



WCEL

WORLD COMMISSION ON ENVIRONMENTAL LAW
COMMISSION MONDIALE DE DROIT DE L'ENVIRONNEMENT
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Comments on the OTP Draft Policy on Environmental Crimes under the Rome Statute

IUCN World Commission on Environmental Law (WCEL), Specialist Group on Environmental Security and Conflict Law

We welcome the initiative by the Office of the Prosecutor to review the policy of the office in relation to investigating and prosecuting environmental crimes. As the world is experiencing the effects of a triple planetary crisis, notably the interconnected nature of the crises of pollution, climate change, and biodiversity loss, every effort to help prevent further damage to the environment is imperative. Assessing the extent to which the Rome Statute provisions are applicable to damage to the environment is, therefore, pivotal as well as timely. We also appreciate the opportunity to comment on the recent *Draft Policy on Environmental Crimes under the Rome Statute*.

The review and drafting process has, clearly, been very rigorous and comprehensive in approach and there is much to be commended in the new Draft Policy. The comments below follow the structure of the Draft Policy.

Objectives of the Draft Policy

1. The Draft Policy outlines 7 objectives at para.12. Adoption of the draft policy itself will help fulfil some of the stated objectives (for example objectives a, b and f), while others will need an ongoing commitment of resources and will.
2. For those interpreting the Rome Statute crimes in an overly narrow way, we welcome the OTP's recognition that such restrictive interpretations are not warranted in today's society – one in which states have already demanded action to protect the environment, including through criminal sanctions for serious harms, both in 'peacetime' and during armed conflict.¹ The Draft Policy clearly articulates the urgent need for environmental protection, importantly setting the Draft Policy in the context of the climate emergency and broader global environmental degradation (para. 2). We, therefore, commend the clear statement contained in the Draft Policy that the full range of Rome Statute crimes can be prosecuted in relation to environmental damage. And we encourage the OTP to reflect this understanding in its practice when Rome Statute charges are brought in current and future cases, both with a view to adequately seeking prosecution of

¹ Note for example, that the UN General Assembly recognised the International Law Commission's Principles on the Protection of the Environment in relation to Armed Conflicts, see UN General Assembly Resolution 77/104, 7 December 2022.

environmental harm in concrete cases and to develop the jurisprudence in international criminal law along the lines mentioned.

3. We also recognise the stated limitations of the OTP and the Draft Policy in analysing only the current provisions of the Rome Statute and, thus, not looking more generally at conceptions of ecocide or broader environmental crimes.
4. Achievement of several of the objectives will be dependent upon the allocation of resources and the fostering of collaborations. For example, the gathering of evidence of environmental damage is pivotal to the criminal prosecution of such crimes, and, as the conflict in Ukraine, for example, rendered evident, there exists a knowledge gap. Similarly, as recognised in the 2024 UNEA resolution 6/12², there is a lack of guidance for states and other stakeholders studying environmental harm in areas affected by armed conflicts. The UNEA has accordingly initiated a process to develop such guidance under UNEP's auspices.
5. The adoption and dissemination of evidence collection methods, standards and protocols are required, therefore, to enable a case to reach the criminal standard of proof, including the need to ensure the appropriate collection, documentation, testing, storage and preservation of such evidence in relation to environmental damage. Many conflicts involve low-tech weapons and systems, and the world often takes its eye off such conflicts despite grave human and environmental harms being inflicted. Most evidence collection and sample verification techniques are likely to be unavailable in such conflict situations. While there is a valuable emphasis on hi-tech scientific tools in much of the literature in this area, such as remote sensing and drone surveillance, there is also the need to consider the broad spectrum of potential ecological evidence of harm when designing evidence collection protocols. And while high-tech methods are helpful to help in gathering and retaining evidence of environmental damage, there is also a strong need for ground truthing and sample collection. We welcome, therefore, the objective of ensuring further work in this area of measuring and proving environmental damage, and the IUCN WCEL would be open to further opportunities to engage with the OTP to create best practice guides for prosecuting and investigating environmental crimes (objective (g)).
6. The IUCN WCEL recently published guidance on the *Corporate Due Diligence and Liability for Natural Resources Supply Chains in/from Conflict-Affected Regions*³, and so is pleased to see the emphasis in the Draft Policy's objectives on investigating individual actors associated with corporations. Historically viewed as a gap within the remit of the Rome Statute, recent state practice, including the Colombian peace process, has emphasised the need to ensure liability for such actors.

