conflicto armado colombiano: Algunas reflexiones desde un diálogo colaborativo interdisciplinar* [*A Legal Impossibility: The Territory—a Living Being, Victim of the Colombian Armed Conflict: Some Reflections from an Interdisciplinary Collaborative Dialogue*], 27 Eunomía: Revista en Cultura de la Legalidad 72, 72 (2024) (discussing the challenges of bringing Indigenous territory into the legal system); Felipe Cadena Garcia et al., *La protección del territorio como víctima del conflicto armado en el marco de la justicia transicional. Un análisis de los casos 002 y 005 de la Jurisdicción Especial para la Paz* [*The Protection of the Territory as a Victim of the Armed Conflicts in the Framework of Transitional Justice. An Analysis of Cases 002 and 005 of the Special Jurisdiction for Peace*], 62 Revista Derecho del Estado 201, 210 (2025) (arguing that the re-signification of the concept of territory is a product of Indigenous movements seeking to change the conceptual frameworks of national and international law). *See generally* Alejandro Santamaría, El territorio indígena: Un potencial denominador común antropológico, un marco jurídico internacional y tres modelos constitucionales en el continente [Indigenous Territory: A Potential Anthropological Common Denominator, An International Legal Framework, and Three Constitutional Models on the Continent] (2022) (treatise discussing how different constitutional systems have sought to incorporate Indigenous territory).

and form part of, the environment. Indeed, the ecocentric approach fails to integrate the symbolic dimensions of our relationship with the environment altogether. Its concept of environment—understood scientifically as ecosystems, or "all the organisms found in a particular physical environment, interacting with it and with each other"[112]—overlooks the cultural dimensions of the human-nature interaction. Further, it fails to appreciate Western science as a form of knowledge that is culturally rooted.[113]

The anthropocentric approach similarly fails to recognize its own cultural grounding. Property is a legal category that constructs a particular relationship with the non-human world. But the anthropocentric approach treats it as a universal category. In doing so, it overlooks other types of relationships constructed by non-Western peoples. Significantly, by excluding protection of those parts of the natural world that are not inherently dangerous or in a relation of property with humans, these laws left Indigenous peoples and their territories especially vulnerable in the context of armed conflict.

Critical scholars have noted this oversight. Helen Kinsella, for example, has shown how Francis Lieber's General Orders 100 ("GO100"), a foundational document of the modern LOAC, were written not only as a way to bring civilized practices to the U.S. Civil War but also to distinguish and thereby exclude the wars against Native nations from the protection of the law.[114] For example, the types of relations that Indigenous people held with their land were not protected.[115] Like most humanitarian instruments through the mid-20th century, GO100 protected private property, and spectacularly failed to protect other types of relations—such as that of the Nations and Tribes of the Great Plains with the buffalo.[116] In this way, the "anthropocentric approach" is a misnomer, given that the LOAC traditionally centered the way in which "civilized" peoples relate to the natural world, while ignoring the types of relations to the natural world that defined Indigenous peoples and others deemed uncivilized.[117]

Recently, war crimes prosecutions and international LOAC instruments have begun to address this oversight, as the next Part demonstrates.

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112. *Ecosystem*, Oxford English Dictionary (3d ed. 2011).

113. *See generally* Bruno Latour, We Have Never Been Modern (1991) (showing how the practice of science relies on cultural practices and beliefs).

114. Helen M. Kinsella, *Settler Empire and the United States: Francis Lieber on the Laws of War*, 117 Am. Pol. Sci. Rev. 629, 630 (2023).

115. *Id.*

116. Donn L. Feir et al., *The Slaughter of the Bison and Reversal of Fortunes on the Great Plains*, 91 Rev. Econ. Stud. 1634, 116 (2024); Dan Flores, *Wars over Buffalo*, *in* Native Americans and the Environment: Perspectives on the Ecological Indian 153–720 (2007).

117. Koskenniemi, *supra* note 17, at 11–20.

II. The Ecocultural Approach

We posit that a third approach to the natural world is emerging in the laws of war: the ecocultural approach.[118] This approach extends protection to "traditional communities whose ways of life are predominantly land based and who have strong cultural and spiritual bonds with their traditional lands and its resources."[119] The term refers to the cluster of LOAC laws, instruments, and practices that protect the material *and* symbolic interdependence of these peoples with their lands. It acknowledges the complexity of the interaction between ecological and cultural systems, and the need to integrate them analytically instead of analyzing them separately.

Like the anthropocentric approach, the ecocultural approach protects the symbolic dimension of the way that people construct their relation to their land. Property, after all, is a cultural category. However, the ecocultural approach includes protection of relationships other than that of property or use; it acknowledges, for example, that for the Nasa People of Colombia, their territory, the *Cxhab Wala Kiwe*, is not only property, but "a living being that forms an integral part of the Nasa; she feels, she must be nourished and cared for."[120]

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118. The term ecocultural resonates with the term biocultural, as defined by Bavikatte and Bennett. Kabir S. Bavikatte & Tom Bennett, *Community Stewardship: The Foundation of Biocultural Rights*, 6 J. Hum. Rts. & Env't 7, 8 (2015). We prefer the term ecocultural for several reasons. First, it refers not just to *bios*, or life, but *eco*, which includes abiotic elements of the environment. Second, and related, the history of biocultural rights is rooted in protection of biodiversity. *See generally* F. Merlin Franco, *Ecocultural or Biocultural? Towards Appropriate Terminologies in Biocultural Diversity*, 11 Biology 207, 207 (2022) (explaining the use of the terms in the natural sciences). By preferring the term ecocultural, we stress that the approach this Article describes is more than an instrumental strategy to achieve biodiversity. *See* Kabir Bavikatte & Daniel F. Robinson, *Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing*, 7 L. Env't & Dev. J. 35, 49–50 (2011) ("The justificatory premise of biocultural rights had less to do with 'group rights' and more to do with the crisis of biodiversity loss and its ramifications on food, health and economic security."); *see also* Sanjay Kabir Bavikatte, *Rethinking Property: A Biocultural Approach*, *in* Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights 116, 116–43 (2014). The term ecocultural is better suited to refer to an approach that is more than a strategy to achieve biodiversity as an end goal. *See generally* Astrid Ulloa, La construcción del nativo ecológico: Complejidades, paradojas y dilemas de la relación entre los movimientos indígenas y el ambientalismo en Colombia [The Construction of the Ecological Native: Complexities, Paradoxes and Dilemmas of the Relationship Between Indigenous Movements and Environmentalism in Colombia] (2004) (critiquing the way in which the "Ecological Indian" stereotype simplifies and homogenizes the diverse relationships that Indigenous peoples have with their environments).

119. Bavikatte & Bennett, *supra* note 118. For a comprehensive analysis of the evolution in the Inter-American Court of Human Rights of the special relationship between Indigenous peoples and their land, which provides an interesting framework avoiding neoliberal approaches to the right to property, see José E. Alvarez, *The Human Right of Property*, 72 U. Miami L. Rev. 580, 607 (2018).

120. Jurisdicción Especial para la Paz [J.E.P.] [Special Jurisdiction for Peace], Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, enero

Like the ecocentric approach, the ecocultural approach views humans and nature as in a complex set of mutualistic relations. In contrast to the ecocentric approach, it views these relations as not only material or biological, but also cultural and spiritual.

One might argue that the emphasis on nature's cultural significance is anthropocentric: It is focused on the well-being of human beings and the protection of human ways of life. Certainly, insofar as this doctrine claims roots in human rights, the priority is human dignity and well-being. The protection of the "right to property" in human rights is instrumental to the rights of Indigenous peoples in an anthropocentric way.

But the ecocultural approach differs in that it decenters humans as such and centers instead the many ways that humans and nature inter-relate. It is not a shift to balancing the interests of humans on the one hand, and nature as an end in itself, on the other. It is a shift to protecting the ways the two interact. In this vein, the Inter-American Court of Human Rights' rich descriptions of the "special relationship" between certain peoples and their land reflect the idea that the way in which Indigenous peoples and their territories interact is of value.[121] That human rights law's protection of the environment is not only anthropocentric was explicitly noted by the Inter-American Court of Human Rights in its 2018 Advisory Opinion on human rights and the environment.[122] And while the language it used to do so was arguably ecocentric, it referenced

17, 2020, Raúl Sánchez, Auto SRVR Caso 005-002, Expediente 2018340160501256E, ¶ 13.5, (Colom.) [hereinafter Nasa Decision]. All English translations of J.E.P. resolutions are by the authors. The term "territory" is essentially contested. It can refer to the lands traditionally used by a people. However, the Awa, Nasa, and other Indigenous and Tribal peoples mentioned in this Article and in Colombia and other Latin American countries use the term in a much broader sense, to include an entire world, including non-humans and spiritual beings. It is used in both senses in this Article. *See also* Daniel Laureano Noguera Santander & Jazmin Janneth Diaz Vivas, *El territorio "Katsa Su" del pueblo indígena awá reconocido como víctima del conflicto: un hito histórico para la justicia restaurativa* [*The "Katsa Su" Territory of the Awá Indigenous People Recognized as a Victim of the Conflict: A Historical Milestone for Restorative Justice*], 62 Revista Derecho del Estado 265, 265 (2025) (conveying the meaning of the Katsa Su, the territory of the Awa People in Colombia); Garcia et al., *supra* note 111, at 203–04; Paulo Ilich Bacca, *Los alfabetos del agua de la cultura Awá en Nariño,* [*The Water Alphabets of the Awá Culture in Nariño*], El Espectador (Aug. 17, 2025), https://www.elespectador.com/colombia/los-alfabetos-del-agua-de-la-cultura-awa-en-narino [https://perma.cc/T3HW-2ZKE] (describing Awa cosmovisions and the Katsa Su). *See generally* Nina Pacari, *Naturaleza y territorio desde la mirada de los pueblos indígenas* [*Nature and Territory from the Perspective of Indigenous Peoples*], *in* Sumak Kawsay Yuyay: Antología del Pensamiento Indigenista Ecuatoriano sobre Sumak Kawsay [Peace Thought: An Anthology of Ecuadorean Indigenist Thought on Peace] 127 (Antonio Luis Hidalgo-Capitán et al. eds., 2014) (describing the meaning of territory in Ecuador).

121. Renglet, *supra* note 20, at 723–26 (showing the evolution of human rights law on the relationship between Indigenous peoples and their land).

122. Medio Ambiente y Derechos Humanos [Environment and Human Rights] (Arts. 4(1) and 5(1) American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 62 (Nov. 15, 2017).

rights of nature laws and jurisprudence that protect Indigenous peoples using an ecocultural lens.[123]

Still, the skeptic may insist that the ecocultural approach is ultimately anthropocentric since it is created by human beings because they think it is a good. The same could be said of the ecocentric approach. Viewed this way, all three approaches are inescapably anthropocentric. However, to avoid the debate about whether it is ever possible for human beings to think outside of their interest, we give a specific and somewhat narrower definition to the term anthropocentric. As noted above, the anthropocentric approach protects a *particular* set of relationships between humans and the environment, that of property and resource, even as it claims to protect humans in general.[124] The other two approaches are distinct because they protect a different and more complex set of relationships between humans and the environment.

To further define and show the scope of this new approach, a typology is presented in Table 1 below. A few aspects of the typology should be noted at the outset. First, the three approaches are not mutually exclusive. The adoption of LOAC norms adhering to the anthropocentric approach does not prevent an actor from also adhering to norms in the ecocentric or ecocultural approaches. The protection of Indigenous territories might coincide with the protection of land as civilian property or as a demilitarized zone that seeks to protect an area of "major ecological importance."[125] Nonetheless, as Table 1 illustrates, each type has a distinct object and scope of protection; each invokes different types of reparatory measures; and each draws from different sources of knowledge.

Second, these are ideal types. The terms used, their definitions, and characterizations intentionally ignore certain features of reality to highlight specific attributes of each approach. In other words, these types depict stylized models of reality to better illustrate the underlying trends in a messier historical trajectory.[126]

Third, the focus of the typology is the protection of the environment and thus it does not purport to include all the objectives pursued by the LOAC. The laws of war have historically prioritized the need to facilitate and legitimize military actions during armed conflict. The protections provided to other values, such as human life, the natural world, or Indigenous territories, are balanced with the need to conduct military operations. The Article returns to this point in Part III.

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123. *Id.* ¶ 64.

124. *See supra* Part I.A.

125. *See* ICRC, *Guidelines*, *supra* note 11, ¶ 208; Jérôme de Hemptinne, *Increasing the Safeguarding of Protected Areas Threatened by Warfare Through International Environmental Law*, 924 Int'l R. Red Cross 1392, 1397 (2023).

