ENVIRONMENTAL WAR CRIMES: ECOCIDE AND THE *ARMENIA V. AZERBAIJAN* CASE

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ABSTRACT

War is one of the most catastrophic climate emergencies. From the displacement of Indigenous peoples to its impacts on natural landscapes, war cripples vital ecologies and environmental resources and leaves ecosystems scarred long after ceasefires. Nowhere is this more evident than in the decades of Azerbaijan's state-sanctioned violence against Armenians. As a result, forests have burned, soils have been laced with phosphorus residues, and historic landscapes sacred to Armenians have been irrevocably altered. The emerging concept of ecocide promises to fill this gap. However, its political feasibility, definitional ambiguity, and limited international enforcement capacity remain fiercely contested.

Using the Armenia v. Azerbaijan *proceedings before the International Court of Justice (ICJ) as a case study, this Article examines whether ecocide can be operationalized to hold perpetrators of environmental war crimes accountable or whether alternative legal tools offer a more effective path to justice.*

First, this Article traces the historical evolution of ecocide, situating its most recent draft definition within the broader context of international environmental law and policy trends. This Part also explores the practical and conceptual challenges of prosecuting ecocide. Second, this Article analyzes the factual record of environmental destruction in the former Republic of Artsakh, specifically the overt ecological damage from Azerbaijan's use of white phosphorus munitions on ancient, biodiversity-rich forests. This Part also considers the applicability of ecocide to the destruction of cultural heritage, arguing that these sites are integrally linked to their surrounding ecosystems. Third, this Article assesses whether alternative legal approaches provide a complementary avenue for addressing certain battlefield practices.

Lastly, this Article proposes targeted policy recommendations, such as creating a Special Rapporteur on ecocide within the United Nations Human Rights Council (UNHRC), amending international instruments to explicitly recognize the destruction of cultural heritage as a form of environmental

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harm, and requiring mandatory Environmental Impact Assessments (EIAs) in armed conflict zones to build a more ecocentric framework for future conflict-related environmental claims.

This Article seeks to highlight the vulnerability of biodiversity in historically disputed war zones. By analyzing the complex environmental dimensions of a war in a disputed territory, this Article raises awareness of this conflict and its history, as well as its significant impacts on the people and the environment of the region.

DISCLAIMER

Throughout this Article, the region internationally known as Nagorno-Karabakh will be referred to as the former Republic of Artsakh, or simply, Artsakh. Historically, Artsakh was the tenth province in the Kingdom of Armenia from 189 BC to 387 AD.[1] From 387 to 1000 AD, it maintained varying degrees of autonomy under successive empires until the establishment of the Kingdom of Artsakh.[2] Between 1603 and 1918, the region was divided and controlled by either Russia or Persia, and in 1921, following regional tensions and wars, the Central Committee of the Russian Communist Party intervened.[3] Despite initially affirming Artsakh's status as part of Armenia, Joseph Stalin subsequently altered this decision, redrawing its borders to isolate Artsakh within Azerbaijan's sovereign territory.[4]

Cut off from Armenia, the Nagorno-Karabakh Autonomous Oblast was created illegally and without the consent of the overwhelming majority of the region's populace.[5] This decision dispossessed the Indigenous Artsakh peoples of their right to self-governance.[6] Using the name Nagorno-Karabakh helps to invalidate the independence referendums of 1988 and 1991, and legitimizes Azerbaijani claims to the ancestral lands of the Armenian peoples.

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1. *Know Your Facts: A Historical Overview of Artsakh*, ARM. MUSEUM OF AM., https://www.armenianmuseum.org/artsakh (last visited Nov. 28, 2025).

2. ROBERT H. HEWSON, ARMENIA: A HISTORICAL ATLAS 102 (2001).

3. *Chronology of Events*, USCDORNSIFE: INST. OF ARM. STUD., https://dornsife.usc.edu/armenian/initiatives/resources-on-karabakh/chronology-of-events/ (last visited Nov. 28, 2025).

4. Alex Ward, *The Conflict Between Armenia and Azerbaijan Explained*, VOX (Oct. 7, 2020), https://www.vox.com/21502327/armenia-azerbaijan-nagorno-karabakh-war-explained.

5. *Id.*

6. ROBERT SERVICE, STALIN: A BIOGRAPHY 204 (2006).

I. INTRODUCTION

Nestled within the South Caucasus, conservation biologists have long recognized the former Republic of Artsakh as a biodiversity hotspot.[7] Its ancient forests harbor more than 6,000 plant species, cliff-side monasteries stand watch over river valleys that have fed Armenian communities for centuries, while steep meadows provide critical habitat for Caucasian leopard corridors and raptor flyways.[8] Those same ridgelines have also been frontline

7. *See Our Story*, WWF, https://www.wwfcaucasus.org/about_us/our_story/ (last visited Nov. 28, 2025); *see also MapMaker: Terrestrial Biodiversity*, NAT'L GEOGRAPHIC: EDUC., https://education.nationalgeographic.org/resource/mapmaker-terrestrial-biodiversity/ (last visited Nov. 28, 2025).

8. *Statement of 50 NGOs in Armenia on Use of Phosphorus Weapons in Artsakh Forests Address to International Community*, ECOLUR NEW INFO. POL'Y IN ECOLOGY (Nov. 2, 2020), https://www.ecolur.org/en/news/biodiversity/12807/; *see Armenia – Country Profile,* CONVENTION ON BIOLOGICAL DIVERSITY, https://www.cbd.int/countries/profile?country=am (last visited Nov. 28, 2025).

trenches in a century-old dispute that most recently erupted in the 2020 war between Armenia and Azerbaijan.

The violence of armed conflict typically conjures images of human suffering and geopolitical upheaval, while the environmental toll of war often remains a silent casualty despite its long-term consequences rippling through ecosystems. While international laws proscribe protections against indiscriminate attacks on civilians, they offer little protection for the natural environment.[9] This accountability gap has generated global interest in criminalizing ecocide by codifying it as the "fifth core crime" under the Rome Statute of the International Criminal Court (ICC).[10] Opponents respond that this concept suffers from definitional ambiguity, evidentiary burdens, and foreseeable geopolitical resistance.[11] This is largely because the process of amending the Rome Statute necessitates a proposal by a state party, followed by approval for negotiations, and ultimately requiring a two-thirds majority vote from the Assembly of State Parties for adoption.[12] Securing this level of political support can be a complex and potentially lengthy process.

Using the ongoing *Armenia v. Azerbaijan* proceedings before the International Court of Justice (ICJ) as a case study, this Article seeks to answer the central question: Can the doctrine of ecocide be effectively operationalized to hold perpetrators of environmental war crimes accountable? If not, do existing instruments offer a more viable interim path to justice?

Against that backdrop, this Article asks six interlinked questions: (1) Do the Artsakh burn scars, toxic residues, and cultural heritage losses satisfy the elements in the leading draft definitions of ecocide; (2) What evidentiary standards are adequate to demonstrate knowledge or reckless disregard on the part of commanding officers; (3) Should cultural heritage be read as

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9. *See generally* Matthew Gillet, *Eco-Struggles: Using International Criminal Law to Protect the Environment During and After Non-International Armed Conflict*, *in* ENV'T PROT. & TRANSITIONS FROM CONFLICT TO PEACE 220, 220–53 (Carsten Stahn et al. eds., 2017).

10. Ella Geraghty, *The Proposed Fifth International Crime: Ecocide*, DENVER J. INT'L L. & POL'Y BLOG (Apr. 24, 2025), https://web.archive.org/web/20250524185606/https://djilp.org/the-proposed-fifth-international-crime-ecocide/.

11. *See generally* Matthew Gillet, *A Tale of Two Definitions: Fortifying Four Key Elements of the Proposed Crime of Ecocide (Part II)*, OPINIOJURIS (June 20, 2023), https://opiniojuris.org/2023/06/20/a-tale-of-two-definitions-fortifying-four-key-elements-of-the-proposed-crime-of-ecocide-part-ii/; *see also* Harry Muir, *Will the Creation of the Crime of Ecocide at the International and National Level Hold Those Who Cause Severe and Irreversible Harm to the Environment Liable?*, UWE BRISTOL: BRISTOL L. SCH. BLOG (Jan. 16, 2023), https://blogs.uwe.ac.uk/bristol-law-school/will-the-creation-of-the-crime-of-ecocide-at-the-international-and-national-level-hold-those-who-cause-severe-and-irreversible-harm-to-the-environment-liable/.

12. Rome Statute of the International Criminal Court art. 121, July 17, 1998, 2187 U.N.T.S. 90.

ecocide in its own right, or does that stretch the doctrine beyond its ecological core; (4) Can Armenia deploy the Environmental Modification (ENMOD) Convention, despite Azerbaijan's non-party status, to frame white phosphorus use as a breach of emerging customary norms; (5) How might an ecocide amendment and ENMOD operate together to close the accountability gap; and lastly, (6) What policy levers are most likely to render environmental protection an operational, rather than aspirational, component of international environmental law and policy?