² UNEA Resolution, Environmental assistance and recovery in areas affected by armed conflict, available at: <https://docs.un.org/UNEP/EA.6/RES.12>. Preamble para. 6, 'Noting that the collection and sharing of environmental data are vital for informing environmental assistance and recovery in areas affected by armed conflict and that States affected by armed conflict may require technical assistance in determining the severity of environmental damage.' Operative para. 4, Requests the Executive Director of the United Nations Environment Programme, subject to the availability of resources, and with the oversight of the Committee of Permanent Representatives to the United Nations Environment Programme, to report to the United Nations Environment Assembly on the provision by the Programme of environmental assistance and recovery in areas affected by armed conflict, and to identify and develop technical guidance, including new and emerging practices, on the collection of data on environmental damage associated with armed conflict.'

³ *Implementation Guidance for Principles 10 and 11 of the ILC Principles on Protection of the Environment in Relation to Armed Conflict*, written by the Specialist Group on Environmental Security and Conflict Law, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://iucn.org/sites/default/files/2024-10/guidance-ilc-principles-10-and-11.pdf>

7. While the OTP is unable to prosecute corporations, the emphasis in objective (d) of supporting national efforts could also include encouraging greater adoption at the domestic level of corporate criminal liability for environmental crimes. This encouragement would be a valuable way in which the OTP could work more closely with states, and would also help implement the International Law Commission's Principle 11 concerning the liability of business enterprises, of the 2023 Principles on the Protection of the Environment in relation to Armed Conflict (PERAC Principles).⁴ At the same time, we are mindful that the ICC's complementarity regime has on some occasions in the past been utilised by States to effectively undermine accountability efforts. It is important that the OTP's engagement with national authorities on issues of environmental crimes keep these lessons in mind and does not end up facilitating accountability gaps. Accordingly, any engagement with national authorities should be based on an assessment of both capacity and will of the relevant national authorities to prosecute all relevant actors for involvement in environmental crimes.
8. In setting out its work programme with national authorities, the Draft Policy could also reference the *Enhanced Due Diligence (EDD) standard*, as it is evolving rapidly and is crucial in high-risk sectors (illegal mining, deforestation, wildlife trafficking) and conflict, fragile or risk contexts. In such cases, the standard of due diligence is insufficient.⁵ EDD requires more rigorous audits of suppliers and partners, stricter monitoring and verification mechanisms, greater transparency in risk disclosures and measures taken, etc. These enhanced requirements align with standards developed by various international bodies (some of them at the universal level in the UN framework). This is critical to prevent companies from claiming ignorance of the highest due diligence standards required in these situations and to support the progressive development of law.

Definitions and Concepts

9. We welcome inclusion of the concept of 'non-human inhabitants' in the definition of environmental damage, although we would suggest simplifying by referring to nature or animals (defined to include all living creatures, or similar). This extension of recognition to the concept of 'non-humans' is especially welcome given the historically anthropocentric understanding of harm by the Court.⁶ Notably, non-human species are not recognised by the Court as falling within the current definition of 'natural persons'.⁷
10. We submit that the definition and interpretation of 'victims' offers the space to accommodate broader notions of victimhood that are relevant for crimes involving the environment, namely: future generations, organisations charged with protection of the environment, and the environment as such. In the first place, the admission of children born out of rape and sexual

⁴ UNGA Res. 77/104, 7 December 2022; ILC, Draft Principles on Protection of the Environment in Relation to Armed Conflicts, in Report of the International Law Commission, UN Doc. A/77/10, 2022, Chap. V (ILC PERAC Principles), available at: <https://legal.un.org/docs/?symbol=A/77/10>

⁵ See for example, Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance) PE/9/2024/REV/1, OJ L, 2024/1760, 5.7.2024, available at: <http://data.europa.eu/eli/dir/2024/1760/oj>

⁶ For an account of how the ICC reparative framework offers opportunities to respond to environmental destruction, see Rachel Killean, 'From ecocide to eco-sensitivity: 'greening' reparations at the International Criminal Court', *International Journal of Human Rights* 25:1 (2021): 323-347; see also, Rachel Killean & Elizabeth Newton, 'From ecocide to ecocentrism: Conceptualising environmental victimhood at the International Criminal Court', *International Review of Victimology* (2024): 1-27.