126. As Max Weber explained, ideal types do not aspire to be a precise reflection of all the attributes of a given reality but instead seek to highlight specific features or dimensions of such reality while dispensing with others, in order to facilitate analysis. *See* Weber, *supra* note 16, 20–22.

Following the typology, this Part presents the ecocultural approach. It traces its roots in international human rights law, international environmental law, and constitutional law, to its more recent emergence in the LOAC. It then further delineates the ecocultural approach through comparison to the anthropocentric and ecocentric approaches, with attention to their different aims and scope.

Table 1: Approaches to Protection of the Environment in the LOAC

	Anthropocentric	Ecocentric	Ecocultural
Scope of protection of the natural world	Property and resources necessary for human survival	Ecosystems and planetary systems, that is, lithosphere, climate	Territories of Indigenous, Tribal peoples, and other "traditional communities whose ways of life are predominantly land based and who have strong cultural and spiritual bonds with their traditional lands"
Protected values	Human life and health	Ecosystems and the environment	Diverse ways of living together forged by peoples and their territories
Assumptions about human and nature relations	Simple material dependence; humans and nature are separate entities	Complex material interdependence; humans and nature are separate entities	Complex material *and symbolic* relations; different peoples have a different way of drawing human and non-human relations
Relevant knowledge systems	Human health sciences, accounting	Environmental sciences, biology, earth sciences	Indigenous and Tribal knowledge, anthropology, ethnobotany
Form of reparation	Monetary compensation	Environmental remediation	Culturally specific reparations using free, prior, informed consultation and consent
Treaty or soft law example	Geneva Conventions I–IV, Protocol I art. 55	Protocol I art. 35(3), ENMOD, Rome Statute	PERAC princs. 5(1)&(2), ICRC 2020 Guidelines r. 12
Contemporary war crimes prosecution example	ICC warrant against Netanyahu	Ukraine's investigations of Russia's possible environmental crimes	JEP 2023 indictments

A. Roots in Human Rights, Environmental Law, and Rights of Nature

The idea that the natural world should be protected for its cultural value was first acknowledged by positive international law in the World Heritage Convention of 1972.[127] As the UNESCO website declares, the Convention's "most significant feature . . . is that it links together in a single document the concepts of nature conservation and the preservation of cultural properties," and it includes within its definition of cultural heritage the "combined works of nature and man."[128] Since then, instruments in heritage law, environmental law, and human rights have further put into positive law the proposition that natural areas can have cultural significance, and that governments have a duty to protect them on this ground. The cultural value of natural sites in the Convention, however, was originally understood in universalist terms. The Convention was "intended to identify, protect, conserve, present, and transmit to future generations the irreplaceable cultural and natural heritage having Outstanding Universal Value as part of the world heritage of humankind."[129] The meaning of a place for a people, as opposed to for all humans, was not yet a priority.[130]

1. Human Rights to Culture and Property

One of the most salient challenges to this universalistic perspective on the importance of nature as culture emerged in human rights law through the inclusion of collective rights. Collective rights encompass both Indigenous rights and some of the rights of ethnic minorities, as well as rights related to the environment. The 1989 Indigenous and Tribal Peoples Convention ("ILO Convention 169") was a first in requiring governments to "respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."[131] This set the stage for the further development of the idea of a "special relationship" in human rights law, particularly in Latin America, home to fifteen of the twenty-four signatories of ILO Convention 169.[132] The Inter-American Court of

127. Convention Concerning the Protection of the World Cultural and Natural Heritage art. 1, Nov. 16, 1972, 1037 U.N.T.S. 151 [hereinafter World Heritage Convention].

128. *Id.*

129. Susanna Kari & Mechtild Rössler, *A World Heritage Perspective on Culture and Nature—Beyond a Shared Platform,* 34 George Wright F. 134, 134 (2017).

130. The interpretation and practice of the World Heritage Convention has undergone a long evolution since 1972 and has come to include the experience of Indigenous and other peoples. *Id.* (making the argument that the understanding of the World Heritage Convention continues to evolve).

131. ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries art. 13, June 27, 1989, 1650 U.N.T.S 383.

132. ILO, *Ratifications of C169—Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, NORMLEX, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO [https://perma.cc/T97P-BXXR].

Human Rights issued the first of a series of judgments on Indigenous rights in *Mayagna (Sumo) Awas Tingni v. Nicaragua* (2001), emphasizing the many dimensions of the relationship Indigenous peoples hold to their land:

> [T]he close ties of Indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For Indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[133]

The Court has since developed these ideas through a series of judgments, and has extended protection to include the lands of Afro-descendent peoples in the Americas.[134]

These doctrines extend beyond the Americas. All three regional human rights courts now regularly recognize and protect the collective rights of Indigenous peoples and ethnic minorities, particularly in relation to environmental rights. In many cases, the rights of Indigenous peoples or ethnic minorities intersect with their right to enjoy their way of life and their environment. For example, the U.N. Human Rights Committee has used individual claims based on traditional rights, such as property, family life, and privacy, to protect the collective rights of the Sami people in Finland to herd reindeer without state interference.[135] Similarly, the African Court on Human and Peoples' Rights protects collective rights, as its very name makes clear. The *Ogiek Case* of 2017 epitomizes the court's understanding of the interplay between nature and culture, a position previously stated by the African Commission on Human and

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133. Mayagna (Sumo) Awas Tingni Commun. v. Nicaragua, *supra* note 110, ¶ 149; *see also* Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 177 n.266 (Sep. 4, 2012); The Yakye Axa Indigenous Commun. v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 135 (June 17, 2005); Chitay Nech v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 147 n.160 (May 25, 2010).

134. Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (ser. C.) No. 172, ¶ 82 (Nov. 28, 2007) ("[The] Saramaka people maintain a strong spiritual relationship with the ancestral territory they have traditionally used and occupied. Land is more than merely a source of subsistence for them. . . . In particular, the identity of the members of the Saramaka people with the land is inextricably linked to their historical fight for freedom from slavery, called the sacred 'first time.'") (footnotes omitted).

135. *See generally* U.N. Hum. Rts. Comm., Jouni E. Länsman et al. v. Finland, Views of the Human Rights Committee under art. 5, para. 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication No. 671/1995, ¶ 10.7, U.N. Doc. CCPR/C/58/D/671/1996 (Oct. 30, 1996). Similarly, the European Court of Human Rights has used the right to privacy to protect the rights of Roma peoples to travel and live in caravans according to their traditions. *See* Chapman v. The United Kingdom, App. No. 27238/95, ¶ 73 (Jan. 18, 2001), https://hudoc.echr.coe.int/eng?i=001-59154, [https://perma.cc/RKX5-N5YP].

Peoples' Rights.[136] The Ogiek people, a forest-dwelling community, claimed that their eviction by the Kenyan government violated their rights under the African Charter on Human and Peoples' Rights. The Kenyan government, in turn, argued that the eviction was necessary for environmental conservation. In its ruling, the court protected the Ogiek people's rights to property, development, and culture, arguing that cultural and environmental rights are deeply intertwined, especially for Indigenous peoples whose survival depends on a symbiotic relationship with their environment.[137]

At the universal level, the U.N. Human Rights Committee has noted that displacement of Indigenous peoples "had a particular impact on them because they are Indigenous."[138] Further, in a climate change case, it noted that the Torres Strait Islander petitioners "depend on the health of their surrounding ecosystems for their own well-being," highlighting their "special relationship with their territory" as worthy of protection.[139]

In each of these cases, the human rights systems have extended human collective rights to protect peoples' "special relationship" with their land. Although the impetus for this doctrinal development was the struggle of Indigenous and Tribal peoples to gain greater autonomy and self-determination, it encompasses a concern for the environmental integrity of their territories, which were often under threat from extractivist projects.

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136. *See generally* Afr. Comm'n on Hum. and Peoples' Rts. v. Republic of Kenya, App. No. 006/2012, Judgment, Afr. Ct. on Human and Peoples' Rts. (May 26, 2017) [hereinafter Afr. Comm'n v. Kenya 2017]. The Commission had already based some of its prior rulings on the interplay between the protection of nature and culture. In the *Endorois Case*, the African Commission on Human and Peoples' Rights protected the Endorois people, a Kenyan semi-nomadic people displaced from their territory around Lake Bogoria by ordering the Malian government to establish a wildlife reserve. Ctr. for Minority Rts. Dev. (Kenya) and Minority Rts. Grp. Int'l on Behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003, Afr. Comm'n on Hum. and Peoples' Rts. ¶¶ 157, 159–62 (Nov. 11, 2009) (including a detailed indigeneity analysis and what it termed Indigenous groups' "sacred relationship to their land," and specifically naming their inspiration from the Inter-American system).

137. African Comm'n v. Kenya 2017, *supra* note 136, ¶¶ 182–90.

138. U.N. Hum. Rts. Comm., 269 members of the K'iche', Ixil and Kaqchikel Mayan Peoples v. Guatemala, Decision adopted by the Comm. Under art. 5(4) of the Optional Protocol, Concerning Communications Nos. 4023/2021–4032/2021, ¶ 7.8 U.N. Doc. CCPR/C/136/D/R.4023/2021-4032/2021* (Oct. 26, 2022).

139. U.N. Hum. Rts. Comm., Daniel Billy et. al. v. Australia, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning Communication No. 3624/2019, ¶ 8.10, U.N. Doc. CCPR/C/135/D/3624/2019 (July 27, 2022) (citing U.N. Hum. Rts. Comm., Benito Oliveira v. Paraguay, Views adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2552/2015, ¶ 8.3, U.N. Doc. CCPR/C/132/D/2552/2015 (July 21, 2021); U.N. Hum. Rts. Comm., Portillo Cáceres v. Paraguay, U.N. Doc. CCPR/C/126/D/2751/2016, ¶ 7.8, U.N. Doc. CCPR/C/126/D/2751/2016 (Jul. 26, 2019)); U.N. Hum. Rts. Comm., *CCPR General Comment No. 16: Article 17 (Right to Privacy)*, ¶ 1 (April 8, 1988).

2. The Cultural Turn in Environmental Law

From a different starting point, international environmental law has also sought to integrate concerns about climate change, biodiversity, ecosystem depletion, and wildlife extinction with an explicit focus on the cultures of Indigenous peoples. Initially, it embraced the idea of Indigenous stewardship over territory as an instrument toward achieving biodiversity rather than as a strategy for giving Indigenous peoples greater autonomy. The Convention for Biological Diversity of 1992, for example, adopted specific norms to conserve Indigenous and traditional cultures that conserve, in turn, biodiversity.[140] These provisions grew from the discovery that there is a positive correlation between biodiversity and cultural diversity, and that Indigenous and other rural sustenance communities play an important role in conservation of biodiversity.[141]

This growing realization has manifested in various ways, from viewing Indigenous peoples as stewards of nature to more sophisticated efforts focused on exchanging experiences and best practices for climate change mitigation and adaptation with Indigenous peoples and local communities.[142] For instance, Article 10 of the U.N. Convention to Combat Desertification ("UNCCD") emphasizes the importance of involving Indigenous knowledge and local populations in designing and implementing programs to combat desertification in their regions.[143] Similarly, the Treaty on Plant Genetic Resources for Food and Agriculture promotes the protection and promotion of Indigenous peoples' and farmers' rights to conserve and utilize these resources.[144]

3. Nature as a Legal Subject

The focus on the relationship of Indigenous and Tribal peoples with their territories as the object of protection also lies at the heart of the legal doctrines of rights of nature, which recognize the legal subjectivity and fundamental

140. Convention on Biological Diversity art. 8(j), June 5, 1992, 1760 U.N.T.S. 79 (providing that states should respect and preserve the "knowledge, innovations and practices of [I]ndigenous and local communities embodying traditional lifestyles").

141. *See, e.g.*, Bryam Mateus-Aguilar et al., *Assessing Biocultural Diversity Across Scales Using Ecological Indicators,* 176 Ecological Indicators, no. 1, 2025, at 1, 10 (finding a partial positive correlation between biodiversity and cultural diversity at the national level in Colombia); Gyanaranjan Sahoo et al., *Impact of Rural Activities on Biodiversity and Ecosystem Services*, 54 J. Tianjin Univ. Sci. & Tech. 373, 379 (2021) (identifying local rural communities as being essential to maintain biodiversity); Cloe Xochitl Pérez-Valladares & Berenice Farfán-Heredia, *Biocultural Landscapes and the Scalability of Biocultural Heritage*, 23 J. Lat. Am. Geography 16, 16 (2024).

142. *See, e.g.*, Paris Agreement art. 7(5), Dec. 12, 2015, 3156 U.N.T.S. 79.