II. UNDERSTANDING ECOCIDE

A. Historical Development, Scope, and Definition of Ecocide

Derived from the Greek word *oikos*, meaning home, and the Latin word *cadere*, meaning to kill, ecocide means the killing of one's home.[13] The term first gained public attention during the Vietnam War in the 1970s, when Swedish Prime Minister Olof Palme famously condemned the United States for committing ecocide through its large-scale use of Agent Orange.[14] Agent Orange is a defoliant that caused widespread environmental devastation and long-term health consequences.[15] This marked a pivotal moment, as it brought the concept of environmental destruction during wartime to the forefront of international discourse. However, despite the term being used for decades, only one provision in the Rome Statute explicitly mentions environmental damage.[16]

Efforts to formally define ecocide have gained momentum, particularly in response to the escalating climate crisis and the increasing recognition of the interconnectedness between human well-being and the health of the

13. Jojo Mehta & Julia Jackson, *To Stop Climate Disaster, Make Ecocide an International Crime. It's the Only Way*, THE GUARDIAN (Feb. 24, 2021), https://www.theguardian.com/commentisfree/2021/feb/24/climate-crisis-ecocide-international-crime.

14. Peter Hough, *Trying to End the War on the World: The Campaign to Proscribe Military Ecocide*, 1 GLOB. SEC.: HEALTH, SCI. & POL'Y 10, 11–12 (2016) (explaining how Palme's use of the term "ecocide" at the 1972 Stockholm Conference popularized the concept and led to a temporary suspension of U.S.-Swedish diplomatic relations).

15. *See generally* INST. OF MED. COMM. TO REV. THE HEALTH EFFECTS IN VIET. VETERANS OF EXPOSURE TO HERBICIDES, VETERANS AND AGENT ORANGE: HEALTH EFFECTS OF HERBICIDES USED IN VIETNAM (1994) (detailing the U.S. military's use of Agent Orange during Operation Ranch Hand and documenting its toxic contamination and associated health concerns that led to its suspension).

16. *See generally Citizen Campaign to End Ecocide in Europe*, INST. FOR ENV'T SEC. (Jan. 22, 2013), https://www.envirosecurity.org/news-archives/citizen-campaign-to-end-ecocide-in-europe (discussing the European Citizens' Initiative to criminalize ecocide and noting ICC recognition that only Article 8(2)(b)(iv) of the Rome Statute expressly mentions environmental damage).

planet.[17] Additionally, prosecuting ecocide could provide a powerful tool for holding individuals in positions of power accountable for actions that lead to mass environmental destruction.[18] This could address the issue of impunity for those who make high-level decisions with devastating environmental consequences.

Seeking to establish a clear and legally sound basis for criminalizing environmental destruction, the Independent Expert Panel (IEP) for the Legal Definition of Ecocide, convened by the Stop Ecocide Foundation, has proposed a widely discussed legal definition: "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."[19] Within this proposed definition, "wanton" is specifically defined as "with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated."[20] This element introduces an aspect of proportionality, highlighting that some level of environmental impact is unavoidable in the pursuit of societal progress while aiming to criminalize actions where the resulting damage is disproportionate to any benefits gained.

Furthermore, the IEP provides specific meanings for the key terms used to describe the threshold of environmental harm. "Severe" damage is defined as that "which involves very serious adverse changes, disruption, or harm to any element of the environment, including grave impacts on human life or natural, cultural, or economic resources."[21] "Widespread" damage is defined as "damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings."[22] "Long-term" damage is defined as "irreversible damage which cannot be redressed through natural recovery within a reasonable period of time."[23]

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17. *See generally* Mark Hillsdon, *Society Watch: Drive to Make Ecocide an International Crime Gains Momentum*, REUTERS (Feb. 20, 2023), https://www.reuters.com/business/sustainable-business/society-watch-drive-make-ecocide-an-international-crime-gains-momentum-2023-02-20/ (describing renewed international efforts to define and criminalize ecocide amid growing recognition of the link between environmental destruction, human well-being, and the global climate crisis).

18. Iryna Rekrut, *Environmental Destruction in Conflict: Broadening Accountability in War*, HUMANITARIAN L. & POL'Y (Mar. 20, 2025), https://blogs.icrc.org/law-and-policy/2025/03/20/environmental-destruction-in-conflict-broadening-accountability-in-war/.

19. STOP ECOCIDE FOUND., INDEPENDENT EXPERT PANEL FOR THE LEGAL DEFINITION OF ECOCIDE: COMMENTARY AND CORE TEXT 5 (2021).

20. *Id*.

21. *Id.*

22. *Id.*

23. *Id.*

B. Legal Criteria and Evidentiary Challenges

Each element in the proposed definition poses its own set of hurdles. First, establishing "knowledge" on the part of the individuals responsible for acts that cause environmental damage is a remarkably complex task. Proving that the perpetrators were aware of the substantial likelihood of causing severe and long-term environmental harm requires access to information about their intentions and decision-making processes. Gathering such evidence can be exceedingly difficult in the context of armed conflict, as military operations are often shrouded in secrecy, limiting access to information.[24]

Additionally, determining whether the damage meets the high threshold of severe, widespread, or long-term requires clear legal standards and robust scientific evidence.[25] Gathering the necessary scientific data to demonstrate that the damage reaches these thresholds will require extensive environmental assessments, long-term monitoring, and expert analysis. This process can be time-consuming and resource-intensive, especially in conflict-affected regions.[26]

Finally, attributing responsibility for ecocidal acts to specific individuals, particularly within military or corporate structures, can present another significant hurdle. Establishing a clear chain of command and demonstrating individuals' direct culpability in ordering or facilitating actions that lead to mass environmental destruction requires thorough investigations and access to potentially sensitive information.[27]

Taken together, these challenges suggest that the practicalities of prosecuting ecocide cases could place even greater demands on the International Criminal Court's (ICC) institutional capacity.

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24. *See generally* LÉA WEIMANN ET AL., CENTER FOR CLIMATE ENGAGEMENT RESPONSE TO OTP'S DRAFT POLICY ON ENVIRONMENT CRIMES (2025) (noting the difficulty of proving direct intent in environmental crime cases).

25. *See* Wim Zqijnenburg & Ollie Ballinger, *Leveraging Emerging Technologies to Enable Environmental Monitoring and Accountability in Conflict Zones*, 105 INT'L REV. RED CROSS 1497, 1505 (2023) (explaining that reliable damage assessments in war require multi-temporal satellite analysis, ground-truth sampling, and long-term ecological monitoring, all of which are costly, data-intensive, and often impossible while conflict is ongoing).

26. *Id.*

27. *See* Vrishank Singhania, *The Proposed Crime of Ecocide – Ignoring the Question of Liability*, OPINIOJURIS (Feb. 16, 2022), https://opiniojuris.org/2022/02/16/the-proposed-crime-of-ecocide-ignoring-the-question-of-liability/.

C. Current International Discourse and Momentum

While the crime of ecocide is not yet explicitly codified in international law, potential pathways and emerging precedents could pave the way for its establishment and application in international courts.[28] As previously mentioned, a significant aspect of the current international discourse surrounding ecocide is the growing movement advocating towards placing it alongside the existing core international crimes of genocide: crimes against humanity, war crimes, and aggression.[29]

Furthermore, existing provisions within the Rome Statute itself offer a potential precedent. Specifically, Article 8(2)(b)(iv) of the Statute already criminalizes ecocide as a war crime:

> [I]ntentionally launching an attack with the knowledge that such an attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term, severe damage to the natural environment, which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[30]

While this provision is limited to armed conflict and sets a high threshold for environmental damage, it demonstrates that international criminal law already recognizes the severity of environmental harm in specific contexts.[31]

Additionally, the movement towards criminalizing ecocide is gaining traction across regional levels as well. Several countries, including Armenia, have already adopted national ecocide legislation or are actively considering its implementation.[32] Furthermore, the European Union's (EU) Environmental Crime Directive includes provisions addressing "qualified criminal offenses" that encompass conduct comparable to ecocide.[33] This

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28. *See* Jessica Durney, *Crafting a Standard: Environmental Crimes as Crimes Against Humanity Under the International Criminal Court*, 24 U.C. L. ENV'T J. 413, 415 (2018) (providing an example of an effort to expand the criminalization of ecocide that suggests prosecuting environmental crimes as crimes against humanity).

29. *Id.* at 416.