⁷ Pre Trial Chamber I, Situation in the DRC, Public redacted version of the "Decision on the application for participation in the proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6", ICC 01/04 101 tEN Corr (17 January 2006) para. 80.

slavery as direct victims as well as the recognition of intergenerational trauma in ICC reparations proceedings,⁸ implies that persons need not be alive yet at the time of the commission of the crime to qualify as victims. For this reason, we encourage the OTP to maintain and expand its references to future generations (para. 4) in the final version of this Draft Policy. For example, it could state the possibility of a specific environmental dimension of intergenerational harm, which could be relevant for, not only gravity, but also sentencing and reparations.⁹ As to organisations charged with protection of the environment, we note the possibility that this type of legal person qualifies as victims under Rule 85(b) RPE. Lastly, concerning the environment, we recall the submission by one of our members where she argued that ‘if certain conditions are met, the environment could be declared a victim directly, given the trend towards recognizing legal personality to nature or its elements.’¹⁰

11. The Draft Policy is commended for its adoption of broad definitions of the ‘environment’ and ‘environmental damage’. Accordingly, ‘environmental damage refers to any loss or deterioration of the natural environment, as defined [in the Draft Policy]. Such loss or deterioration includes the impact on the health and well-being of a particular ecosystem’s non-human as well as human inhabitants’ (para. 23). We also note the recognition of the notion of ‘well being’ of the world, including the natural world (para. 4), provided as context for the inclusion of well being concerns. Thus, environmental damage as defined includes the ‘impact on the well-being of non-human inhabitants’. We would welcome further elaboration in the examples given of what this new definition/recognition might look like in practice.
12. Clearly, the Rome Statute crimes contain significant thresholds of harm, and so it remains that only the most grave crimes will be the subject of prosecution. However, the adoption of such a forward-thinking definition of ‘environmental damage’ will, importantly, help ensure the consideration of a broader range of environmental harms for investigation and prosecution.
13. The Draft Policy helpfully clarifies that the two concepts of ‘natural environment’ and ‘environment’ are synonymous and interchangeable. This approach recognises as outdated the notion of placing limits on qualifying damage based on whether the environment in question was viewed as being ‘natural’. We notice that the Draft Policy also expresses the notion that it is taking an ‘ecocentric approach’ by extending recognition to pure environmental damage, by including, for example, ‘large-scale damage to an ecosystem that is not being used for subsistence purposes’ (para. 29). However, the way in which the Draft Policy exemplifies the concept of ‘ecocentric’ is not the way in which that concept is understood in international environmental law. Ecocentric refers instead to rules that are centred or based on nature-centric values, rather than on the worth of nature to humans. The legal notion of ‘pure environmental damage’, however, tends to refer to that environmental damage that has no immediate impact upon humans, human use and non-uses values.
14. The OTP outlined the environment-specific factors that will be considered when assessing gravity for admissibility decisions (para. 29), which are said to include:

⁸ Appeals Chamber, ‘*Ntaganda* Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”’ (12 September 2022) ICC-01/04-02/06-2782, para. 657; and Trial Chamber II, ‘*Ntaganda* Addendum to the reparations order’ (14 July 2023) ICC-01/04-02/06-2858-Red, paras. 177, 192, 196 and 197.

⁹ See also Maastricht Principles on The Human Rights of Future Generations (3 February 2023) available at <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>.

¹⁰ Marina Lostal, Comment on OTP Environmental Crimes Policy. ‘The Environment and the ICC Legal Framework concerning Victims’ (16 March 2024): pp. 1, 2-4, available at: https://iucn.org/sites/default/files/2024-04/icc_submission_marina_lostal1.pdf.

‘Scale: the number of direct and indirect human and non-human victims and/or the geographical or temporal spread of the environmental damage.

- **Nature:** whether the environmental crimes were committed against or affected particularly vulnerable or marginalised victims, including but not limited to women, children, the elderly, and Indigenous Peoples.

- **Impact:** the extent of the damage caused to the natural environment regardless of its anthropocentric effect; the intergenerational effect of environmental damage on human life; and the specific social, cultural, psychological, religious, or socioeconomic damage the environmental crimes inflicted on an affected community’.