143. United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa art. 10, Oct. 14, 1994, 1954 U.N.T.S. 3.

144. International Treaty on Plant Genetic Resources for Food and Agriculture arts. 5.1(d), 9.1, Nov. 3, 2001, 2400 U.N.T.S. 303.

rights of natural entities such as rivers and forests. For many Indigenous and Tribal peoples in the Americas, their territories and the natural entities within them are not merely things, but beings with whom they hold social relations.[145] Rights of nature acknowledge the symbolic dimension of the relationship between peoples and their environment. But they are more than mere acknowledgment: They effectuate this relationship in national law, by granting the entity legal rights that can be claimed in court.[146] In rights of nature cases, courts typically assign particular groups who hold close relations with the natural entity the role of representing it in court and of supervising implementation of court orders in its favor.[147] Rights of nature jurisprudence is thus another form of expressing and practicing the heightened protection of the relationship between peoples and their territories. These doctrines have developed most extensively in legal systems with a commitment to legal pluralism, and in dialogue with Indigenous and Tribal social movements.[148]

Colombia's Constitutional Court ("CCC"), for example, declared in 2016 that the Atrato River was "an entity that is a subject of rights to protection, conservation, maintenance and restoration in the hands of the State and the ethnic communities."[149] For the CCC, the recognition of nature rights is part of a constitutional commitment to multicultural constitutionalism.[150] Nonhuman entities in Indigenous and Tribal territory are granted legal personhood as an "acknowledgement of the profound and intrinsic connection that

145. *See generally* Castro, *supra* note 107; Serna, *supra* note 107.

146. *But see* Anna Grear, *It's Wrongheaded to Protect Nature with Human-Style Rights*, AEON (Mar. 19, 2019), https://aeon.co/ideas/its-wrongheaded-to-protect-nature-with-human-style-rights [https://perma.cc/WV46-9LJQ] (arguing that rights create separation rather than relation); *but c.f.* Lieselotee Viaene, *Can Rights of Nature Save Us from the Anthropocene Catastrophe? Some Critical Reflections from the Field*, 9 Asian J. L. & Soc'y. 187, 199 (2022).

147. Philipp Wesche, *Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision*, 33 J. Env't L. 531, 540 (2021) (showing how the Colombian Constitutional Court made local communities the guardians of the Atrato River after it declared that the river had constitutional rights); Kaitlin Sheber, *Legal Rights for Nature: How the Idea of Recognizing Nature as a Legal Entity Can Spread and Make a Difference Globally*, 26 Hastings Env't L. J. 147, 153–54 (2020) (identifying local communities in New Zealand being made guardians of the Ganges and Yamuna Rivers after a court granted the rivers legal status).

148. *See generally* Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies,* 9 Transnat'l Env't. L. 429 (2020); Elizabeth Kronk Warner & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature,* 111 Cal. L. Rev. 325 (2023); Alexandra Huneeus, *The Three Faces of Non-Human Rights*, *in* The Oxford Handbook of Comparative Human Rights Law, at 8 (Neha Jain & Mila Verstaag eds., forthcoming) (viewing rights of nature as "a co-construction whereby [I]ndigenous peoples articulate the relationship they have to their territory through the language of law and rights, and the state recognizes this relationship by bringing it into being in national law").

149. Corte Constitucional [C.C.] [Constitutional Court], agosto 3, 2016, Sentencia T-622/16, Gaceta de la Corte Constitucional [G.C.C.] (pp. 5, 145, ¶ 9.32, 159, ¶ 10.2(1), 164) (Colom.) [hereinafter Atrato Case].

150. *See id.* ¶¶ 5.22–5.37

exists between nature, its resources, and the culture of ethnic and Indigenous communities that inhabit them, which are interdependent and cannot be understood in isolation."[151] Since then, at least ten rivers and several other entities, including the Amazon basin, have been recognized as rights bearing entities under the Colombia Constitution.[152] In neighboring Ecuador, where the 2007 Constitution recognized the rights of nature, much of the litigation of these rights aims to protect Indigenous territories.[153]

In international environmental law, as in human rights law, then, the idea that certain peoples' relationship to their lands and territories deserves special protection, in both its material and symbolic dimensions, has become a well-established doctrine. These ideas also animate the development of domestic rights of nature law and jurisprudence in Latin America, New Zealand, and other places. As the next section shows, they also begin to emerge in the LOAC.

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151. *Id.* ¶ 5.11.

152. Juzgado Primero Penal del Circuito con Funciones de Conocimiento de Neiva [First Criminal Circuit Court with Knowledge Functions in Neiva], octubre 24, 2019, J. Víctor Alcides Garzón, No. 41001-3109-001-2019-00066-00, at 35 (Colom.) (acknowledging "the Magdalena River, its basin, and tributaries as a legal entity with rights"); Tribunal Administrativo de Boyacá [Administrative Court of Boyacá], Tercera Sala, agosto 9, 2018, No. 15238-3333-002-2018-00016-01, at 67 (Colom.) (declaring "the Pisba Páramo as a legal entity with rights"); Juzgado Único Civil Municipal La Plata (Huila) [Single Civil Municipal Court of La Plata (Huila)] marzo 19, 2019, J. Juan Carlos Clavijo González, No. 41-396-40-03-001-2019-00114-00, at 16, 21–22 (Colom.) (recognizing the "La Plata River" as a legal entity with rights); Tribunal Administrativo de Tolima [Administrative Court of Tolima], mayo 30, 2019, J. José Andrés Rojas Villa, No. 73001-2300-000-2011-00611-00, at 149 (Colom.) (recognizing "the Coello, Combeima, and Cocora rivers, their basins, and tributaries as individual entities, legal entities with rights"); Juzgado Cuarto de Ejecución de Penas y Medidas de Seguridad [Fourth Court of Sentence Execution and Security Measures], septiembre 11, 2019, J. Edna Marcela Millán Garzón, No. 66001-3187-004-2019-00057, at 42 (Colom.) (acknowledging "the Otún River, its basin, and tributaries as a legal entity with rights"); Juzgado Tercero de Ejecución de Penas y Medidas de Seguridad [Third Court of Sentence Execution and Security Measures], julio 12, 2019, J. Hugo Fernelly Franco Obando, No. 179299, at 10 (Colom.) (declaring "the Pance River, its basin, and tributaries as a legal entity with rights"); Tribunal Superior de Medellín [Superior Court of Medellín], Sala Cuarta Civil de Decisión, junio 17, 2019, J. Juan Carlos Sosa Londoño, No. 05001-3103-004-2019-00071-01, at 43 (Colom.) (acknowledging "the Cauca River, its basin, and tributaries as a legal entity with rights").

153. Constitución de la República del Ecuador arts. 71–74; *see, e.g.*, Corte Constitucional de Ecuador [C.C.] [Constitutional Court], CEDHU v. ARCONEL, May 6, 2019, No. 502-19-JP (Ecuador) (beginning the court's discussion of the juridical content of nature's rights); Corte Constitucional de Ecuador [C.C.], Canton Santa Clara v. Ministry of Environment, julio 9, 2020, No. 1754-19-JP (Ecuador) (expanding nature's rights to include not only violations of procedural requirements but also its impact on Indigenous communities, thus development projects needed to include sustainability measures); Corte Constitucional de Ecuador [C.C.], Municipality of Cotacachi v. Ministry of Environment, Nov. 10, 2021, No. 1149-19-JP/21 (Ecuador) (emphasizing the need to sustain ecosystem function to ensure human well-being); Corte Constitucional de Ecuador [C.C.], Rights of Nature and Animals as Subjects of Rights, Jan. 27, 2022, No. 253-20-JH/22 (Ecuador) (recognizing the value of nature and the interrelationships between human and non-human elements in nature).

B. Emergence in the Laws of War

The cultural significance of nature did not form part of the original Geneva Conventions. State parties to Additional Protocol I considered whether to establish special protections for natural objects that have a cultural value, but the option was discarded in part due to the lack of universal cultural value of natural objects.[154] As noted in Part I, therefore, the protection of cultural objects was limited to man-made objects.

However, this has shifted in the most recent generation of soft law instruments seeking to codify and progressively develop the LOAC's environmental protection. Indeed, the LOAC's treatment of the environment has begun drawing concepts and doctrine from human rights and environmental law and adopting the idea that the natural and cultural worlds are inextricably linked.[155] This was evident in the discussions around the ILC's Draft Principles on the PERAC during the U.N. General Assembly's Sixth Committee in 2019. As the ILC's commentaries clarify, the language of the draft principles draws from the ILO Convention 169, the U.N. Declaration on the Rights of Indigenous Peoples, and international court jurisprudence.[156] The incorporation of these instruments led the ILC to recognize the fundamental importance of territories for the "collective physical and cultural survival as peoples."[157]

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154. Jiří Toman, The Protection of Cultural Property in the Event of Armed Conflict 53 (1996).

155. *See* Pantazopoulos, *supra* note 23 (with representatives of various states, with the exception of Russia and the United Kingdom, emphasizing the need to strengthen the connections between the LOAC and other areas of international law, such as international environmental law, human rights law, international criminal law, and the law of the sea).

156. Commentary (5) to PERAC Principle 5, states: "Paragraph 1 is based on article 29, paragraph 1, of the United Nations Declaration on the Rights of Indigenous Peoples, which expresses the right of [I]ndigenous peoples to 'the conservation and protection of the environment and the productive capacity of their lands or territories and resources', and article 7, paragraph 4, of ILO Convention No. 169, which recognizes that 'Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.' It furthermore builds on the jurisprudence of regional courts and tribunals. Reference can also be made to the obligation under the Convention on Biological Diversity to respect, preserve and maintain knowledge, innovations and practices of [I]ndigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity." Int'l L. Comm'n, Rep. on the Work of Its Seventy-Third Session, at 109–10, U.N. Doc. A/77/10 (2022) [hereinafter Commentary to the PERAC Principles].

157. Commentary (4) to PERAC Principle 5, states: "The special relationship between [I]ndigenous peoples and their environment has been recognized, protected and upheld by international instruments such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples, as well as in the practice of States and in the jurisprudence of international courts and tribunals. To this end, the lands of [I]ndigenous peoples have been recognized as having a fundamental importance for their collective physical and cultural survival as peoples." *Id.* at 109.

The ILC's commentaries also emphasize the relationship between the environment and culture in the context of protected areas, noting:

> Protected zones designated in accordance with the current draft principle may also be areas of cultural importance, as it is sometimes difficult to draw a clear line between areas that are of environmental importance and areas of cultural importance. This is also recognized in the World Heritage Convention: the fact that heritage sites under this Convention are selected on the basis of a set of 10 criteria, including both cultural and natural criteria (without differentiating between them), illustrates this point. The International Union for Conservation of Nature and Natural Resources (IUCN) furthermore defines a protected area as 'a clearly defined geographical space, recognized, dedicated, and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.'[158]

PERAC similarly acknowledges cultural and biological ties to nature. It provides that "states should designate, by agreement or otherwise, areas of environmental importance as protected zones in the event of an armed conflict, including where those areas are of cultural importance."[159] Further, the ILC specifically addressed the use of the term culture in the PERAC:

> [T]he term 'cultural' is used here to indicate the existence of a close linkage to the environment. This term includes, for example, the ancestral lands of [I]ndigenous peoples, who depend on the environment for their sustenance and livelihood.[160]

The 2020 ICRC Guidelines also take a step in this direction. While still using the notion of property, they acknowledge the possibility of a relationship between cultural heritage and the natural environment by prohibiting attacks, unless required by military necessity, on "[p]roperty of great importance to the cultural heritage of every people, including such property which constitutes part of the natural environment."[161] They also extend this prohibition to non-international armed conflicts, binding both states and non-state actors to whom the LOAC is applicable.[162]

Finally, the ICC announced that it will issue a new policy on prosecuting environmental crimes.[163] It will likely take the JEP's intercultural work into consideration. After a seventeen-year preliminary examination, the ICC has established institutional knowledge of and ties with Colombian practice,

158. *Id.* at 107, princ. 4, commentary (7).
159. PERAC Principles, *supra* note 8, princ. 4.
160. Commentary to the PERAC Principles, *supra* note 156, at 107.
161. ICRC, *Guidelines*, *supra* note 11, r. 12(A), at 69.
162. *Id.* r. 12(B).
163. *See* Office of the Prosecutor, *supra* note 13.

and with the JEP.[164] When the ICC closed its Preliminary Examination in Colombia in October of 2021, it committed to continued engagement through "exchanges of lessons learned and best practices."[165]

C. Scope and Limits

The ecocultural approach does not claim universality. While the anthropocentric and ecocentric approaches claim to apply in the same way to all human groups, the ecocultural approach extends protection only to "traditional communities whose ways of life are predominantly land based and who have strong cultural and spiritual bonds with their traditional lands and its resources."[166]

Exactly to whom this protection extends will be a difficult line-drawing exercise. The threshold requirement has both material and symbolic elements. At the material level, the relationship must be one of subsistence: The environment sustains the community and without it they would not be able to survive. This is true, of course, of us all. The difference is that the land on which certain communities live is also the land which provides their material sustenance. A significant part of their means of living does not come through the market economy but rather through the local community and environment. At the symbolic level, the ties of the community to the territory must form "the fundamental basis of their cultures, their spiritual life, their integrity."[167] The Inter-American Court of Human Rights has described this as "a strong spiritual relationship with the ancestral territory they have traditionally used and occupied" such that "[t]he lands and resources . . . are part of their social, ancestral, and spiritual essence."[168] Thus, the environment must be important to a people with whom it has a particularly close relationship, rather than to all peoples. This stands in contrast to those instruments that base the protection of natural heritage to its universal importance, such as the World Heritage Convention that speaks of "outstanding universal value from the aesthetic or scientific point of view."[169] A corollary is that the land protected will have

164. Courtney Hillebrecht & Alexandra Huneeus, with Sandra Borda, *The Judicialization of Peace*, 59 Harv. Int'l L. J. 279, 280 (2018) (showing the ICC's deep involvement with the Colombian peace process).