30. Rome Statute of the International Criminal Court, *supra* note 12, art. 8(2)(b)(iv).

31. *Id.*

32. *Ecocide/Serious Environmental Crimes in National Jurisdictions*, ECOCIDE LAW, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Nov. 28, 2025); *see* CRIMINAL CODE OF THE REPUBLIC OF ARMENIA art. 394 (referencing ecocide as a punishable offense).

33. Michael Faure, *The Creation of an Autonomous Environmental Crime through the New EU Environmental Crime Directive*, 2 EUCRIM 81, 154–55 (2024) (analyzing the Environmental Crime Directive's introduction of "qualified offenses" and describing it as a major expansion of environmental criminal liability in the EU).

directive mandates that EU member states criminalize certain severe environmental harms, indicating a regional commitment to tackling serious environmental offenses through criminal law mechanisms.[34]

Lastly, the Office of the Prosecutor (OTP) of the ICC has also shown an increasing interest in environmental crimes, signaling a potential shift towards greater accountability for such offenses within the Court's existing mandate.[35] Specifically, the OTP has launched policy initiatives and consultations to explore how the existing provisions of the Rome Statute can be utilized to address environmental destruction.[36] Note that it is essential to clarify the distinct roles of international courts in this context. While the International Court of Justice (ICJ) primarily handles disputes between states and can address state responsibility for environmental damage, it lacks jurisdiction over individual criminal liability, which is the focus of the proposed crime of ecocide.[37] Therefore, establishing individual criminal accountability for ecocide at the international level hinges primarily on the willingness of states to amend the Rome Statute, despite the political and legal challenges this path presents.

D. Conceptual and Practical Challenges to Operationalizing Ecocide

Despite widespread efforts to criminalize ecocide, the path toward recognizing and effectively enforcing such criminalization is fraught with obstacles. Legally, one of the primary hurdles is the lack of a universally agreed-upon definition.[38] Specifically, this concern centers on the potential vagueness and overbreadth of the ecocide definition. Critics argue that the broad language could lead to the criminalization of legitimate activities that cause environmental damage as a byproduct, such as infrastructure development, agriculture, or resource extraction necessary for economic development.[39] Thus, while the definition proposed by the IEP has gained

34. *Id.*

35. *See ICC Office of the Prosecutor Launches Second Public Consultation on a Policy Initiative to Advance Accountability for Environmental Crimes Under the Rome Statute*, INT'L. CRIM. CT. (Dec. 18, 2024), https://www.icc-cpi.int/news/icc-office-prosecutor-launches-second-public-consultation-policy-initiative-advance.

36. *Id.*

37. Juliette McIntyre, *How Does the International Court of Justice Differ from the International Criminal Court?*, UNIV. OF MELBOURNE: PURSUIT (Jan. 8, 2024), https://pursuit.unimelb.edu.au/articles/how-does-the-international-court-of-justice-differ-from-the-international-criminal-court.

38. Rachel Killean, *The Benefits, Challenges, and Limitations of Criminalizing Ecocide*, IPI GLOB. OBSERVATORY (Mar. 30, 2022), https://theglobalobservatory.org/2022/03/the-benefits-challenges-and-limitations-of-criminalizing-ecocide/.

39. *See generally* Liana Georgieva Minkova, *Ecocide, Sustainable Development and Critical Environmental Law Insights*, 22 J. INT'L. CRIM. JUST. 81 (2024) (critiquing the IEP's ecocide definition

considerable traction, it has also faced criticism and has not yet been formally adopted by the international community.[40]

Furthermore, the inclusion of the "wanton" element in the proposed definition—requiring an assessment of whether the environmental damage is "clearly excessive" in relation to the social and economic benefits anticipated—introduces a degree of subjectivity into the legal standard.[41] As previously mentioned, determining an acceptable balance between environmental protection and socioeconomic development can be highly context-dependent and politically charged. This balance makes it challenging to apply this standard consistently across different cases and jurisdictions.

Additionally, and arguably most importantly, defining the requisite level of "knowledge" that the perpetrator possessed regarding the substantial likelihood of causing severe and long-term damage presents a significant challenge.[42] Proving the mental state of individuals, particularly those operating within complex organizational structures such as corporations, governments, or militaries, can be challenging. Thus, establishing they were aware of the likely environmental consequences of their actions to the degree required by the definition poses a considerable evidentiary burden.

On the political front, resistance from powerful states protective of their national sovereignty and economic and military interests is expected. Such nations often hold strong concerns about international interference in what they consider their internal affairs.[43] They are wary of any international legal framework that could expose their actions to scrutiny or prosecution, particularly during times of conflict.[44] Their reluctance is rooted in the belief that environmental matters are intrinsically linked to their national independence, making them hesitant to cede authority over these issues.[45]

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for importing a cost-benefit "wantonness" test that could sweep lawful development into criminal liability and incentivize greenwashing).

40. Kevin Jon Heller, *Skeptical Thoughts on the Proposed Crime of "Ecocide" (That Isn't)*, OPINIOJURIS (June 23, 2021), https://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/ (praising the IEP's effort yet arguing the draft's mens rea design is "unworkable" and underscoring that states have not yet adopted the definition).

41. *Id.*

42. *Id.*

43. Mohamad Albakjaji & Jinane El Baroudy, *The Effectiveness of the International Environmental Law: The Issues of State Sovereignty, National Interests, and Differing Levels of Commitments*, 3 J. ECOHUMANISM 1348, 1353 (2024).

44. Roberta Chardulo Andrade, *The Time to Criminalize Ecocide is Here, But a Fifth International Crime Could Hurt the Very System from Which it Draws Power and Legitimacy*, OPINIOJURIS (Sept. 6, 2024), https://opiniojuris.org/2024/09/06/the-time-to-criminalize-ecocide-is-here-but-a-fifth-international-crime-could-hurt-the-very-system-from-which-it-draws-power-and-legitimacy/.

45. *Id.* (stating that criminalizing ecocide would impose tangible limitations on the sovereignty that states have traditionally enjoyed over the use of their own natural environment, and that major powers not party to the Rome Statute are likely to be wary of accepting that their nations be prosecuted).

Protecting their national interests, which may include maintaining military operational flexibility, can often take precedence over environmental concerns in the international arena.[46] Overcoming this obstacle will require sustained international cooperation, robust diplomatic efforts, and a strong commitment from states to prioritize environmental protection and accountability at the highest levels of international law.

Beyond sovereignty, geopolitical considerations further complicate matters. States may prioritize broader political and strategic alliances, making them reluctant to sanction allies or powerful nations, even in cases of severe environmental harm.[47] This suggests that national interests and stability can sometimes take priority over the urgency of addressing environmental destruction.

Finally, beyond these challenges, critics have also raised concerns about the potential for ecocide law to be applied selectively or disproportionately, targeting certain states or actors based on political considerations rather than solely on the objective assessment of environmental harm.[48] This could undermine the perceived legitimacy and fairness of the international criminal justice system. Additionally, some argue that existing international environmental laws already provide sufficient legal mechanisms to address environmental destruction in conflict, suggesting the focus should instead be on strengthening the enforcement of these mechanisms rather than creating a new crime that might unnecessarily complicate the existing landscape.[49]

E. Ecocide and Cultural Heritage: Boundaries and Intersections

While the natural environment and cultural heritage are often interconnected and can influence each other, their primary focus and the legal regimes designed to protect them differ. The currently proposed definitions

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46. *See generally* Ananya Bhargava, *Are We at War with the Environment?*, OPINIOJURIS (Feb. 14, 2025), https://opiniojuris.org/2025/02/14/are-we-at-war-with-the-environment/ (arguing that wartime environmental law is state-centric and anthropocentric, with proportionality and "military necessity" privileging operational advantage over environmental protection, including under Rome Statute art. 8(2)(b)(iv)).

47. *Id.*

48. *See generally* 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) (noting concerns that ecocide prosecutions could replicate existing structural and geopolitical biases within international criminal law, leading to politically influenced enforcement favoring powerful states).

49. *See generally* Thomas Obel Hansen, *Accountability for Environmental Crimes in Conflict Zones: Why Expanding the International Criminal Court's Jurisdiction Is Not the Best Solution*, 56 N.Y.U. J. INT'L L. & POL. 879 (2024) (arguing that, given ICC constraints, accountability for conflict-linked environmental harm is more effectively advanced by using existing International Humanitarian Law and International Environmental Law tools and domestic prosecutions, including extraterritorial jurisdiction, than by adding a new ecocide crime at the ICC).

of ecocide, including the one drafted by the IEP, primarily emphasize harm to ecosystems, biodiversity, natural resources, and the overall health and integrity of Earth's systems and living organisms.[50] In contrast, cultural heritage—which encompasses both tangible assets such as monuments, archaeological sites, and artworks, and intangible aspects like traditions, customs, and knowledge—typically falls under separate legal frameworks within international law.[51]

However, strong arguments can be made for considering cultural heritage destruction within the scope of ecocide. Specifically, cultural heritage sites (e.g., ancient churches and cemeteries) are not isolated human constructs but are deeply embedded in their ecological contexts.[52] The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage specifically recognizes the "combined works of nature and of man" as worthy of protection, affirming the inseparability of cultural and natural heritage.[53]

Additionally, instruments like the UN Declaration on the Rights of Indigenous Peoples establish that cultural destruction, especially when tied to Indigenous lands, is a recognized harm in international law.[54] Lastly, excluding cultural heritage from ecocide artificially separates humans from nature, perpetuating an outdated, anthropocentric worldview. Thus, as an emerging crime, ecocide should build on frameworks that affirm an ecocentric legal philosophy that acknowledges the mutual dependence of human culture and environmental health.