15. We, therefore, commend the inclusion in the environment-specific factors of both direct and indirect harms, including those caused to ‘non-human victims’, as well as the inclusion of the ‘temporal’ dimensions of damage as part of the assessment of potential scale of harm – as this aspect is often missing from damage assessments, as well as consideration of the ‘intergenerational effects of environmental damage’ on human life. In relation to the inclusion of the ‘temporal spread of the environmental damage’, we do, however, note that this aspect of environmental damage has historically been used to limit liability. As the ‘best available scientific knowledge’ will generally show, environmental damage tends to persist long after predicted evaluations of its temporal extent. Consequently, we welcome inclusion of the temporal aspect, however we would urge the OTP to clarify that this provision is meant to recognise the full scale of environmental impacts, particularly the long-term nature of those impacts.

16. When assessing admissibility, one of the factors that the OTP needs to analyse is whether the prosecution in question would serve the ‘interests of justice’. The notion of ‘interests of justice’, however, is not defined. We would welcome the addition of a comment in the Draft Policy that justice needs to be understood beyond mere human relations (Art. 53(2)(c), Rome Statute).

17. The Draft Policy states at para. 8 that ‘in analysing environmental crimes, the Office will emphasise the rights of individual members of groups that have a particularly close connection with the natural environment, particularly Indigenous Peoples’. Recognition of the strong ties of Indigenous Peoples with nature and their traditional lands and resources is found throughout the Draft Policy, as is recognition of the often-vulnerable situation of many Indigenous Peoples (para. 56). This emphasis in the Draft Policy demonstrates the adoption of a modern, bio-cultural approach,¹¹ and mirrors the emphasis by the International Law Commission in the Principles on the Protection of the Environment in relation to Armed Conflict (PERAC)¹² on ensuring that special consideration is taken of the need for protection of the lands and territories that Indigenous Peoples inhabit or traditionally use, as well as the jurisprudence of the Inter-American Court of Human Rights. Due to this close cultural and spiritual bond, the Draft Policy articulates the need to consider and weigh heavily the environmentally-damaging impacts of policies and actions on indigenous peoples. This emphasis on considering impacts on Indigenous Peoples is, therefore, commended.

18. The Draft Policy also specifies a need for the OTP to take an intersectional lens when weighing impacts on vulnerable persons and communities (paras. 8 and 29). Furthermore, there is a clear and welcome recognition in the Draft Policy that discriminatory human rights violations are frequently structural drivers of violence and environmental damage, for example persecution of indigenous and other vulnerable or marginalised communities on the basis of race, ethnicity,

¹¹ Britta Sjöstedt and Karen Hulme, ‘Re-evaluating international humanitarian law in a triple planetary crisis: New challenges, new tools’, (2023), 105 *International Review of the Red Cross* 924: 1238–1266.

¹² Principle 5, ILC Principles on *Protection of the Environment in Relation to Armed Conflict*.

socioeconomic status, religion, and caste, for example (para.56). Thus, as recognised in the Draft Policy, investigating and prosecuting environmental crimes is very important, not only to help protect the environment, but to help address the root causes of conflicts and to support the broader objectives and purposes of the maintenance of peace and security as affirmed in the UN Charter (Draft Policy para. 7). We strongly endorse these perspectives adopted by the Draft Policy.

The Crimes

19. The Draft Policy then helpfully sets out the four Rome Statute crimes and examines, with examples, how those crimes could be committed through environmental damage, illegal exploitation of natural resources, or illegal dispossession of land.

Genocide

20. In relation to genocide the Draft Policy focuses on Article 6(c), notably ‘deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part’ with ‘intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.’ The Draft Policy articulates how this crime can be committed through environmental damage, illegal exploitation of natural resources, or illegal dispossession of land. There is one example provided, that of depriving the affected group of the means of their survival, such as the alleged acts of destruction of ‘food, wells and water pumping machines, shelter, crops and livestock’, among others, in the Prosecutor’s case against Al-Bashir.¹³ Here the allegations include the deliberate contamination and poisoning of wells used for drinking water for the population and for cattle.