165. ICC, Cooperation Agreement Between the Office of the Prosecutor of the International Criminal Court and the Government of Colombia art. 4, (Oct. 28, 2021), https://www.icc-cpi.int/sites/default/files/itemsDocuments/20211028-OTP-COL-Cooperation-Agreement-ENG.pdf [https://perma.cc/ES8W-4QB2] [hereinafter ICC Cooperation Agreement].

166. Bavikatte & Bennett, *supra* note 118, at 8.

167. Mayagna (Sumo) Awas Tingni Commun. v. Nicaragua, *supra* note 110, ¶ 149. *See also* Río Negro Massacres v. Guatemala, *supra* note 133, ¶ 177 n.266; The Yakye Axa Indigenous Commun. v. Paraguay, *supra* note 133, ¶ 135; Chitay Nech v. Guatemala, *supra* note 133, ¶ 147 n.160.

168. Saramaka People v. Suriname, *supra* note 134, ¶ 82.

169. World Heritage Convention, *supra* note 127, art. 2.

been traditionally (even if not continually) occupied and used by the people in question.[170]

How do these requirements apply to the categories that already exist in international law? The PER AC Principles restrict special protection to Indigenous and Tribal peoples. However, in many parts of the world, Indigenous and Tribal peoples are not recognized as such by their governments.[171] To avoid excluding peoples that have not been officially recognized as Indigenous or Tribal from the protections provided by international treaties, some environmental treaties, like the Convention of Biological Diversity, began adding the term "local communities" or "local populations" that embody traditional lifestyles relevant to conservation.[172] In a similar way, some of the JEP rulings mention the possibility of recognizing the territories of campesinos, or peasants of mixed ancestry, as possible victims of armed conflict.[173]

Including the protection of the relationship between peasants or local communities with their territories thus makes sense, inasmuch as they, too, have a distinct material and symbolic relationship with their lands that is especially vulnerable to the environmental harms produced by war.[174] Moreover, as recognized by the U.N. Declaration, these communities have "the right to reparation for ecological debt and for historic and current dispossession of their land and territories."[175] Thus, partially following the definition of peasants adopted in Article 1 of the U.N. Declaration on the Rights of Peasants and Other People Working in Rural Areas, the ecocultural approach would extend protection to distinct local communities that directly derive their sustenance from small and midsize agricultural production, hunting, gathering, and fishing, relying primarily on family labor and traditional techniques, whether or not they own the land on which they work.[176] Given their closeness to the land, these local

170. Saramaka People v. Suriname, *supra* note 134, ¶ 59.

171. *See generally* Bruce Granville Miller, Invisible Indigenes: The Politics of Nonrecognition (2003).

172. Convention on Biological Diversity pmbl., arts. 8(j), 10(d), June 5, 1992, 1760 U.N.T.S. 79.

173. *See, e.g.*, J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, noviembre 12, 2019, Belkis Florentina Izquierdo Torres & Ana Manuela Ochoa Arias, Auto SRVBIT Caso No. 002-079; J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, enero 24, 2020, Auto SRVBIT Caso No. 002-018; J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, junio 10, 2020, Belkis Florentina Izquierdo Torres & Ana Manuela Ochoa Arias, Auto SRVBIT Caso No. 02-2020.

174. *See* Serna, *supra* note 107 (providing an ethnographic account of the effects of Colombia's armed conflict on the relationship between rural peoples of Colombia and their environment, including cultural harms).

175. Hum. Rts. Council, Declaration on the Rights of Peasants and Other People Working in Rural Areas art. 11(5), U.N. Doc. A/HRC/WG.15/1/2 (2013).

176. Article 1 of the Declaration on the Rights of Peasants and Other People Working in Rural Areas defines peasants as follows:

communities develop a special relationship with their land and nature through the production of food or other agricultural products.

Finally, it should be noted that the two requirements are additive: Both must be met for protection to apply. Undoubtedly, individuals and communities that are neither Indigenous, Tribal, nor peasants also have significant cultural relationships with different parts of the environment. Activities like fishing, hiking, hunting, conservation and reforestation, and gardening are all widely practiced as part of the lifestyles of urban and suburban populations around the world.[177] Contrary to Indigenous, Tribal, and peasant peoples, however, neither wilderness billionaires nor urban and suburban populations depend on the environmental integrity of the territories they inhabit for their material sustenance or cultural survival.

Thus, although the adoption of an ecocultural approach to environmental protection against the consequences of war should extend to some rural peoples like peasants, it should not necessarily include all peoples and cultures just because their relationship with the environment has a cultural dimension. In expanding beyond the established categories of Indigenous and Tribal peoples, the determinant factor should not be only the symbolic dimension of the relationship with the environment, but the direct dependence on the territory they inhabit or use, and thus, their vulnerability to the consequences of war.

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1. A peasant is a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products. Peasants work the land themselves and rely above all on family labour and other small-scale forms of organizing labour. Peasants are traditionally embedded in their local communities and they take care of local landscapes and of agro-ecological systems.
2. The term peasant can apply to any person engaged in agriculture, cattle-raising, pastoralism, handicrafts related to agriculture or a similar occupation in a rural area. This includes [I]ndigenous people working on the land.
3. The term peasant also applies to the landless. According to the Food and Agriculture Organization of the United Nations definition, the following categories of people are considered to be landless and are likely to face difficulties in ensuring their livelihood:
   (a) Agricultural labour households with little or no land;
   (b) Non-agricultural households in rural areas, with little or no land, whose members are engaged in various activities such as fishing, making crafts for the local market, or providing services;
   (c) Other rural households of pastoralists, nomads, peasants practising shifting cultivation, hunters and gatherers, and people with similar livelihoods.

Id. art. 1.

177. For example, as Justin Farrell has shown, environmental conservation in Teton County, Wyoming, has nurtured idealized visions of a pristine landscape and a lifestyle close to nature among the wealthiest people in the United States, while simultaneously transforming it into the most unequal county in the country, where only a few decide what the land is for. *See generally* Justin Farrell, Billionaire Wilderness: The Ultra-Wealthy and the Remaking of the American West (2021).

1. Systems of Knowledge and Reparation

The ecocultural approach acknowledges that non-Western peoples may approach what Western people view as the distinction between nature and culture through a different ontology. It seeks to give expression to this difference from an internal standpoint, in the terms in which those people explain and experience it. In this sense, the ecocultural approach includes a commitment to intercultural dialogue. The point is not only to acknowledge that peoples may have deep knowledge of their environment and how to care for it, but also to tailor practices so that those affected by armed conflict see their experiences reflected in the laws that govern it.

Thus, free, prior, and informed consent is a requirement set forth by PERAC, and, in its commentary, the ILC notes the importance that consultations "be culturally appropriate."[178] Consultation must take place when states are taking measures to prevent harm as well as in remedial measures. The ILC commentary notes that "in light of the special relationship between [I]ndigenous peoples and their environment, these steps shall be taken in a manner that respects this relationship and in consultation and cooperation with such peoples, in particular through their own leadership and representative institutions."[179]

One consequence of this requirement is that the systems of knowledge on which the ecocultural approach draws will be different from the knowledge on which the other approaches draw. The anthropocentric and ecocentric approaches primarily rely on the health sciences and environmental sciences, respectively. The ecocultural approach, by contrast, also draws on the expertise of anthropologists and others familiar with Indigenous knowledge systems, and with intercultural dialogue. Further, in repairing harm, it may draw upon the systems of knowledge of the peoples whose territories have suffered harm. We discuss what this could look like in more depth through the discussion of the JEP's innovative practices in Part III.

III. Implementing the Ecocultural Approach

What would the ecocultural approach look like in action? This Part begins to provide an answer by sharing a case study of the Colombian peace court's prosecution of environmental war crimes. The JEP's 2023 indictments for crimes against territories strive to protect the relationship that Indigenous peoples hold with their territory by acknowledging their *cosmovision*, or world view, within the language of the laws of war. This effort has been controversial at

178. Commentary to the PERAC Principles, *supra* note 156, princ. 5, commentary (11), at 111; PERAC Principles, *supra* note 8, princ. 5(2) (requiring states to "undertake appropriate and effective consultations and cooperation with the [I]ndigenous peoples concerned").

179. Commentary to the PERAC Principles, *supra* note 156, princ. 5, commentary (3), at 108.

times. But the JEP's work points the way to further incorporation of the ecocultural approach in the LOAC. This Part then considers how the approach could be incorporated further into the LOAC as a preventive measure in the time before an armed conflict breaks out, during an armed conflict, and in response to harm wreaked by armed conflict.

A. Case Study: Territory as a Victim of Armed Conflict

The JEP's struggle to engage Indigenous and Black Colombian perspectives as it protects the environment provides an example of the ecocultural approach.

The JEP was provided for by the 2016 Peace Accord between the Revolutionary Armed Forces of Colombia ("FARC") and the Colombian government that finally put an end to Latin America's longest internal armed conflict.[180] Tasked with finding truth and accountability for the crimes that took place during the fifty-year armed conflict between Colombia and the FARC, it is proving to be an innovative transitional justice tribunal, with a strong commitment to legal pluralism and restorative justice. Among its unique features is its diversity: Over half of the judges are women, over sixty percent come from regions outside the capital city of Bogotá, and almost a quarter claim their identity as Afro-Colombian, Indigenous, or both.[181] The JEP has authority to apply international criminal law as well as domestic criminal law.[182] But its mandate includes a commitment to engagement with Indigenous and other "ethnic" legal systems.[183]

The JEP's focus also prioritizes the environment.[184] Colombia's armed conflict with the FARC was in great part a conflict over land and natural resources. The conflict also wreaked environmental devastation.[185] Attacks on oil pipelines

180. *See* Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera [Final Accord for the Termination of the Conflict and the Construction of a Stable and Lasting Peace], noviembre 24, 2016, 124 (Colom.), available at https://www.jep.gov.co/Documents/Acuerdo%20Final/Acuerdo%20Final.pdf [https://perma.cc/WZ27-LV6R]. [hereinafter Peace Accord]. The tribunal was established under 2019 legislation passed by the Colombian Congress. *See* L. 1957/2019, junio 6, 2019, Diario Oficial [D.O.] (Colom.) [hereinafter J.E.P. Statute].

181. Also, for better or for worse, over half of the judges work in academia. *See* Santiago Pardo Rodríguez, *A Second Chance on Earth: Understanding the Selection Process of the Judges of the Colombian Special Jurisdiction for Peace*, 10 Notre Dame J. Int'l & Comp. L. 240, 265 (2020) (explaining the selection process).

182. Acto Legislativo 01 de 2017, abril 4, 2017, 50.196 Diario Oficial [D.O.] 1–6 (Colom.).

183. *Id.* arts. 1, 9.

184. *See generally* Camilo Ramirez Gutiérrez & A. Sebastián Saavedra Eslava, *Protection of the Natural Environment Under International Humanitarian Law and International Criminal Law: The Case of the Special Jurisdiction for Peace in Colombia*, 25 UCLA J. Int'l L. & Foreign Aff. 123 (2020).