Opponents of expanding the definition of ecocide to include cultural destruction could argue that it might dilute the primary focus on the natural environment and create additional challenges in its legal application and prosecution.[55] Specifically, opponents may argue that the core aim of ecocide

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50. *See generally* STOP ECOCIDE FOUND., *supra* note 19.

51. *See, e.g.*, Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 3, May 14, 1954, 3511 U.N.T.S. 240 (safeguarding tangible cultural property); Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property art. 3, Nov. 14, 1970, 11806 U.N.T.S. 232 (creating export-certificate and restitution duties to curb illicit trafficking in movable cultural objects); and Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, 2368 U.N.T.S. 35, 37 (covering intangible expressions via representative and urgent-safeguarding lists and national inventory duties).

52. *See Cultural Landscapes*, UNESCO WORLD HERITAGE CONVENTION, https://whc.unesco.org/en/culturallandscape/ (last visited Nov. 28, 2025) (highlighting the ecological embeddedness of cultural heritage by stating "[c]ombined works of nature and humankind . . . express a long and intimate relationship between peoples and their natural environment").

53. *Id.*; *see* Convention Concerning the Protection of the World Cultural and Natural Heritage art. 1, Nov. 16, 1972, 1037 U.N.T.S. 151.

54. G.A. Res. 61/295 art. 8 (Sept. 13, 2007).

55. Kevin Jon Heller, *Ecocide and Anthropocentric Cost-Benefit Analysis*, OPINIOJURIS (June 26, 2021), https://opiniojuris.org/2021/06/26/ecocide-and-anthropocentric-cost-benefit-analysis/

law is to protect Earth's life-supporting systems from mass destruction. Therefore, including cultural heritage within this definition could cause overlap with existing legal frameworks specifically designed for cultural heritage protection. This could lead to confusion, fragmentation, and weakening of both legal regimes. Thus, a more focused approach that centers solely on the natural environment might be more effective for establishing ecocide as a distinct and powerful international crime.

However, these arguments are of little value when considering that the destruction of cultural sites disrupts the social fabric of communities, weakening their connection to the land and reducing their role as environmental stewards. This undermines the very same long-term environmental conservation efforts that ecocide law targets. The Parts below expand on this argument.

III. CASE STUDY: *ARMENIA V. AZERBAIJAN*

Understanding the historical and political backdrop is essential for analyzing the arguments presented by Armenia before the International Court of Justice (ICJ). Armenia and Azerbaijan have had a strained relationship—deeply rooted in ethnic and territorial disputes—for several decades.[56] While their 21st-century rivalry mainly revolves around the unresolved status of Artsakh, Armenia's painful past with Turkey has long fueled the dispute between the two neighboring countries.[57] Turkey, bordering Armenia on its eastern side, is Azerbaijan's closest ally.[58] Azerbaijan and Turkey are bound by ethnic, cultural, and historical ties, and both countries refer to their relationship as one between "one nation, two states."[59] Turkey was the first country in the world to recognize Azerbaijan's independence from the Soviet Union in 1991.[60] Ever since, they have maintained a close alliance.[61]

(arguing that stretching the crime's contours to capture social and economic benefits would unjustifiably dilute the concept of ecocide, illustrating how adding things to the definition risks eroding its core environmental focus).

56. EUR. COMM'N AGAINST RACISM & INTOLERANCE, SECOND REPORT ON AZERBAIJAN 6 (2007).

57. *See generally* CHRIS MORRIS, THE NEW TURKEY: THE QUIET REVOLUTION ON THE EDGE OF EUROPE (2005).

58. *Press Statements of Presidents of Azerbaijan and Turkey Recep Tayyip Erdogan*, OFF. WEBSITE OF PRESIDENT OF AZER. REPUBLIC (Sept. 15, 2010), https://president.az/en/articles/view/736/print.

59. *Id.*

60. Susan Fraser, *AP Explains: What Lies Behind Turkish Support for Azerbaijan*, AP NEWS (Oct. 2, 2020), https://apnews.com/article/turkey-territorial-disputes-azerbaijan-ankara-armenia-9a95d9690569623adedffe8c16f3588d.

61. *Id.*

Ongoing historical grievances have also defined Armenia's relationship with Turkey.[62] This is primarily due to lingering resentment since the 1915 Armenian Genocide carried out by Ottoman Turkey, in which 1–2 million Armenians were murdered between 1915 and 1923.[63] While governments and parliaments of 33 countries—including the United States and 15 other NATO members—have formally recognized the Armenian Genocide, both Turkey and Azerbaijan continue to adopt a policy of denial.[64]

A. Historical Background: The Fight for Artsakh

Although the region is a *de jure* part of Azerbaijan, the territorial ownership of the mountainous enclave is fiercely contested between Armenia and Azerbaijan.[65] Dotted with medieval Armenian churches, historians have affirmed the presence of Indigenous Armenian peoples in Artsakh since the second century BC.[66] Nonetheless, Azerbaijan claims historical ties to the region.[67]

For most of the 19th century, Artsakh was under the rule of the Russian Empire.[68] After the collapse of the Empire in 1918, Armenia and Azerbaijan formed new countries and immediately began fighting over the region.[69] Just three years later, Russian Soviets conquered the entire Caucasus and eventually made Armenia and Azerbaijan republics within the Soviet Union, and drew new borders.[70]

In 1923, the Soviet government established the Nagorno-Karabakh Autonomous Oblast, placing Artsakh within the borders of Azerbaijan

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62. BENNY MORRIS & DROR ZE'EVI, THE THIRTY-YEAR GENOCIDE: TURKEY'S DESTRUCTION OF ITS CHRISTIAN MINORITIES, 1894–1924, at 244 (2019).

63. *Id.*

64. *See* Armenian Genocide Recognition, ARM. NAT'L COMM. AM. https://anca.org/armenian-genocide/recognition/ (last visited Nov. 28, 2025); *see also Denial*, THE GENOCIDE EDUC. PROJ., https://genocideeducation.org/background/denial/ (last visited Nov. 28, 2025).

65. *See UNHCR Publication for CIS Conference (Displacement in the CIS) – Conflicts in the Caucasus*, UNHCR: THE UN REFUGEE AGENCY (May 1, 1996), https://www.unhcr.org/publications/refugeemag/3b5583fd4/unhcr-publication-cis-conference-displacement-cis-conflicts-caucasus.html.

66. *See Know Your Facts: A Historical Overview of Artsakh*, *supra* note 1.

67. THOMAS DE WAAL, BLACK GARDEN: ARMENIA AND AZERBAIJAN THROUGH PEACE AND WAR 127–28 (2003) [hereinafter BLACK GARDEN]; *see* Tigran Zakaryan, *The Karabakh War of 1918–1920 and the "Resolution" of the Conflict Under Soviet Authorities*, REG'L POST: CAUCASUS (Apr. 30, 2021), https://regionalpost.org/en/articles/the-karabakh-war-of-1918-1920.html.

68. *See Know Your Facts: A Historical Overview of Artsakh*, *supra* note 1.

69. *Id.*

70. Robert Coalson, *How Stalin Created Some of the Post-Soviet World's Worst Ethnic Conflicts*, ATLANTIC (Mar. 1, 2013), https://www.theatlantic.com/international/archive/2013/03/how-stalin-created-some-of-the-post-soviet-worlds-worst-ethnic-conflicts/273649/.

despite its 95% Armenian populace.[71] Assigning territories with one predominant ethnic group to a republic dominated by another ethnic group was a calculated tactic to maintain Soviet control, as it kept local nationalities divided and dependent on Moscow for peace and stability.[72] This decision by the Soviet authorities sowed the seeds for future unrest as the Armenian population increasingly desired reunification with neighboring Armenia.[73]

When the Soviet Union began disintegrating, a new policy initiative called Glasnost was announced.[74] Glasnost was intended to grant the various peoples of the Soviet Republics more political freedoms, which gave ethnic Armenians in Artsakh a chance for independence.[75] Alongside Mikhail Gorbachev's reform program of Perestroika, this period loosened long-standing restrictions on political expression and national self-determination.[76] Across the Soviet republics, this newfound openness stirred political activism and debates over cultural identity, particularly in regions with complex ethnic compositions such as Artsakh.[77]

In 1988, the regional legislature voted to transfer control over the territory from Azerbaijan to Armenia.[78] This move was met with opposition in Azerbaijan.[79] In Armenia, people rallied for reunification, while counter-protests ensued in Azerbaijan.[80] The Republic of Azerbaijan rejected the proposals in an attempt to claim Artsakh as part of its territory.[81] The Armenian Supreme Soviet and the Oblast's Supreme Council (the highest

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71. Ctr. for Preventative Action, *Tensions Between Armenia and Azerbaijan*, COUNCIL ON FOREIGN RELS.: GLOB. CONFLICT TRACKER, https://www.cfr.org/global-conflict-tracker/conflict/nagorno-karabakh-conflict (last updated Aug. 12, 2025); *see* RICHARD G. HOVANNISIAN, THE REPUBLIC OF ARMENIA: VOLUME I THE FIRST YEAR, 1918–1919, at 82 (1971).