21. Other examples could be offered, such as (i) the draining of marshlands on which a population is materially or spiritually dependent, referring again to the emphasis on Indigenous Peoples, (ii) scorched earth tactics during warfare that are intended to destroy a group’s vital resources, or (iii) destroying all the target group’s means of survival (e.g., poisoning sources of water including communal wells and aquifers, or destroying or contaminating water resources, and crops).¹⁴

Crimes Against Humanity

22. Article 7, Crimes Against Humanity as defined under the Rome Statute, requires an attack on the civilian population. As explained in the Draft Policy, that attack, however, can be orchestrated in an indirect way through the deliberate causation of environmental damage. That act may fall within Article 7(1) provided that it is committed ‘as part of a widespread or systematic attack directed against any civilian population’ and ‘pursuant to or in furtherance of a State or organizational policy to commit such attack.’ The Draft Policy outlines several ways in which this may occur, stating that ‘environmental damage, the illegal exploitation of natural resources, and the illegal dispossession of land may contribute to the existence of a widespread or systematic attack whenever they amount to acts listed in article 7(1), such as murder, persecution, or other inhumane acts’. Examples of qualifying acts provided refer to the deliberate poisoning of drinking wells for murder (para. 35 for Article 7(1)(a)), deprivation of access to food and of traditional lands of indigenous peoples for extermination (para. 36 for Article 7(1)(b)), destruction of environmental resources for forcible displacement under Article 7(1)(c) (para. 37), and

¹³ *Prosecutor v. Al Bashir*, ICC-02/05-157-AnxA, para. 179.

¹⁴ Note the Geneva Water Hub Submission to the ICC’s first call for comments, p.2, available at: chrome-extension://efaidnbnmnibpcajpcglclefindmkaj/https://iucn.org/sites/default/files/2024-04/icc_submission_geneva_water_hub1.pdf

discriminatory persecution through environmental contamination of resources, illegal land dispossession and illegal exploitation of natural resources for Article 7(1)(h) (para. 38).

23. We commend these examples, which help to clarify the broader remit of Article 7 crimes, as well as the emphasis placed on vulnerable individuals and populations, particularly members of indigenous communities, and taking an intersectional approach to such persecution. We also recognise and welcome the inclusion of the right to a healthy environment as one of the fundamental rights of which a group may be deprived (para. 38).
24. Particularly welcome is the definition of an 'organisation' for purposes of Article 7. As recognised in the Draft Policy, a group qualifies as an 'organisation' as long as it has 'sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute (para. 33)'. The Draft Policy, therefore, explicitly recognises that Crimes against Humanity can be committed by 'corporations' – although presumably the Policy should refer to the separate notion of 'corporate actors' as corporations are not, per se, subject to the Court's jurisdiction. The recognition regarding 'corporate actors' is valuable, particularly in relation to environmental crimes as there is clear evidence that corporate actors, who may be individuals, frequently exploit unstable situations to dispossess populations of their land territories and illegally expropriate natural resources.

War Crimes

25. Examination of the war crimes provisions in relation to environmental crimes is clearly the most developed in the existing literature. This is so because Article 8(2)(b)(iv), in relation to international armed conflict, contains a specific provision referring to environmental damage. The provision criminalises the intentional launching of an attack in the knowledge that such attack will cause 'widespread, long-term and severe damage to the natural environment' that would be clearly disproportionate. However, while the Draft Policy states that the OTP will take into account the 'fragile state of the environment' and will rely on the 'best available scientific knowledge' when determining whether environmental damage breaches the three-fold threshold (para. 42), there is no analysis provided of those threshold terms. This lack of an accepted definition has been a long-running issue in relation to those concepts, and the ICRC has indeed provided some observations based on state practice¹⁵, but it seems like a missed opportunity for the OTP that it has not provided a suggested definition – or indicated how it will resolve this important issue should a prosecution be commenced.
26. International humanitarian law has struggled with defining the three threshold concepts, and so the OTP will need to examine existing state practice on the definitions. While the OTP has said that it would rely on the 'best available scientific knowledge', it is unclear if the environmental damage measurement would be sufficiently forward-looking as to be able to estimate future continuing or cascading environmental harms, notably impacts on future ecosystem health and to predator or prey species, for example, from damage caused to rivers, soils, and species from hazardous pollutants. It is, therefore, important to include within the threshold calculation the notion of cascading environmental impacts, as well as to consider possible, future cumulative and synergistic impacts. The impact dimension also refers to the 'intergenerational effect of environmental damage' – albeit only the impact on 'human life' is mentioned.
27. In terms of the threshold scale of harm, elsewhere in the Draft Policy there is specific mention of factors beyond that of fragility. Thus, the factors specifically mentioned in relation to Article 8(2)(b)(iv) could also include specific mention of the value of a protected area, for example, as