185. *See generally* Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición [Commission for the Clarification of Truth, Coexistence and Non-Repetition], Hay futuro si hay verdad: Sufrir la guerra y rehacer la vida: Impactos, afrontamientos y resistencias [There Is a Future if There Is Truth:

spilled over 3.7 million barrels of oil.[186] Illegal mining released mercury into rivers, harming ecosystems and making the supply of fish hazardous to human health.[187] Forests were illegally cleared to make way for coca crops, which in turn were sprayed with glyphosate herbicide, harming ecosystems and humans alike well beyond the coca farms.[188] The JEP's commitments—intercultural dialogue and protection of the environment—converged because Indigenous, Tribal, and peasant lands suffered disproportionate levels of environmental harm.

1. Territory as a Victim of Armed Conflict

In November of 2019, the JEP granted the Awá people's request that their territory, the *Katsa Su*, be formally designated as a victim of the armed conflict considering "that it has identity and dignity that constitute it as a subject of rights."[189] Victims accredited by the JEP have rights to truth, justice, and reparation.[190] The following year, the JEP acknowledged the victim status of the *Cxhab Wala Kile* and the *Eperara Euja*, which are the territories of the Nasa people and the Sia people of Nariño, respectively.[191] The JEP resolutions quoted extensively from the Awá, Nasa, and Sia peoples' own statements about their territories' experience of the armed conflict. Each of the JEP's resolutions emphasized how the armed conflict had harmed the relationship between Indigenous peoples and their territories. The Nasa, for example, declared:

> Our ancestral and sacred territory has suffered violations, alterations, mutilations, occupations and harms, resulting from the armed internal conflict, that have negatively transformed the bond that the Indigenous communities had with their territory, violating the balance, harmony, and autonomy of the Nasa Indigenous people of the Northern Cauca . . . [192]

In 2020, the JEP also declared the territories of two Black Colombian communities in Nariño to be victims of the armed conflict.[193] Again, the resolutions

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Suffering War and Rebuilding Life: Impacts, Coping Mechanisms and Resistance] (2022).

186. *See also Voladuras de Oleoductos en Colombia: una cruda arma de Guerra* [Pipeline Bombings in Colombia: A Brutal Weapon of War], Semana, http://especiales.sostenibilidad.semana.com/voladuras-de-oleoductos-en-colombia/index.html [https://perma.cc/GJR8-VZJQ] [hereinafter *Voladuras de Oleoductos*].

187. Ricardo Pereira, Britta Sjöstedt, & Torsten Krause, The Environment and Indigenous People in the Context of the Armed Conflict and the Peacebuilding Process in Colombia 4 (Apr. 2021).

188. *Id.*

189. J.E.P., noviembre 12, 2019, Auto SRVBIT Caso No. 002-079, *supra* note 173, ¶ 5. All English translations of J.E.P. resolutions are by the authors.

190. *Id.*

191. *See generally* Nasa Decision, *supra* note 120; J.E.P., junio 10, 2020, Auto SRVBIT Caso No. 02-2020, *supra* note 173.

192. Nasa Decision, *supra* note 120, ¶ 13.5.

193. J.E.P., enero 24, 2020, Auto SRVBIT Caso No. 002-018, *supra* note 173, at 116.

emphasized the depth of the relationship between Black Colombian communities and their environment:

> As the Hileros Organization has said, 'for Black communities, territory has a special meaning; it is the place where their worldview and cultural logic is created, and above all it is the space necessary for the survival of the collective subject of the Black people [Pueblo Negro].'[194]

In July 2023, the JEP issued a resolution recognizing the Cauca River as a victim of the armed conflict, pursuant to a petition presented by the Black Colombian communities of the north of the Cauca River.[195] During the conflict, the river had been used by the FARC as a dumping ground for cadavers, for mercury that was used in illegal mining, and for chemicals used in making illegal substances, transforming the Cauca River from "a source of life to a site of pain and mourning."[196] The JEP held:

> The Cauca River will be credited as a victim in Case 05, given that . . . serious damage was caused by practices related to the armed conflict that have altered its waters and the species that inhabit it, as well as its deep relationship with the ethnic communities of the north of Cauca and the south of Valle del Cauca.[197]

In further recognition of these relationships, the JEP designated the legal representatives of the people who claimed the territory as their own as the legal representatives of the victim territories in hearings before the JEP.

These JEP resolutions have generated a significant amount of scholarship and reflection.[198] In particular, the resolutions were understood to yield new

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194. *Id.*

195. The Cauca River was first recognized as a legal person with rights by the Superior Court of Medellín in its Ruling of June 17, 2019, which ordered, "Acknowledge the Cauca River, its basin, and tributaries as a legal entity with rights." Tribunal Superior de Medellín [T.S.M.] [Superior Court of Medellín], Sala Cuarta Civil de Decisión, junio 17, 2019, Juan Carlos Sosa Londoño, Gazeta Judicial [G.J.] (No. 28, p. 43) (Colom.).

196. *La JEP Acredita Como Víctima al Río Cauca en el Caso 05*, *Comunicado 080* [The JEP Recognizes the Cauca River as a Victim in Case 05, Communiqué 080], J.E.P. (July 17, 2023), https://www.jep.gov.co/Sala-de-Prensa/Paginas/-la-jep-acredita-como-victima-al-rio-cauca-en-el-caso-05.aspx. [https://perma.cc/7TMJ-82PD]. Illegal mining along with the agricultural conversion of the area for the production of illicit crops are the two major phenomena against the environment in the prioritized territory. These two activities summarize the impact of war on nature.

197. J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, julio 11, 2023, Auto SRVR Caso 005-226, Expediente 9002794-97.2018.0.00.0001 (Colom.), at 42. "After years of conflict in which the river went from being a source of life to a space of pain and mourning." *Id.* at 3.

198. *See generally* Torres & Viaene, *supra* note 111; Sjöstedt & Hulme, *supra* note 81; Kristina Lyons, *"Nature" and Territories as Victims: Decolonizing Colombia's Transitional Justice Process*, 125 Am. Anthropologist 63 (2023); Viaene, *supra* note 146; Alexandra Huneeus & Pablo Rueda-Saiz, *Territory as a Victim of Armed Conflict*, 15 Int'l J. Transitional Just. 210 (2021); Keina

approaches to transitional justice, restorative justice, and reparations.[199] They imply a duty to repair even in those situations in which humans are not harmed, and they open the way to crafting reparations resonant with the experience and perspectives of Indigenous peoples.[200]

Yoshida & Lina M. Céspedes-Báez, *The Nature of Women, Peace and Security: A Colombian Perspective*, 97 Int'l Affs. 17 (2021); Natalia Elisa Ramírez Hernández & Wilmer Yesid Leguizamon Arias, *La naturaleza como víctima en la era del posacuerdo colombiano* [*Nature as a Victim in the Colombian Post-Agreement Era*], 20 El Ágora USB 259 (2020); Luisa Gómez-Betancur, *The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting*, 25 UCLA J. Int'l L. & Foreign Affs. 41 (2020); Rachel Killean & Elizabeth Newton, *Transitional Justice and Other-Than-Human Harm: Lessons from Colombia*, Int'l J. Hum. Rts., May 2025, at 1 (drawing lessons from the JEP's practice of recognizing territories as victims of armed conflict for transitional justice more generally); Nina Bries Silva, *Territory as Victim: Rethinking the Right to Reparation Through Awá Indigenous Territories,* 119 AJIL Unbound 140 (2025). The scholarship in Spanish is more voluminous. *See generally* Rosambert Ariza Santamaria & Bryan Vargas Reyes, *Derecho propio: elementos restaurativos para la aplicación del enfoque étnico en casos relacionados con el territorio como víctima del conflicto armado* [*Indigenous Law: Restorative Elements for the Application of the Ethnic Approach in Cases Related to Territory as a Victim of Armed Conflict*], 26 Estudios Socio-Jurídicos, no. 1, 2024, at 1 (reflecting on the inclusion of ancestral knowledge in judicial decision-making, particularly as a basis for recognizing territory as victim); Estefanía Serna Ramírez, *¿De qué hablamos cuando hablamos de naturaleza?: el concepto naturaleza en el caso 005 de la JEP* [What Do We Mean When We Talk About Nature?: The Concept of Nature in Case 005 of the JEP] (May 5, 2024) (LL.M. thesis, Universidad de los Andes) (analysing the concept of nature as used by JEP in charges of environmental war crimes against FARC-EP members); María José García Prada & Alejandra Milena Oviedo Soto, *Justicia ambiental en la Jurisdicción Especial para la Paz: Dando voz a las víctimas silenciosas del conflicto armado colombiano en el marco de la justicia transicional* [*Environmental Justice in the Special Jurisdiction for Peace: Giving Voice to the Silent Victims of the Colombian Armed Conflict Within the Framework of Transitional Justice*], *in* Justicia Ambiental y Personas Defensoras de Justicia del Medio Ambiente en América Latina [Enviromental Justice and Environmental Justice Defenders in Latin America] 225 (Leonardo Güiza & Suárez Christoph Josef Kaufmann eds., 2024) (exploring the treatment of environmental justice in JEP jurisprudence and highlighting gaps in international regulations and the use of transitional justice tools for environmental responsibility); Laetitia Braconnier Moreno et al., *Transiciones inconclusas: Los caminos de la interculturalidad en el Sistema Integral para la Paz en Colombia* [*Unresolved Transitions: Paths to Interculturality in the Integral System Toward Peace in Colombia*], 47 Tabula Rasa 105 (2023) (arguing that ethnic organizations played a key role in designing and implementing JEP); Johana Fernanda Sánchez Jaramillo, *Colombia: La naturaleza como sujeto de derechos entre el activismo y la contención* [*Colombia: Nature as a Subject of Rights Between Activism and Containment*], 16 Novum Jus 189 (2022) (critically analyzing specific judicial decisions to understand the arguments judges adopt for recognizing nature rights without constitutional or legal frameworks); Itzamar Nataly Cuervo López et al., *Territorios en condición de víctima. Experiencia de investigación y extensión en la Universidad Nacional de Colombia* [*Territories in the Condition of Victimization. Research and Outreach Experience at the National University of Colombia*], E+E: Estudios De Extensión En Humanidades, Apr.-Oct. 2022, at 1 (exploring the territorial focus of the approach to peace, including concerns over conflict victims based in the river territory).

199. *See generally* Torres & Viaene, *supra* note 111; Lyons, *supra* note 198; Huneeus & Rueda-Saiz, *supra* note 198; Killean & Newton, *supra* note 200; Bries Silva, *supra* note 198.

200. *See* Garcia et al., *supra* note 111, at 207 (arguing that the designation of Indigenous territories as victims of armed conflict was the result of the active participation of Indigenous peoples in the legal system). *See generally* Carlos A. Gutiérrez-Rodríguez, *Beyond Liberal Justice?*

2. War Crimes Against Victimized Territories

But the JEP is also a criminal law body with the power to indict and punish. Four years after it first declared territories as victims, the JEP had to decide how and whether the victimization of territories would be addressed at the charging stage. Through two indictments for environmental war crimes issued in 2023, the JEP brought the figure of the "territory as victim" from the realm of transitional justice into that of international humanitarian and criminal law. It has been a struggle.

The JEP uses an inquisitorial process in which one judge acts as investigating magistrate and writes an indictment, and then all the judges in the chambers vote on the charging document.[201] In charging for environmental war crimes, the investigating judge relied heavily on international humanitarian law and international criminal law, as the JEP's mandate allows. He concluded that the war crime of attacking the environment was not available given that, under the Rome Statute and treaty law more generally, it is penalized only in the context of an international armed conflict.[202] He charged the defendants instead for the war crime of "destroying or seizing the property of an adversary," which is penalized in non-international armed conflict.[203]

The problem is that the same chamber had earlier declared the *Cxhab Wala Kile* to be a victim with rights during the investigating stage, in recognition of the Nasa People's own experience of the armed conflict and their world view. Despite this, the investigating judge ended up classifying the *Cxhab Wala Kile* as property—as a *thing*—at the charging stage. Of the six other judges in the chamber, five issued separate opinions.[204] Judge Lemaitre objected that the

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Decolonising Colombian Transitional Justice Through Victims' Participation and Indigenous Rights, 28 Int'l J. Hum. Rts. 1569 (2024) (showing the participation of Indigenous peoples in the JEP); Angela Marcela Olarte Delgado, *Attempts in Strengthening Indigenous Justice Systems in Colombia Through Transitional Justice*, 14 Int'l J. Crime, Just. & Soc. Democracy 83 (2025) (discussing the importance but also the challenges of incorporating Indigenous systems within transitional justice).