72. Thomas de Waal, *Revenge of the Border*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Dec. 8, 2016), https://carnegieendowment.org/posts/2016/12/revenge-of-the-border?lang=en (stating Soviet ethno-territorial borders were intentionally crafted to "set one ethnic group against another," thereby weakening potential unified resistance).

73. *Armenia,* HUM. RTS. WATCH, https://www.hrw.org/reports/1995/WR95/HELSINKI-01.htm (last visited Nov. 28, 2025).

74. *See generally* Olivia B. Waxman, *Mikhail Gorbachev Championed 'Glasnost' and 'Perestroika.' Here's How They Changed the World*, TIME (Aug. 30, 2022), https://time.com/5512665/mikhail-gorbachev-glasnost-perestroika/.

75. *Id.*

76. *Id.*

77. Matthew Tentler, *Armed Conflict in Nagorno-Karabakh: Crisis, Exodus, and Ethnic Cleansing*, GLOB. GOVERNANCE INST. (Oct. 9, 2023), https://www.globalgovernance.eu/publications/armed-conflict-in-nagorno-karabakh-crisis-exodus-and-ethnic-cleansing?.

78. *Chronology of Events*, *supra* note 3; BLACK GARDEN, *supra* note 67.

79. Vox, *The Armenia and Azerbaijan War, Explained*, YOUTUBE (Dec. 3, 2020), https://www.youtube.com/watch?v=YU2v38hRRbg.

80. *Id.*

81. *Id.*

elected body in the former territory) issued a joint declaration calling for the unification of Armenia and Artsakh, which Azerbaijan declared illegal and void.[82] This series of events triggered the resurfacing of long-suppressed nationalist aspirations. The growth of anti-Armenian sentiment resulted in ethnic violence, beginning with a series of pogroms between 1988 and 1990 against Armenians in Sumgait, Ganja, and Baku.[83]

The Armenians in the region then held an independence referendum, with an overwhelming majority voting in favor of independence.[84] Azerbaijan refused to recognize the legitimacy of the vote and responded militarily.[85] As Armenia and Azerbaijan achieved independence in 1991 following the dissolution of the Soviet Union, Azerbaijan's escalating anti-Armenian violence and territorial demands erupted into a full-scale war.[86] The First Karabakh War, which lasted from 1991 to 1994, was a brutal conflict that resulted in an estimated 30,000 casualties and created hundreds of thousands of refugees and internally displaced persons.[87] By the time a ceasefire was brokered by Russia in 1994 through the Bishkek Protocol, Armenian forces officially regained control over the entire region.[88]

The 1994 ceasefire left Artsakh in a state of *de facto* independence, operating as an extension of the Armenian government, with a self-proclaimed government in Stepanakert.[89] For three decades following the war, this "unresolved" status led to a prolonged period of "no war, no peace," characterized by intermittent deadly incidents, ceasefire violations, and diplomatic efforts that failed to yield a lasting political solution.[90]

In 2020, in a sudden and unprovoked escalation, Azerbaijanis rallied for war against Armenia, and Turkey voiced its firm support for Azerbaijan.[91]

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82. *Joint Resolution of Armenia SSR & Nagorny Karabakh Oblast on Reunification* (Dec. 1, 1989), *in* NAGORNO-KARABAKH: DOCUMENTS, RESOLUTIONS AND AGREEMENTS (2014); *see also* Econ. & Soc. Council, Report on the Situation of Human Rights in Nagorno-Karabakh, at 5, U.N. Doc. E/CN.4/2005/G.23 (2005).

83. INS RES. INFO. CTR., AZERBAIJAN: THE STATUS OF ARMENIANS, RUSSIANS, JEWS AND OTHER MINORITIES 11 (1993); *see Baku Pogroms*, COUNCIL OF EUR.: PARLIAMENTARY ASSEMBLY (Jan. 31, 2020), https://pace.coe.int/en/files/28589/html.

84. Vox, *supra* note 79.

85. *Id.*

86. *Id.*

87. Ctr. for Preventative Action, *supra* note 71.

88. *Id.*

89. Natalie Mychajlyszyn, *The OSCE and Regional Conflicts in the Former Soviet Union*, *in* ETHNICITY AND TERRITORY IN THE FORMER SOVIET UNION 194, 211 (James Hughes & Gwendolyn Sasse eds., 2014).

90. WALTER LANDGRAF & NAREG SEFERIAN, A "FROZEN CONFLICT" BOILS OVER: NAGORNO-KARABAKH IN 2023 AND FUTURE IMPLICATIONS 9 (2024).

91. RealLifeLore, *Why Azerbaijan Will Keep Attacking Armenia*, YOUTUBE (Oct. 15, 2022), https://www.youtube.com/watch?v=7NOMj7n6QAM&t=640s.

The war officially began with a large-scale Azerbaijani ground offensive that included targeting of infrastructure using rocket artillery and cluster munitions in the capital of Artsakh on September 27, 2020.[92] During this war, the use of white phosphorus munitions by the Azerbaijani military triggered an ecocide alert—the central component of this Article.[93] After 44 days of intense fighting, Azerbaijan occupied most of the territories it had lost to Armenian forces in the early 1990s.[94] A Russian-mediated ceasefire agreement brought the 44-day war to an end on November 10, 2020. This agreement mandated the deployment of Russian peacekeeping forces to the parts of Artsakh that remained under Armenian control and the establishment of a narrow corridor connecting Artsakh with Armenia across the Lachin region.[95]

The fragile peace established by the 2020 ceasefire was short-lived. On December 12, 2022, Azerbaijan imposed a brutal blockade on the Lachin Corridor, severely restricting the movement of people and goods into Artsakh, leading to a humanitarian crisis that lasted nine months, two weeks, and four days.[96] On September 20, 2023, Azerbaijan launched a large-scale military offensive against Artsakh.[97] Within days, the local Armenian authorities were forced to surrender, resulting in the complete takeover of the region by Azerbaijani forces.[98] This offensive resulted in the mass exodus of the vast majority of the ethnic Armenian population of Artsakh, numbering

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92. *Azerbaijan: Unlawful Strikes in Nagorno-Karabakh*, HUM. RTS. WATCH (Dec. 11, 2020), https://www.hrw.org/news/2020/12/11/azerbaijan-unlawful-strikes-nagorno-karabakh.

93. Eoghan Darbyshire, *Report: Investigating the Environmental Dimensions of the 2020 Nagorno-Karabakh Conflict*, CONFLICT & ENV'T OBSERVATORY (Feb. 2021), https://ceobs.org/investigating-the-environmental-dimensions-of-the-nagorno-karabakh-conflict/.

94. Ctr. for Preventative Action, *supra* note 71.

95. Hayk Smbatyan & Heydar Isayev, *An Analysis of the November 9 Ceasefire Agreement and Its Implementation*, CAUCASUS EDITION J. FOR CONFLICT TRANSFORMATION (Aug. 26, 2022), https://caucasusedition.net/an-analysis-of-the-november-9-ceasefire-agreement-and-its-implementation/.

96. *Azerbaijan: Blockade of Lachin Corridor Putting Thousands of Lives in Peril Must Be Immediately Lifted*, AMNESTY INT'L (Feb. 9, 2023), https://www.amnesty.org/en/latest/news/2023/02/azerbaijan-blockade-of-lachin-corridor-putting-thousands-of-lives-in-peril-must-be-immediately-lifted/; *see UN Experts Urge Azerbaijan to Lift Lachin Corridor Blockade and End Humanitarian Crisis in Nagorno-Karabakh*, U.N. HUM. RTS.: OFF. OF THE HIGH COMM'R (Aug. 7, 2023), https://www.ohchr.org/en/press-releases/2023/08/un-experts-urge-azerbaijan-lift-lachin-corridor-blockade-and-end; *see also* Ewelina U. Ochab, *Lachin Corridor Blockade Starves Nagorno-Karabakh*, FORBES (Aug. 8, 2023), https://www.forbes.com/sites/ewelinaochab/2023/08/08/lachin-corridor-blockade-starves-nagorno-karabakh/.