¹⁵ International Committee of the Red Cross (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, Geneva, 2020, at paras.50-72, available at: [Guidelines on the Protection of the Natural Environment in Armed Conflict](#).

a natural heritage site, or of the presence of particularly rare habitats or species – which may not always fulfil the notion of ‘fragile’. There could also be explicit reference in the Draft Policy to the concept of ‘environmental protected zones’ under Principles 4 and 18 of the ILC Principles on the Protection of the Environment in relation to Armed Conflict. The Draft Policy could also include specific mention of concepts such as nature, species and biodiversity, particularly when it has been set in the content of the current global climate crisis that is also now escalating the rapid decline in biodiversity.

28. In relation to the context of committing war crimes, the Draft Policy again refers explicitly to the value of these provisions in relation to corporate actors. This is especially relevant, observes the Draft Policy, because there is no requirement in the provisions that the perpetrator intended the act in question to further the armed conflict. Therefore, where corporate actors ‘take advantage of the existence of an armed conflict to engage in environmental damage, illegal exploitation of natural resources, or illegal dispossession of land’ this may engage Article 8. This recognition is particularly relevant in relation to the provisions relating to environmental destruction that satisfies the criteria for wanton destruction, property damage and pillage, where undertaken by corporations or individuals (paras. 44-46). Again, we commend this emphasis on narrowing some of the jurisdictional gaps in protection afforded by the Rome Statute and the objective to tackle some of the structural drivers of conflict.
29. In paragraph 47, there is a clear statement to the effect that ‘the natural environment as a whole generally qualifies as a civilian object’. The rule of distinction, thus, undoubtedly provides the broadest and, arguably, the most effective protection for the environment, and components such as forests, lakes, and habitats. Thus, it is important for new documents, such as the Draft Policy, to continue to reflect this position regarding the environment’s status during armed conflict as a *prima facie* civilian object.
30. Referring to its earlier Policy on Cultural Heritage, the current Draft Policy examines Articles 8(2)(b)(ix) and 8(2)(e)(iv) that criminalise, in international and non-international armed conflict respectively, intentionally directing attacks against cultural property (among other things). Taking a broad approach to the provision, the Draft Policy, thus, criminalises attacks directed against ‘natural sites of cultural value, including certain natural or cultivated landscapes and physical, biological, or geological formations’ – particularly those ‘natural sites and mixed natural/cultural sites that have important meaning for human groups, such as Indigenous Peoples, even if they are not buildings or monuments within the traditional meaning of those terms’. This interpretation is a very welcome development, especially in relation to protecting the natural and spiritual sites of indigenous peoples, and through its explicit recognition of the importance of the criteria for listing sites to be found in environmental law, under the 1972 UN Convention concerning the Protection of the World Cultural and Natural Heritage (para. 50). We do recognise, however, that this is not the interpretation that has heretofore been used by the Court. We would, therefore, ask the OTP to clarify this point in the Draft Policy as well as to explore the other crimes within the Rome Statute that capture natural sites

Aggression

31. The Draft Policy sets out a clear statement recognising that the crime of aggression ‘poses a unique threat to the natural environment’, referencing the fact that military force entailed in an act of aggression normally causes environmental destruction, but also because of the additional harm to the environment caused by the triggering of an armed conflict (para. 51). Indeed, going further, military preparations and weapons testing even in ‘peacetime’ are constant sources of environmental harm.

32. We welcome, therefore, the explicit inclusion of environmental damage among the factors affecting the 'character, gravity, and scale' of acts constituting aggression, including 'the number and kind of the act's human and non-human victims and whether the environmental damage is potentially irreversible'.
33. It is interesting to note, however, the final sentence in para. 54, which states that the OTP considers 'intentionally destroying or damaging the environment to be a particularly grave form' of the use of force 'because the natural environment should not be instrumentalised in the conduct of international relations'. It is unclear from this statement if this reference is intended to confirm that intentional damage to the environment can itself constitute an illegal use of force. We would welcome clarification of this position with some examples.

We welcome the OTP's work on the Draft Policy, which is designed to clarify its prosecutorial approach to such crimes, and help remedy the historical neglect of such crimes. And we are grateful for the opportunity to provide comments.