201. These judges can also issue dissenting or concurring opinions. *See* J.E.P. Statute, *supra* note 180.

202. Rome Statute, *supra* note 65, art. 8(2)(b)(iv).

203. J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, febrero 1, 2023, Auto SRVR Caso No. 005-001, Expediente 9002794-97.2018.0.00.0001, ¶¶ 493, 1027–30 (Colom.) (holding that the FARC had acted as a de facto environmental authority and thus had a positive duty to prevent environmental harm); *see also* J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, marzo 8, 2023, Auto SRVR Caso No. 005-001, ¶ 19 (Colom.) (Parra Vera, J., concurring) (explaining the FARC's duty as a *de facto* occupying power).

204. The most trenchant debate emerged among the judges who agreed that the underlying acts comprise a war crime but disagreed about which war crime. But there were some who disagreed that environmental war crimes could be charged in this case. *See, e.g.*, J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, marzo 21, 2023, Auto SRVR Caso No. 005-001, at 3 (Colom.) (Díaz Gómez, J., dissenting)

court could not eat its cake and have it too: The environment is either an object or a subject; it is either property or a victim; it is either nonliving or alive.

> [T]his is a surprising argument, considering that it is preceded by a dense reflection on the legal personality of the territory (it would not belong to anyone or would belong to itself) and the relationship of ethnic peoples with it (it would belong to the peoples, not to the State) . . . [I]n order to create a war crime that does not exist, the colonial notion of considering it as a property is resorted to, disregarding the special relationship that Indigenous communities have with the territory.[205]

The next indictment, issued four months later, relied on a different provision of the Rome Statute. It was written by Judge Izquierdo, a member of the Arhuaca People, for whom the priority was finding room to express the complex relations that Indigenous and Black Colombians have with their territories within the language of international law. Rather than "seizing the property of the enemy," Judge Izquierdo charged under the crime of "[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals . . . ."[206] Here, the territories were not likened to "property of the enemy" but to "buildings" dedicated to cultural and social practices. The pay-off to the argument is that it better reflects the experience of the peoples that have been most affected by the conflict.

> Concerning these types of impacts, the victims indicated that "[t]he invasion of sacred sites by various armed actors has led to their contamination, causing physical and spiritual disharmony in the territory, as well as among the people who have stopped going to these places . . . ."[207]

The challenge here is that the attacks addressed by the judgment were not against man-made buildings. They were attacks against what we consider

("The charging document fails to sufficiently demonstrate that the international condemnation of environmental damage in contexts of non-international armed conflicts has taken on the typical form of a crime . . . ."); *see also* J.E.P., marzo 8, 2023, Auto SRVR Caso No. 005-001 (Parra Vera, J., concurring), *supra* note 203, ¶ 19; J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, marzo 9, 2023, Auto SRVR Caso No. 005-001, at 10 (Colom.) (Rueda Guzmán, J., dissenting). Additionally, there were many issues raised by the separate opinions, and not all of them had to do with environmental war crimes. *See generally* sources cited *supra* notes 203–04.

205. J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, marzo 8, 2023, Auto SRVR Caso No. 005-001, at 16 (Colom.) (Lemaitre Ripoll, J., dissenting).

206. J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, julio 5, 2023, Auto SRVR Caso No. 002-003, Expediente 9002762-92.2018.0.00.0001/0002, ¶ 1770 (Colom.).

207. J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, marzo 8, 2023, Auto SRVR Caso No. 005-001, at 4, ¶ 87 (Colom.) (Izquierdo, J., concurring).

nature, or that which is not man-made, which includes rivers and forests within Indigenous and Tribal territories, as well as the animals that inhabit them. Judge Izquierdo constructs her argument by linking the crime to its Rome Statute analog in international armed conflicts, which speaks not of buildings but of "sites of worship." Foregrounding legal pluralism, she writes:

> [T]he Rome Statute, when referring to "buildings," does so from a Western perspective. However, under legal pluralism, it should be understood in a broad sense as "place," according to the beliefs and views of each people. Likewise, the term "religion" should be understood in a broad sense that allows for the inclusion, within the freedom of worship and diverse belief systems, of the spiritual practices of Ethnic Peoples in accordance with their worldviews.[208]

Here, Judge Izquierdo tries to re-signify the categories of the LOAC and international criminal law to give expression to Indigenous and Black Colombian approaches to the natural world. She seeks to acknowledge that a natural place can be meaningful not only because of its use as property or because of the ecosystem services it provides, but because of its cultural meaning.

Finally, Judge Izquierdo also charges for the crime of "destruction of the environment," which is written into both Additional Protocol I to the Geneva Conventions and the Rome Statute in the context of international armed conflict.[209] Judge Izquierdo argues that the non-international armed conflict version of this crime, although not found in treaty law, is nonetheless a crime under customary international law ("CIL") and thus applicable to the Colombian conflict.[210] In this way, she is able to avoid the trap of labeling the environment as property or buildings. But the charge of "crimes against the environment" is steeped in the ecocentric approach, and thus also fails to capture the concept of territory as understood by Indigenous and Black communities. Judge Izquierdo therefore includes a section titled "Conceptualization of Natural Environment, Nature, and Territory" which attempts to re-signify each of these terms. In these passages, Judge Izquierdo seeks to erase the line that Western Cartesian perspectives draw between man and the environment, and nature and culture, by emphasizing their entwinement, even as she is applying a body of law that has always treated them as separate. She writes, for example:

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208. *Id.* ¶ 83.

209. Protocol I, *supra* note 6, art. 55; Rome Statute, *supra* note 65, art. 8(2)(b)(iv).

210. According to the ICRC, CIL prohibits attacks on the environment but does not attribute criminal liability as a war crime. *See* ICRC, Customary International Humanitarian Law rs. 43–45 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005). However, the indictment argued that the underlying acts rise to the threshold level established by the ICTY in the *Tadić* judgment. *See* Prosecutor v. Tadić, IT-94-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 94 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995).

> [The Awá People] describe themselves as the "people of the mountains." The Territory, in their words, is "who we are." Thus, whatever harms affect the health and well-being of the mountain is also a violation committed against the human community of the Awá.[211]

The indictment includes lengthy quotes in which the affected Indigenous peoples and Black communities describe the harm suffered by their territories in the armed conflict.[212]

The two sets of indictments issued in 2023 are being contested at the next stage of the JEP's judicial process at the time of this Article's publishing.[213] Due to their novelty, the environmental war crime indictments of the JEP have led to debate over whether the charges are fair to the defendants.[214] This Article does not take a position on the legality of the classification of the crimes. Rather, it uses the JEP's innovative effort to weave Indigenous and Black Colombian views into its work to illustrate what the ecocultural approach might look like in action. The key aspect is that they are not about the environment understood ecologically, but about protecting the relationship Indigenous and Tribal people have with their territories. Crucially, the indictments seek to incorporate non-Western understandings of this relationship into their logic, even where the language of the LOAC is premised on Western notions of property. In this way, they step back from the anthropocentric approach insofar as that approach emphasizes relationships of property and use.

One might object that the practice of the JEP is not an example of the LOAC but of transitional justice. In addition to determining criminal legal responsibility for war crimes, the JEP has the role of promoting truth-telling and other aspects of restorative justice as a core part of its mandate.[215] Some of its practices highlighted here, such as declaring territories to be victims of the armed conflict, might therefore be understood as part of its work as a transitional justice mechanism. However, this is a case of "both . . . and." The JEP is a transitional justice mechanism, and many scholars have analyzed the innovations it has

211. J.E.P., julio 5, 2023, Auto SRVR Caso 002-003, *supra* note 206, ¶ 1688.

212. *Id.*

213. At the investigatory stage, the JEP is composed of three chambers with differing functions. The indictments were issued by the Chamber for the Acknowledgement of Truth and Responsibility, which has opened eleven emblematic macro-cases, each encompassing hundreds or thousands of crimes. At the second instance is the Peace Tribunal, which itself divides into three first-instance chambers and an appellate court. J.E.P. Statute, *supra* note 180.

214. *See* J.E.P., marzo 8, 2023, Auto SRVR Caso No. 005-001 (Lemaitre Ripoll, J., dissenting), *supra* note 205, at 2 (arguing that the creation of new war crimes violates the principle of legality and the "principle of the broadest amnesty possible"). For a broader critique of classification, see generally Talita Dias, Beyond Imperfect Justice: Legality and Fair Labelling in International Criminal Law (Timothy L.H. McCormack ed., 2023).

215. L. 1957/19 art. 4, junio 6, 2019, D.O. (Colom.).

introduced to that field.[216] But it is also a special domestic war crimes tribunal charged with prosecuting international crimes and applying humanitarian law. When the JEP issues indictments, it acts as a war crimes court interpreting international criminal law on war crimes, and contributing to its development. It bears mentioning that it was only once the JEP opened its doors that the ICC closed its seventeen-year-long preliminary examination in Colombia. It signed a cooperation agreement with the Colombian government, which describes the transitional justice process as "a valuable experience that may be replicated in other situations around the world" and it committed to ongoing dialogue and "exchanges of lessons learned and best practices" with the JEP.[217]

Further, the realms of the LOAC and transitional justice increasingly overlap. PERAC includes aspects of post-armed-conflict remedial measures within its scope.[218] The ICRC also considers post-conflict measures to be part of the scope of the LOAC, thereby folding transitional justice into the practice of the LOAC.[219] This is not to say that all transitional justice measures are relevant to the evolution of the LOAC. But there is certainly room for cross-fertilization.

Another, similar objection may be that the ecocultural approach is not really the LOAC but rather a much broader doctrine that cuts across several different areas of international law, beyond even transitional justice. While this may be true, this Article seeks to develop the concept within the LOAC as a distinct branch of law with its own history. The following section explores next steps in the development of the ecocultural approach within the LOAC.

B. Before and During Armed Conflict

Insofar as the LOAC is a set of laws that must be practiced in the theater of operations, simplicity is a virtue. The LOAC is not only about protecting noncombatants in armed conflict; it is also about legitimating and shaping the practice of war. Adding another layer of protection makes this less practicable. How will the commanding officer know when they are in Indigenous, Tribal, or peasant territory, for example, and what protections a particular people require?

The following subsections point to ways that the ecocultural approach could be further integrated into the LOAC in a workable manner before, during, and after the armed conflict, following the sequencing set out by the Additional

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216. *See* sources cited *supra* note 200. Further, scholars have already been making the argument that transitional justice as a field needs to encompass human and non-human relations. *See* sources cited *supra* note 200; *see also* Clark, *supra* note 103, at 2 (arguing for a relational approach in transitional justice in Ukraine).

217. ICC Cooperation Agreement, *supra* note 165.

218. PERAC Principles, *supra* note 8, princ. 24.

219. *See generally* Luke Moffett & Nikhil Narayan, *Provisional Justice in Protracted Conflicts: The Place of Temporality in Bridging the International Humanitarian Law and Transitional Justice Divide*, 106 Int'l Rev. Red Cross 1222 (2024).

Protocols and the PERAC.[220] There is no denying that the ecocultural approach adds an extra set of constraints, and therefore complexity. However, it is also the case that this approach protects important values. Further, it could be implemented in a way that is practical, and not necessarily more complex than existing constraints on the conduct of hostilities. Rather than providing a full-fledged, comprehensive normative framework to implement the ecocultural approach, we identify a series of key issues and discuss how they might be addressed in order to exemplify what the ecocultural approach could be in action.

1. Preempting Harm

The protection provided before an armed conflict arises should focus on identifying and making public those elements of the environment that are important for preserving the material and cultural continuity of Indigenous and Tribal peoples and peasants. This includes a mechanism to establish public inventories similar to the ones established for protected cultural objects, like the UNESCO World Heritage List,[221] the international register of cultural property,[222] or those for key natural sites, like those under special protection in the list of Ramsar wetlands.[223] The protection for different elements of these territories can be differentiated depending on a system of categorization following consultations with Indigenous or Tribal authorities and peasant organizations, as well as an evaluation of the ecosystemic and cultural vulnerability to different risk factors associated with armed conflicts. The creation of territorial inventories and the evaluation of vulnerability to risk factors associated with armed conflicts would help to determine when and whether they can be regarded as military targets.[224] In certain cases, vulnerability evaluations

220. *See* PERAC Principles, *supra* note 8, princ. 1; *see also* Britta Sjöstedt, *Protecting War's Unseen Environmental Damage*, 94 Nordic J. Int'l L. 24, 26 (2025) (noting that "the PERAC principles' temporal approach, introduced by Special Rapporteur Marie Jacobsson, marks a significant shift towards recognizing environmental harm as a complex, multi-stage issue spanning before, during, and after armed conflict," and using the work of the JEP as an example).