97. Rupert Neate, *Wednesday Briefing: What You Need to Know About the Nagorno-Karabakh Conflict*, THE GUARDIAN (Sept. 27, 2023), https://www.theguardian.com/world/2023/sep/27/first-edition-nagorno-karabakh.

98. Christian Edwards, *Republic of Artsakh Will Cease to Exist January 1, 2024*, GENOCIDE WATCH (Sept. 29, 2023), https://www.genocidewatch.com/single-post/nagorno-karabakh-will-cease-to-exist-from-next-year-how-did-this-happen.

around 120,000 people, to Armenia, effectively ending the Armenian presence in the region for the first time in its millennia-old history.[99] On January 1, 2024, the self-proclaimed Republic of Artsakh officially dissolved itself.[100]

B. Ecocide Alert in Artsakh

On October 30, 2020, during the 44-day war, video footage of white phosphorus rainfall in the forests of Artsakh circulated on the internet.[101] Shortly after these videos surfaced, the Ministry of Defense of the former Republic of Artsakh stated that the Azerbaijani military had used white phosphorus weapons to burn the forests of Artsakh.[102] The Armenian Human Rights Defender announced that civilians were hiding in these forests.[103] While Azerbaijan has accused Armenia of being the perpetrator, the Armenian government has openly called for an independent assessment by the Organization for the Prohibition of Chemical Weapons, a call that the American Armenian Bar Association supports.[104]

The Armenian Human Rights Defender subsequently confirmed that approximately 1815 hectares (4400 acres) of forested areas throughout Artsakh had been damaged.[105] While both parties have blamed one another for the use of white phosphorus, restrictions on media and the work of international journalists within Azerbaijan have made it difficult to investigate the events and responsible parties.[106] However, findings of the

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99. Patrick Reevell, *Nagorno-Karabakh Enclave Emptied After Entire Ethnic Armenian Population Flees*, ABCNEWS (Oct. 2, 2023), https://abcnews.go.com/International/nagorno-karabakh-enclave-emptied-entire-armenian-population-flees/story?id=103655356.

100. Edwards, *supra* note 98.

101. Astghik Karapetyan, *The Use of White Phosphorus by Azerbaijan and the Armenian Government's Slow Response*, EVN REPORT: POL. (Sept. 7, 2021), https://evnreport.com/politics/the-use-of-white-phosphorus-by-azerbaijan-and-the-armenian-governments-slow-response-2/; *see A Reporter Documents Impact of Azerbaijan's White Phosphorus Munitions in Karabakh*, CIVILNET (Feb. 28, 2021), https://www.civilnet.am/en/news/540162/a-reporter-documents-impact-of-azerbaijans-white-phosphorus-munitions-in-karabakh/.

102. THE HUM. RTS. DEF. OF THE REPUBLIC OF ARM. & THE HUM. RTS. OMBUDSMAN OF THE REPUBLIC OF ARTSAKH, AD HOC PUBLIC REPORT ON THE USE OF INCENDIARY AMMUNITION OF MASS DESTRUCTION (INCENDIARY WEAPON) AGAINST CIVILIAN OBJECTS OF ARTSAKH (NAGORNO-KARABAKH) BY THE AZERBAIJANI ARMED FORCES 5–6 (2020) [hereinafter PUBLIC REPORT].

103. *Id.* at 31.

104. Darbyshire, *supra* note 93.

105. PUBLIC REPORT, *supra* note 102, at 21.

106. *See Azerbaijan*, REPS. WITHOUT BORDERS, https://rsf.org/en/country/azerbaijan (last visited Nov. 16, 2025) (ranking Azerbaijan at 167th place, as the 13th worst ranking country in 2025); *see also* Darbyshire, *supra* note 93 (stating the Azerbaijani "Ministry of Foreign [A]ffairs actively encouraged journalists to avoid the conflict"). Hence, much of the journalistic content on the Azerbaijani perspective is state sponsored. *Id.*

burned territories were published in the Joint Ad Hoc Report by the Human Rights Defender in the Republic of Armenia and the Human Rights Ombudsman of the Republic of Artsakh.[107] No equivalent legal reporting exists from Azerbaijan.[108] Additionally, the Atlantic Council's Digital Forensic Research Lab identified large, burnt fields resembling burn damage from white phosphorus in Armenian-controlled territories.[109] Specifically, satellite imagery provides visual evidence of extensive burn marks across large forested areas, particularly in locations such as northwest of the village of Dadivank and near the village of Arpagetik, which aligns with Armenia's assertions.[110] The report resulted in the U.S. House of Representatives passing an amendment calling for a report on Azerbaijani war crimes, including the use of illegal munitions and white phosphorus against Armenian civilians.[111]

The use of white phosphorus munitions immediately triggered an Ecocide Alert on November 2, 2020 from 51 non-governmental organizations (NGOs) from Armenia, France, Sweden, and Luxembourg, headed by the Foundation for the Preservation of Wildlife and Cultural Assets.[112] This is mainly due to Artsakh being known for its biodiversity and its high number of endemic species.[113] Specifically, the forests of Artsakh are home to over 6000 plant species, 153 mammal species, and approximately 400 bird species.[114] Hundreds of these species are listed in the Red Book of Threatened Species and the global IUCN Red List.[115] The alert highlighted the significant biodiversity and number of endangered species in Artsakh, noted how the use of white phosphorus posed an existential threat to their survival, and called on global environmental actors to prevent ecocide.[116]

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107. Darbyshire, *supra* note 93.

108. *Id.*

109. Lukas Andriukaitis, *Satellite Imagery Shows Environmental Damage of Reported White Phosphorus Use in Nagorno-Karabakh*, MEDIUM (Nov. 12, 2020), https://medium.com/dfrlab/satellite-imagery-shows-environmental-damage-of-reported-white-phosphorus-use-in-nagorno-karabakh-9826391a295.

110. *Id.*

111. Jackie Abramiam, *A Year After Unleashing War Crimes Against Indigenous Armenians, Azerbaijan's Threats and Violations Continue*, FORBES (Sept. 27, 2021), https://www.forbes.com/sites/jackieabramian/2021/09/27/a-year-after-unleashing-war-crimes-against-indigenous-armenians-azerbaijans-threats-and-violations-continue/?sh=ef4745a8cc12.

112. Darbyshire, *supra* note 93.

113. *See* Valida Ali-zade et al., *Armenia*, *in* RED LIST OF THE ENDEMIC PLANTS OF THE CAUCASUS: ARMENIA, AZERBAIJAN, GEORGIA, IRAN, RUSSIA, AND TURKEY 73, 73 (James Solomon et al. eds., 2014).

114. *Statement of 50 NGOs in Armenia on Use of Phosphorus Weapons in Artsakh Forests Address to International Community*, *supra* note 8.

115. Valida Ali-zade et al., *supra* note 113.

116. *Biodiversity of Nagorno-Karabakh's Forests in Danger Because of Extensive Fires. Armenian NGOs Seeking Support from International Environmental Platforms*, ARNIKA (Nov. 5, 2020),

The ecocide alert also triggered the Conflict and Environment Observatory to investigate the environmental dimensions of the war.[117] This report, published in 2021, offers a neutral and objective assessment of the environmental damage resulting from the war. The report cites the poorly informed and partisan ways the conflict has been investigated and reported upon as one of their two main concerns.[118] Using earth observation data from both sides, the Observatory investigated the hundreds of landscape fires that occurred between October 16 and November 4, 2020 in the forests of Artsakh.[119]

The report reiterated the harm done to the environment through fires and bioaccumulation in water, soil, crops, and animals due to the use of white phosphorus munitions.[120] The report cites potential reasons for the use of these weapons, including burning down the forests to remove cover from ground troops or to cause ecocide intentionally.[121]

Lastly, albeit most importantly, the report states that environmental damage caused by the recent and historical fighting will continue to have humanitarian consequences.[122] This includes psychological costs, given the importance attached to the natural environment as an aspect of cultural heritage.[123] While the report states that this is exemplified by the emotion attached to digital posts around ecocide and environmental terrorism, it is also apparent in *Armenia v. Azerbaijan*, as the destruction of Armenian cultural heritage sites in these forests is one of the primary claims of the petition.[124] More importantly, Armenia is one of only ten nations to have ecocide codified as a crime, sending a clear message about the importance of the natural world in Armenian culture and society.[125]

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https://arnika.org/en/news/biodiversity-of-nagorno-karabakhs-forests-in-danger-because-of-extensive-fires-armenian-ngos-seeking-support.