221. World Heritage Convention, *supra* note 127, art. 11.

222. Convention for the Protection of Cultural Property, *supra* note 54.

223. *See* Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Feb. 2, 1971, 996 U.N.T.S. 245.

224. The objection against the creation of registries of Indigenous territories that is based on the history of their use for territorial displacement and dispossession of Indigenous peoples needs to be contextualized both historically and geographically. Different forms of colonialism and divergent legal traditions in the Americas and Africa, for example, granted property registries contrasting functions. Thus, while in the history of the United States, property registries provided the basis of jurisdiction for facilitating displacement and dispossession of Indigenous peoples, in Latin America, the titles provided by the Spanish crown have served as a basis for Indigenous mobilization and recovery of their lands. For an analysis of the jurisdictional

should be factored into the analysis to determine whether specific military operations are proportionate.

Additionally, military operations should be prohibited in some Indigenous territories. This is the case with respect to territories inhabited or used by Indigenous peoples in voluntary isolation, but it might be expanded also to others who are in a similarly vulnerable situation, such as hunter-gatherer groups or nomadic and migratory peoples. Indigenous peoples in isolation often choose this due to previous experiences of contagion with illnesses. This was the case of the Nukak Maku, a nomadic, hunter-gatherer Indigenous group living in the Colombian Amazon basin.[225] When their territory was affected by the armed conflict in the late 1980s, they were forcibly displaced into nearby towns, where they entered into contact with the general population. Half of their population died as a result, mostly from influenza.[226] Moreover, their culture and social structure suffered, and there have been very high levels of suicide among them.[227] Situations such as that of the Nukak show the need to prohibit conducting military operations in certain Indigenous, Tribal, or peasant territories where the vulnerability to the risks associated with armed conflict are disproportionately high.

Areas that entail a lower risk may be covered by the presumption of having a civilian status established in paragraph 3 of Article 52 of Additional Protocol I. However, additional precautions should be adopted to limit harm to any areas and identifiable places, living beings, water sources, or natural objects that

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function of property registries in the dispossession of Indigenous lands, see generally K-Sue Park, *Property and Sovereignty in America: A History of Title Registries & Jurisdictional Power*, 133 Yale L. J. 1487 (2024). For a discussion of contradictions in indigeneity and racial land ownership regimes in Bolivia, see generally Penelope Anthias, *Rethinking Territory and Property in Indigenous Land Claims*, 119 Geoforum 268 (2021). For an analysis of how colonial registries in Spain and Ecuador helped Indigenous peoples in Colombia recover their lands without resorting to litigation, see generally Pablo Rueda-Saiz, *Indigenous Autonomy in Colombia: State-Building Processes and Multiculturalism*, 6 Glob. Constitutionalism 265 (2017). Moreover, in the context of the Colombian armed conflict, existing land registries have significantly facilitated the work of the Land Restitution Unit to recover Indigenous and Tribal peoples' land. They have demanded registration of unregistered land titles as a measure of "transformative justice" and a guarantee of non-revictimization in these litigation processes. *See, e.g.*, Corte Constitucional [C.C.], marzo 18, 2021, Curvaradó and Jiguamiandó Restitution, Ruling No. A-123/21 (Colom.); Afrodescendant Communities & Leaders of Jiguamiandó, Curvaradó, Pedeguita and Mancilla v. Colombia, Inter-Am. Comm. H.R., Precautionary Measure No. 140–14, Res. 6/2018 (Feb. 7, 2018).

225. For an ethnography of the Nukak, see generally Gustavo Politis, Nukak: Ethnoarcheology of an Amazonian People (1st ed. 2007).

226. For an account of the consequences of the Colombian armed conflict over the Nukak, see *The Nukak*, Survival International, https://www.survivalinternational.org/tribes/nukak [https://perma.cc/WX42-HZV8].

227. *See generally* Kelly Peña A. Riveros, *Nukak: los contactos, el Estado y la atención en salud en el norte de la Amazonía colombiana* [*Nukak: Contacts, the State and Health Care in the Northern Colombian Amazon*], 39 Revista Anthropológica 447 (2021).

have been previously classified as posing some risk to the cultural and material integrity of a group.

2. Outbreak of Hostilities

A measure that can be adopted during the emergence of an armed conflict is the suspension of certain natural resource extraction or transportation activities. Armed conflicts tend to have significant impacts over the distribution chains of natural resources and other types of commodities. Moreover, armed conflicts can produce scarcity and increase demand for such commodities, creating incentives to expand production. Therefore, the natural resource extraction sites and the trajectories for their distribution may become important military objectives, regardless of whether such attack is warranted under the LOAC. Resource extraction disproportionately affects Indigenous peoples around the world because a significant portion of the extractive industries conducts operations in Indigenous lands.[228] However, not all resource extraction and transportation represent significant risks to Indigenous territories during armed conflicts, so the risks must be evaluated before the conflict emerges.[229] Moreover, governments need to be able to develop different scenarios and find alternative sources for those materials in cases of conflict. For this reason, the possible suspension of natural resource extraction from, and distribution through, Indigenous or Tribal territories needs to be planned prior to the emergence of an armed conflict even though the suspension would be executed during the armed conflict.

The ecocultural approach would also favor a prohibition of the use of specific weapons that have permanent territorial consequences. This includes installing land mines, regardless of the risk level attached to the territory where they are used. Land mines have been a source of forced displacement, especially among rural populations that need to use specific areas for basic resources like food and water, children's access to school, or medical services. The remoteness of Indigenous, Tribal, and peasant territories from cities and towns, and the scarcity of the sources of basic goods and services tend to produce the total or partial deterritorialization of Indigenous, Tribal, or peasant groups living in mined

228. *See generally* Christina M. Kennedy et al., *Indigenous Peoples' Lands Are Threatened by Industrial Development; Conversion Risk Assessment Reveals Need to Support Indigenous Stewardship*, 6 One Earth 1032 (2023).

229. In some cases, man-made natural resource disasters during times of conflict pose a significant risk of damage. During the last thirty-three years, the *Ejército de Liberación Nacional* (National Liberation Army) guerrilla group bombed the Cañolimón-Coveñas pipeline 1,500 times, spilling over 3.7 million barrels of oil over the territory of the U'wa Indigenous people. *See* Semana, *Voladuras de Oleoductos*, *supra* note 186.

areas.[230] Moreover, once these groups have been forcibly displaced, return to their territories is practically impossible, and the consequences of displacement include the loss of traditional knowledge linked to their territorial integrity, including the preservation of ethnobotanical knowledge.[231]

During the conflict, the analysis of proportionality of harms should incorporate the effects of conducting specific military actions involving Indigenous, Tribal, and peasant territories. This includes taking into account sources of knowledge other than those associated with human health, property, and ecology. It includes an appraisal of the expected effects of military actions on the community's relationship with their territory and their material and cultural integrity. As mentioned above, this appraisal would be more feasible if, prior to the outbreak of a conflict, risk factors were evaluated through consultation with the Indigenous, Tribal, or peasant communities involved. Moreover, the evaluations of risk should be publicly available as part of the territorial inventories.

C. After Armed Conflict

The ecocultural approach points to a distinct type of reparatory practice. As noted above, PERAC provides that reparations must be "culturally appropriate" and further notes that Indigenous peoples must be consulted in the reparatory stage, in order to understand both their experience of the harm and how best to provide repair. Under the ecocultural approach, this extends to Tribal peoples and peasants. But exactly what this means will vary among national systems that have established different systems for the process of consultation.[232]

1. The Challenge of Defining the Harm

An example of how the ecocultural approach would play out in reparations after the conflict has ended involves the use of jaguars during the Colombian armed conflict. During Colombia's armed conflict, the FARC and the paramilitaries used jaguars to torture civilians, especially Indigenous and Afro-Colombian people in the Amazon basin and on the Pacific coast.[233] The harm of this illegal form of warfare goes beyond the specific cases of torture or

230. *See, e.g.*, U.N. Secretary-General, *United Nations Verification Mission in Colombia*, ¶ 81, U.N. Doc. S/2021/298* (Mar. 26, 2021) (noting that the Emberá peoples have been "especially affected including due to the continuous use of antipersonnel mines in their territories").

231. *See generally* Victor Hugo Gonzalez et al., *Forced Migration and Indigenous Knowledge of Displaced Embera and Uitoto Populations in Colombia: An Ethnobotanical Perspective*, 3 Mundo Amazónico 165 (2012).

232. *See generally* Pablo Rueda-Saiz, *Normative Divergence in the Implementation of the Indigenous and Tribal Peoples Convention in Latin America*, Colum. J. Transnat'l L. (forthcoming 2026) (describing the different ways the treaty and free, prior informed consent are implemented across the region).

233. *See generally* Daniel Ruiz-Serna, *Inside a Jaguar's Jaws*, 50 Am. Ethnologist 545 (2023).

death. It also goes beyond the concern for jaguars as a near-threatened species that plays a critical role in the rainforest ecosystem.[234] Many of those tortured belonged to peoples who consider jaguars to be sacred animals, a reincarnation of their ancestors that mediates between the human and non-human worlds.[235] Younger generations of Indigenous peoples and Black Colombian communities who learned of the damages inflicted on their families through this form of torture no longer viewed jaguars as sacred, seeing them only as instruments of torture.[236] A fundamental relationship, and one that tied present generations to the past and to the non-human world, was also broken.

The example of the jaguars used for torture points to the importance but also the complexity of implementing the ecocultural approach. Efforts to protect the entwined material and symbolic dimensions of human relationships to the environment should focus on Indigenous, Tribal, and peasant territories. However, there are multiple complexities with the concept of territory. These groups have different understandings of what a territory is. Their definitions can include the biotic and abiotic elements contained within a particular area, but they can also refer to diverse non-material entities. As the jaguar example suggests, the challenge is repairing harms that are rooted in experiences that do not unfold within a Western understanding of the world. Reparation can involve restoring an ecosystem, returning people to lands they were forced to abandon, but also restoring the symbolic ties, including the spiritual ties, of a people to their territory. One way to do this, for example, is through holding Indigenous-led rituals of repair and sacralization.[237]

2. Intercultural Experts

The JEP has appointed "intercultural experts" who assist in investigating and understanding the harm suffered by peoples and their territories and cites them as sources in the footnotes of their charging document. In one investigation,

234. *See generally* Séverine Roques et al., *Effects of Habitat Deterioration on the Population Genetics and Conservation of the Jaguar*, 17 Conservation Genetics 125 (2016).

235. For an analysis of the role of jaguars among various Amazonian Indigenous peoples, see Michael Taussig, *Shamanism, Colonialism, and the Wild Man: A Study in Terror and Healing*, *in* On Violence: A Reader 503–21 (Bruce B. Lawrence & Aisha Karim eds., 2007); Stephen Hugh-Jones, The Palm and the Pleiades: Initiation and Cosmology in Northwest Amazonia 217–25, 290–95 (Jack Goody ed., 1979); Glenn H. Shepard Jr., *Primacy of the Eyes: Tracing the Visual Legacy of Amazonian Shamanism*, 32 Anthropology of Consciousness 42, 42 (2021).

236. *See generally* Ruiz-Serna, *supra* note 233.

237. The JEP has embraced the practice of holding rituals of harmonization with the Indigenous peoples it engages. *See, e.g.*, J.E.P., *Ritual de armonización de autoridades espirituales de los pueblos Kankuamo y Wiwa* [*Harmonization Ritual of Spiritual Authorities of the Kankuamo and Wiwa Peoples*], (YouTube, Oct. 7, 2025), https://www.youtube.com/watch?v=vIft7JPKCqw [https://perma.cc/D26Z-GEAS].

the JEP worked with seven intercultural experts, an anthropologist, and an environmental engineer in order to better understand the harm suffered by the *Katsa Su*, the territory of the Awá, and to better address the harm.[238] It is through this intercultural dialogue that the JEP was able to understand more fully the harm to the Awá and the *Katsa Su*, which it conveys at length in its charging document:

> For the Awa people, there exists a spirit they call *kuanka*, who lives in the cascades and bathes in the river and feeds on the river's fish and crabs. However, once the river was contaminated, the spirit abandoned them, and this led to tragedies, deaths, misunderstandings, and problems in the community. Additionally, the contamination of the rivers led to loss of riverside plants [that are] . . . fundamental for their medicinal and spiritual practices.[239]

The document goes on to explain how the oil spills made it impossible for the Awá to perform traditional rituals, given that it was no longer possible to sit or step on the slick, oil-blackened river rocks.[240] The quotes show that the JEP is committed to acknowledging what it calls Indigenous and Tribal "cosmovisions" and treating them with dignity in the legal system.[241] By appointing intercultural experts it acknowledges the ontological differences between peoples and seeks to navigate this difference in a culturally aware manner.