117. *See* Darbyshire, *supra* note 93.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*; *see* Application of the International Convention of the Elimination of All Forms of Racial Discrimination (Arm. v. Azer.), Application Instituting Proceedings, 2021 I.C.J. 1, 21–22, 42–44 (Sept. 16, 2021).

124. *Id.*; *see* Darbyshire, *supra* note 93.

125. *See* CRIMINAL CODE OF THE REPUBLIC OF ARMENIA art. 394.

C. White Phosphorus Munitions

White phosphorus munitions are weapons that use one of the common allotropes of the chemical element phosphorus.[126] White phosphorus is pyrophoric, meaning it ignites upon contact with air.[127] When white phosphorus interacts with oxygen, it ignites and burns, producing a dense, toxic white smoke.[128] While militaries predominantly use white phosphorus as an obscurant to provide visual cover for ground operations, it can also be used as an incendiary weapon, burning or setting fire to the ground below it.[129] White phosphorus burns fiercely, and certain uses of these weapons are banned or restricted by general international laws, particularly those related to incendiary devices.[130]

While not directly forbidden by any treaty, if the toxic properties of white phosphorus are specifically intended to be used as a weapon, it is prohibited under the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction (CWC).[131] Specifically, air-dropping white phosphorus is prohibited as it can result in indiscriminate attacks due to the wide dispersion of the burning fragments.[132] The CWC applies to any chemicals used against humans or animals that cause harm or death through the toxic properties of the chemical.[133]

These operations cause irreversible environmental damage, ranging from widespread forest fires to permanent air, soil, and water pollution.[134] When used as a weapon, white phosphorus can cause fire to rain down on targets, inflicting sweeping damage.[135] This is largely why such use is

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126. Paul Reynolds, *White Phosphorus: Weapon on the Edge*, BBC NEWS, http://news.bbc.co.uk/2/hi/americas/4442988.stm (last updated Nov. 16, 2025); *see Molecule of the Week: White Phosphorus*, AM. CHEM. SOC'Y (Sept. 7, 2020), https://www.acs.org/content/acs/en/molecule-of-the-week/archive/w/white-phosphorus.html.

127. *Id.*

128. *See* Ian Sample, *What is White Phosphorus?*, THE GUARDIAN (Nov. 19, 2005), https://www.theguardian.com/science/2005/nov/19/thisweekssciencequestions.uknews.

129. *Id.*

130. *"They Burn Through Everything," The Human Cost of Incendiary Weapons and the Limits of International Law*, HUM. RTS. WATCH (Nov. 9, 2020), https://www.hrw.org/report/2020/11/09/they-burn-through-everything/human-cost-incendiary-weapons-and-limits.

131. *See* Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction art. 2, Sept. 3, 1992, 1975 U.N.T.S. 45.

132. *Id.*

133. *Id.*

134. PUBLIC REPORT, *supra* note 102, at 19.

135. *See generally Rule 1. The Principle of Distinction Between Civilians and Combatants*, ICRC: INT'L HUMANITARIAN L. DATABASES, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1 (last visited Nov. 28, 2025).

banned, as international law requires combatants to distinguish between civilian and military elements.[136]

Lastly, customary international humanitarian law states that particular care must be taken to avoid, or in any event minimize, incidental loss of civilian life, injury to civilians, and damage to civilian objects when incendiary weapons are used.[137] The natural environment is classified as a civilian object and should, therefore, also enjoy such protection.[138]

D. Evaluating the Applicability of Ecocide to the Armenia v. Azerbaijan *Case*

On October 21, 2021, the Republic of Armenia initiated proceedings against Azerbaijan before the ICJ, citing violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).[139]

Armenia has called on the tribunal to take provisional measures as a matter of extreme urgency to protect and preserve Armenia's rights and to prevent the aggravation of the dispute between the two countries until the Court determines the merits of the allegations.[140] Specifically, Armenia's petition details how Armenians have been subjected to systemic discrimination, mass killings, torture, and other forms of abuse at the hands of Azerbaijan.[141] These violations are directed at individuals of Armenian ethnic or national origin, and these practices have intensified as a result of the 2020 war.[142]

While the environmental harm caused by the 2020 war is a matter of concern and has been raised by Armenia in various contexts, it is not the central legal argument in the ongoing ICJ proceedings under CERD.[143] Nevertheless, the evidence presented by the Republic of Armenia to support its claims of cultural heritage destruction in Artsakh's forests and natural landscapes is one of Armenia's primary causes of action and overlaps with

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136. *Id.*

137. *See generally Rule 84. The Protection of Civilians and Civilian Objects from the Effects of Incendiary Weapons*, ICRC: INT'L HUMANITARIAN L. DATABASES, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule84 (last visited Nov. 28, 2025).

138. *See generally Rule 43. Application of General Principles on the Conduct of Hostilities to the Natural Environment,* ICRC: INT'L HUMANITARIAN L. DATABASES, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule43 (last visited Nov. 28, 2025).

139. *See generally* Application of the Internation Convention of the Elimination of All Forms of Racial Discrimination (Arm. v. Azer.), *supra* note 123.

140. *Id.*

141. *Id.* at 6, 16, 24.

142. *Id.* at 24–30.

143. *Id.* at 6.

the evidence of environmental damage. Specifically, the petition states that "in keeping with its long-standing policy of ethnic cleansing, Azerbaijan has systematically sought to destroy, erase, and falsify Armenian cultural heritage in the region."[144]

Among many other well-documented examples is the destruction of historic Armenian cemeteries, which once boasted the world's largest collections of Khachkars (distinctive Armenian cross-stones) from the 15th and 16th centuries.[145] The destruction has been acknowledged and denounced by the International Council on Monuments and Sites, the European Parliament, and numerous international press reports describing Azerbaijan's acts as the "worst cultural genocide of the 21st century."[146] This destruction of cultural sites located in environmentally sensitive areas could be presented as evidence of a broader pattern of disregard for Armenian heritage and well-being, encompassing both cultural and natural aspects.

With all of this in mind, the environmental damage documented by Armenia presents a compelling test case for the applicability of the concept of ecocide. This is particularly so because these findings align with every core element of the proposed definition. The use of white phosphorus is a "wanton" act as defined within the framework, as the reckless disregard for damage is clearly excessive in relation to any legitimate military objectives. Similarly, white phosphorus, known for its destructive effects and capacity to contaminate soil and water for extended periods, meets the severe and long-term damage criteria. Thus, while *Armenia v. Azerbaijan* does not directly involve the prosecution of ecocide as a distinct international crime, the arguments of environmental harm—particularly involving white phosphorus—provide a concrete example for examining the potential applicability of the concept of ecocide in the context of international law and policy.

144. *Id.* at 44–50.

145. *Id.* at 44.

146. *See* Dale Berning Sawa, *Monumental Loss: Azerbaijan and 'the Worst Cultural Genocide of the 21st Century'*, THE GUARDIAN (Mar. 1, 2019), https://www.theguardian.com/artanddesign/2019/mar/01/monumental-loss-azerbaijan-cultural-genocide-khachkars; *see also* Resolution on the Destruction of Cultural Heritage in Azerbaijan, EUR. PARL. DOC. B6-0126-06 (2006); MICHAEL PRETZET ET AL., INT'L COUNCIL ON MONUMENTS & SITES, REPORT ON THE DESTRUCTION OF ARMENIAN CULTURAL HERITAGE (2003).

IV. ALTERNATIVE LEGAL APPROACHES

A. The ENMOD Convention: An Overview

The ENMOD Convention provides a legal framework that could be relevant to allegations of environmental harm in armed conflict, particularly those involving deliberate manipulation of natural processes. The ENMOD Convention refers to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.[147]

ENMOD is an international treaty established in 1976 and entered into force in 1978, representing a specific effort within international disarmament law to protect the environment during armed conflict by prohibiting the hostile use of environmental modification techniques as a means of warfare.[148] The impetus for the ENMOD Convention arose primarily from Cold War-era concerns, later intensified during the Vietnam War, about the potential for states to manipulate the environment for military purposes (such as through weather modification or geophysical techniques).[149] The Convention aims to prevent the development and deployment of methods that could weaponize natural systems.

The ENMOD Convention defines environmental modification as "any technique for changing—through the deliberate manipulation of natural processes—the dynamics, composition, or structure of the earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space."[150] This definition emphasizes the requirement of deliberate manipulation of natural processes, distinguishing it from incidental environmental damage that may occur during conventional warfare. Under this strict definition, the use of white phosphorus might not necessarily be classified as an environmental modification technique unless it can be demonstrated that it was employed to deliberately alter the environment in a widespread, long-lasting, or severe manner.