3. Consultation and Harmonization

The legal framework of the Colombia peace process provides that reparations be decided in consultation with the Indigenous and Tribal peoples whose territories have been victimized.[242] Further, reparations may include spiritual rituals in accordance with the cultural and ancestral tradition of each people.[243] The JEP has held rituals of harmonization with the Indigenous communities involved in the cases it is investigating, including a ritual of harmonization with the *Consejo Regional Indígena del Cauca*, a multiethnic Indigenous organization that unites nine Indigenous peoples in the department of Cauca, when

238. J.E.P., julio 5, 2023, Auto SRVR Caso 002-003, *supra* note 206, ¶ 101, n. 99.
239. *Id.* ¶ 1394.
240. *Id.* ¶ 1395.
241. For a discussion of the term *cosmovision*, see sources cited *supra* note 111.
242. This is a requirement of the JEP regulatory framework. *See, e.g.*, Protocol for the Coordination, Interjurisdictional Articulation and Intercultural Dialogue Between the Special Indigenous Jurisdiction and the JEP arts. 5, 6, 31, 33 (July 24, 2019) (Colom.); *see also* Methodology for Truth Recognition of Crimes Against Indigenous Peoples (Oct. 30, 2018), at 34 (Colom.).
243. Peace Accord, *supra* note 180, at 173; *see also* Decreto Ley 4633/11, diciembre 9, 2011, Diario Oficial [D.O.] (Colom.).

it received their petitions to be included as victims within the JEP process.[244] Taken together, these examples of the JEP's reparatory work point to the richness of possibilities of practice across cultures and ontologies. However, overemphasizing the symbolic aspects of reparations also poses the significant risk of undermining the material dimensions of harm and the material conditions that made certain communities more vulnerable to them.

4. Structural Limits of Repair in the Indigenous and Tribal Context

Despite the 2016 Peace Accord, and notwithstanding the innovative, culturally attuned work of the JEP, the Awá, the Nasa, and the Eperara people are on the verge of extinction.[245] Violence, illegal exploitation, and the usurpation of their territories continues.[246] Similarly, the Black communities of Tumaco continue to suffer disproportionate levels of poverty.[247] The absence of a strong state presence renders communities in this region of Colombia particularly vulnerable, compounding the effects of their marginalization and of the harm suffered during the armed conflict. The JEP does have the power to issue provisional measures,[248] and has issued provisional measures in at least one case to prevent

244. Arial Cabrera, *En ritual de armonización la JEP recibe acreditación de las víctimas de los pueblos indígenas* [*In a Harmonization Ritual, the JEP Receives Accreditation from the Victims of the Indigenous Peoples*], Radio Santa Fé (Dec. 7, 2019), http://www.radiosantafe.com/2019/12/07/en-ritual-de-armonizacion-la-jep-recibe-acreditacion-de-las-victimas-de-los-pueblos-indigenas/ [https://perma.cc/QU9F-VQJN]; *Con ritual de armonización se dio inició a la sexta sesión de intercambio de saberes JEP y JEI* [*The Sixth Session of the JEP and JEI Knowledge Exchange Began with a Harmonization Ritual*], Consejo Regional Indígena del Cauca (Oct. 9, 2019), https://www.cric-colombia.org/portal/con-ritual-de-armonizacion-se-dio-inicio-a-la-sexta-sesion-de-intercambio-de-saberes-jep-y-jei/ [https://perma.cc/P2L2-F47G].

245. Manuel Rueda, *UN Warns of 'Ongoing Tragedy' as Indigenous Groups in Colombia Face Extinction*, AP News (May 20, 2025), https://apnews.com/article/un-colombia-sierra-nevada-indigenous-extinction-95f7d6655e25b773036cc5efcb05d50b [https://perma.cc/CFF8-KNWD]; *see also* Krisna Ruette-Orihuela et al., *Necropolitics, Peacebuilding and Racialized Violence: The Elimination of Indigenous Leaders in Colombia*, 105 Pol. Geography 1, 8–9 (2023) (examining "racialized and spatialized violence directed at [I]ndigenous leaders, organizations and communities in northern Cauca, Colombia since the signing of the Peace Agreement").

246. *See generally* J.E.P., Unidad de Investigación y acusación, El Ambiente como Víctima Silenciosa: Un diagnóstico de las afectaciones en el posacuerdo de paz (2017–2022) [The Environment as a Silent Victim: An Assessment of the Impacts of the Post-Peace Agreement] (2022) (showing how land-grabbing, violence by non-state actors, and environmental degradation continued after the peace accord of 2016, endangering Indigenous peoples).

247. Rebecca Bratspies, *'Territory is Everything': Afro-Colombian Communities, Human Rights and Illegal Land Grabs*, Colum. Human Rts. Rev. Online (May 7, 2020), https://hrlr.law.columbia.edu/hrlr-online/territory-is-everything-afro-colombian-communities-human-rights-and-illegal-land-grabs/ [https://perma.cc/3JGR-CC3W] ("Colombia's Afro-descendant and indigenous people are generally subsisting at the lowest economic levels—and are much more likely to be poor or extremely poor.").

248. Andrea Camacho Rincón & Germán Parra Gallego, *Addressing Environmental Damages in Contexts of Armed Conflict Through Transitional Justice in Colombia,* 925 Int'l Rev. Red Cross

further land-grabbing from peasant communities and further environmental harm.[249] Yet there is only so far that the ecocultural approach, and the laws of war themselves, can alter the structural challenges that Colombia faces.[250]

Conclusion

This Article has presented a new typology of the fundamental approaches to environmental protection during war since the late 19th century, documented the emergence of an ecocultural approach, and argued for its further incorporation into the LOAC. It concludes by pointing to three further implications of the argument.

First, the ecocultural approach reveals something significant about the LOAC: Even the existing approaches to the environment—the anthropocentric and ecocentric approaches—are not just about protecting nature as an object but also about safeguarding the relationships between humans and nature. If all three approaches were applied to the same piece of land, each would emphasize different aspects of human relationships with what anthropologists call the non-human world.[251] The anthropocentric approach would protect the land as property or as a resource for human survival. The ecocentric approach would focus on preserving the ecosystem, of which humans form part. The ecocultural approach, however, would go further, protecting not only the property, resources, and ecosystem, but also the collective meaning it holds for the people who inhabit and depend on it. The argument presented here, in other words, allows us to view the LOAC as a legal system that safeguards relationships, which makes it a more comprehensive and relational body of law. The LOAC does not protect nature per se, but rather the ways in which humans and their environments are interconnected.

Second, the ecocultural approach pushes the LOAC to recognize that its traditional approaches to environmental protection are shaped by Western assumptions. But it also challenges the dominance of Western categories like subject-object and nature-culture, which are already under strain due to climate change and other environmental crises that some view as eroding the division

424, 444–45 (2023) (noting the JEP's use of this faculty to stop dredging that might interfere with forensic work).

249. *See* J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, octubre 1, 2024, Nadiezhda Henríquez Chacín, Auto SRVNH Caso No. 04/04-124 (Colom.).

250. *See generally* Rosario Figari Layus & Juliette Vargas Trujillo, *The 'Domino Effect' of Ongoing Violence on Transitional Justice: The Case of Colombia's Special Jurisdiction for Peace*, 17 Int'l J. Transitional Just. 435 (2023) (discussing the challenges of restorative justice in the midst of ongoing violence in Colombia).

251. *See generally* Castro, *supra* note 109.

between humans and nature.[252] By incorporating the ecocultural perspective, the LOAC not only takes a step toward a more inclusive and just framework, it also highlights ways of relating to the environment that exist even within Western societies but are often obscured by the commodification of land.[253] After all, it is not only Indigenous, Tribal, and peasant communities whose relationships to land extend beyond their use and exchange values. Even in non-Indigenous societies in the United States and Europe, human connections to the natural world are shaped by material, cultural, and symbolic elements that go beyond legal ownership.

The approaches of Colombia's JEP reflect this perspective. While its charging documents can be read as advocating for special protections for Indigenous and Tribal communities, they also call on Western societies to reconsider the rigid nature-culture divide that has shaped their legal frameworks. Anthropologist Astrid Ulloa has shown how Indigenous communities in Colombia address environmental challenges by framing their territories as sentient beings and by recognizing both human and non-human entities as political actors.[254] In doing so, they invite a broader reflection on the many ways humans relate to and are part of their natural environments—relationships that extend beyond property and resource use and should be acknowledged in legal systems worldwide. As an Indigenous leader testifying before the JEP put it, the ecocultural approach has implications that go far beyond the protection of Indigenous lands:

> One of our great contributions to humanity is the form in which our peoples relate to natural resources. While the so-called "developed cultures" have abused and destroyed nature . . . we reaffirm and resolve the relation of living together, of respect and dignity with all the beings that inhabit this earth.[255]

The framework presented here, in other words, harbors the suggestion that the ecocultural approach could extend beyond the protection of Indigenous and

252. This is what Marisol de la Cadena refers to as an "ontological opening." *See* Lyons, *supra* note 198, at 63.

253. *See generally* Polanyi, *supra* note 43.

254. Astrid Ulloa, *Climate Change, Cultures, Territories, Nonhumans, and Relational Knowledges in Colombia,* Humanities Futures (Iván Vargas trans.), https://humanitiesfutures.org/papers/climate-change-cultures-territories-non-humans-and-relational-knowledges-in-colombia [https://perma.cc/Z3LQ-P36E]; *see also* Astrid Ulloa, *Estrategias culturales y políticas de manejo de las transformaciones ambientales y climáticas en Colombia* [*Cultural and Political Strategies for Managing Environmental and Climate Transformations in Colombia*], *in* Sabiduría y adaptación: El valor del Conocimiento Tradicional para la Adaptación al Cambio Climático en América del Sur [Wisdom and Adaptation: The Value of Traditional Knowledge for Adaptation to Climate Change in South America] 155, 162–66 (Rommel Lara & Roberto Vides-Almonacid eds., 2014).

255. J.E.P., Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, junio 10, 2020, Auto SRVBIT Caso No. 002-094, ¶ 82 (Colom.).

Tribal lands to encompass the protection of symbolic and material ties to the environment for all human communities. This perspective could be integrated into the LOAC through its existing treaties and other sources that protect cultural property, reinforcing the idea that certain connections between people and their environments deserve protection during armed conflict—not just for conservation or property reasons, but because of their profound cultural and existential significance.[256] That is a question for another day—one that should only be pursued if it strengthens, rather than weakens, the hard-won protections Indigenous and Tribal movements have achieved for their territories.

Third, the argument has implications for branches of law beyond the LOAC, and in particular for international criminal law. The principles underlying the ecocultural approach could provide a powerful lens for rethinking how we conceptualize an international crime of ecocide for the future.[257] As the legal conversation around ecocide gains momentum, integrating these perspectives could shape a more comprehensive and just framework for prosecuting environmental destruction. Exploring this connection is a critical next step.

256. For an anthropological perspective that promotes this form of engagement with indigenous thought, see generally CASTRO, *supra* note 109.

257. As we went to press, an article that draws lessons from the JEP's prosecutions for thinking about ecocide was published. *See* Juliana Galindo & Héctor Herrera, *From Environmental War Crimes to Ecocide: Lessons from Colombia's Transitional Justice*, INT'L J. HUM. RTS. 1, 20 (2025) (noting that "expanding the notion of victimhood to encompass the environment-as-victim could be a productive next step in the evolution of International Criminal Law"); *see also* Rachel Killean & Elizabeth Newton, *From Ecocide to Ecocentrism: Conceptualising Environmental Victimhood at the International Criminal Court,* 31 INT'L REV. VICTIMOLOGY 238, 238 (2024). For arguments that are similar but do not draw from the Colombian experience, see generally Matthew Gillett, *'Human, All Too Human': The Anthropocentricisation of Ecocide*, 9 INT'L J. HUM RTS. 1 (2025); Rebecca J. Hamilton, *Criminalizing Ecocide: An Opportunity to Embed the Inseparability of Humans from Nature into the Law*, 38 HARV. HUM. RTS. J. 69 (2025). For arguments that criminalizing ecocide simply cannot do justice to the problem, and, in fact, may itself cause harm, see generally Carmen Gonzalez, *Racial Capitalism, Climate Change, and Ecocide*, 41 WISC. INT'L L. J. 479 (2024); *see also* Robert Knox & David Whyte, *Law's Quick Fix? Ecocide, Social Transformation and the Pitfalls of Criminalisation*, 4 ENV'T POL., 2025, at 1 (arguing that criminalizing ecocide does not attend to the complexity of the harms it creates).