However, one could make a strong argument that the deliberate targeting of forests with incendiary weapons like white phosphorus—with the

147. *See generally Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques*, UN: OFF. FOR DISARMAMENT AFFS., https://disarmament.unoda.org/en/our-work/weapons-mass-destruction/convention-prohibition-military-or-any-other-hostile-use (last visited Nov. 28, 2025) [hereinafter ENMOD Convention].

148. *Id.*

149. *Id.*; *see* James R. Lee*, Cloud Seeding, Conflict, and Climate Change*, UK PARLIAMENT: SCI. & TECH. COMM. (Dec. 2009), https://publications.parliament.uk/pa/cm200910/cmselect/cmsctech/memo/geoengineer/ucm0102.htm (linking the Vietnam-era weather warfare scandal to the final political push that produced the treaty).

150. Joanna Jarose, *ENMOD: Dead Letter or Environmental Lifeline?*, W. POINT LIEBER INST. (Mar. 18, 2025), https://lieber.westpoint.edu/enmod-dead-letter-environmental-lifeline/.

knowledge that it could cause widespread and long-lasting fires leading to significant ecological damage—could be interpreted as a hostile use of a technique to manipulate the environment (in this case, fire ecology) for destructive purposes. This interpretation would depend on how broadly one defines "deliberate manipulation of natural processes."

Furthermore, ENMOD's "Understandings" relating to Article II provide a non-exhaustive list of phenomena that could result from environmental modification techniques, including "an upset in the ecological balance of a region."[151] The widespread destruction of forests could arguably lead to an upset in the ecological balance.

B. Applicability of ENMOD to Armenia v. Azerbaijan

Evaluating the applicability of the ENMOD Convention to Armenia's contentions against Azerbaijan requires careful consideration of the Convention's scope and limitations. As of 2022, the ENMOD Convention has 78 state parties, including Armenia, who ratified the treaty in 2002.[152] However, a primary limitation to ENMOD's applicability in this case is the fact that Azerbaijan is not a party to the Convention. The Convention's obligations are primarily binding on state parties.[153]

However, creative legal strategies could extend ENMOD's reach in international adjudications. Even though Azerbaijan is not a party to the Convention, there might still be potential advantages to invoking ENMOD's provisions in international adjudications related to Azerbaijan's environmental war crimes. For example, while Azerbaijan's lack of ratification means the treaty's obligations do not directly bind it, Armenia could argue the principles underlying the ENMOD Convention reflect an emerging norm of customary international law prohibiting the hostile use of environmental modification techniques.[154]

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151. *Id.*; *see* ICRC, ADVISORY SERV. ON INT'L HUMANITARIAN L., 1976 CONVENTION ON THE PROHIBITION OF MILITARY OR ANY HOSTILE USE OF ENVIRONMENTAL MODIFICATION TECHNIQUES (2003).

152. ENMOD Convention, *supra* note 147; *see Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques, 10 December 1976*, ICRC: INT'L HUMANITARIAN L. DATABASES, https://ihl-databases.icrc.org/en/ihl-treaties/enmod-1976/state-parties (last visited Nov. 28, 2025) (showing that Armenia ratified the ENMOD Convention in 2002).

153. *Rule 45. Causing Serious Damage to the Natural Environment*, ICRC: INT'L HUMANITARIAN L. DATABASES, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule45 (last visited Nov. 28, 2025) [hereinafter *Rule 45*].

154. *See* Jelena Jaros, *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 (2024) (stating that ENMOD has broader potential application than it has historically been given, and that its potential expansive meaning does, in essence, support the ICRC customary law study rule that "destruction of the natural environment may not be used as a weapon").

By referencing ENMOD, Armenia could strengthen its argument that Azerbaijan's actions violate international norms related to environmental protection in armed conflict. More specifically, Armenia could argue that the deliberate use of white phosphorus weapons in a manner that causes widespread and long-lasting forest fires constitutes a hostile use of a technique (incendiary weapons). Since white phosphorous weapons have severe and long-term environmental effects, Armenia could argue that they fall within the spirit, if not the strict letter, of the Convention.[155]

Thus, states should explore the potential for invoking existing legal frameworks, such as the ENMOD Convention, even when the perpetrator is not a party to the Convention. In the context of Armenia's arguments against Azerbaijan, invoking the ENMOD Convention might be more relevant as an argument for developing or interpreting customary international law norms regarding environmental warfare rather than as a direct legal obligation that Azerbaijan has violated.

C. Strengths and Limitations of ENMOD Compared to Ecocide

One of ENMOD's key strengths is that it is an existing and legally binding international treaty that specifically aims to prevent the hostile use of environmental modification techniques. It provides a concrete legal framework, albeit a limited one, for addressing the deliberate manipulation of natural processes for destructive purposes. Furthermore, the Convention covers military and other hostile uses of environmental modification techniques, meaning its reach extends beyond traditional armed conflict scenarios.[156]

However, as previously stated, ENMOD also requires a demonstration of hostile intent and that the damage is inflicted upon another state party, which limits its applicability in non-international armed conflicts or when the perpetrator is not a party to the Convention.[157] In comparison, the proposed crime of ecocide aims to provide broader environmental protections. Unlike ENMOD, ecocide intends to cover environmental damage in both peacetime and conflict, and it encompasses a broader range of harmful acts beyond the

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155. Note that *Rule 45*, *supra* note 153, and the ILC Draft Principles show that the substance of ENMOD's ban on hostile environmental modification is increasingly treated as customary international law. *See* ILC Draft Principles on the Protection of the Environment in Relation to Armed Conflicts, Principle 17 (2022).

156. *See* Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Technique art. I, Dec. 10, 1976, 2 U.N.T.S. 3.

157. *See generally* Silja Voneky, *Limiting the Misuse of the Environment during Peacetime and War – The ENMOD Convention*, FREIBURG INFO. PAPERS ON INT'L L. AND PUB. L., May 2020, at 1, 13–14 (confirming that ENMOD's reach is essentially inter-state).

deliberate manipulation of natural processes.[158] A key strength of ecocide is its potential to hold individuals accountable for ecocidal acts, including those in positions of leadership within governments.[159] That is not to say that ecocide does not face significant limitations; it is not widely recognized as a crime and thus lacks the established treaty framework of ENMOD. Defining the crime and establishing clear legal standards and thresholds for its application are ongoing challenges.

In essence, the ENMOD Convention provides a specific but limited legal tool, whereas ecocide, if recognized, could provide a broader and more encompassing framework for environmental protection. The limitations of ENMOD highlight the potential value of ecocide as a complementary or alternative legal approach.

V. POLICY RECOMMENDATIONS

To effectively strengthen the ecocide framework, a multi-pronged approach is necessary. This includes continued efforts to refine and achieve an internationally accepted definition of ecocide, preferably through an amendment to the Rome Statute. Codifying ecocide gives it international legal recognition, creating a binding obligation for member states to prosecute environmental war crimes.[160]

This process should involve consultations with legal experts and policymakers to ensure a legally sound, scientifically informed, and politically viable definition. Building a strong coalition of supporting states will be essential for achieving this long-term goal. Beyond these foundational steps, it is imperative for states to actively support and advocate for the formal recognition of ecocide as an international crime at the International Criminal Court (ICC).[161] This involves engaging in diplomatic efforts to

158. *See generally* STOP ECOCIDE FOUND., *supra* note 19 (explaining that the proposed definition of ecocide extends environmental protection beyond wartime to peacetime and encompasses a broader range of environmentally destructive acts than those prohibited under ENMOD).

159. Fiona Harvey, *Pacific Islands Submit Court Proposal for Recognition of Ecocide as a Crime*, THE GUARDIAN (Sep. 9, 2024), https://www.theguardian.com/law/article/2024/sep/09/pacific-islands-ecocide-crime-icc-proposal.

160. *See FAQs: Ecocide & the Law*, STOP ECOCIDE INT'L, https://www.stopecocide.earth/faqs-ecocide-the-law (last visited Nov. 28, 2025) (stating that once a country ratifies ecocide as a crime, the ICC comes into play only if nation states cannot or will not prosecute, i.e., complementarity confirms the binding obligation).

161. As noted by Jojo Mehta of Stop Ecocide International and other advocates, a number of states have formally submitted proposals to amend the Rome Statute, reflecting efforts of the broader view that without active support and advocacy from states, formal recognition is unlikely to materialize and sustain momentum. *See Mass Destruction of Nature Reaches International Criminal Court (ICC) as Pacific Island State Propose Recognition of "Ecocide" as International Crime*, STOP ECOCIDE INT'L (Sep. 9,

build consensus among states, supporting initiatives at the UN and the ICC's Assembly of States Parties, and raising public awareness about the importance of criminalizing ecocide.[162] Additionally, targeted policy reforms that address the main legal and political hurdles while pushing for concrete, actionable changes are necessary to make criminalizing ecocide a viable option.

A. Establishing a UN Special Rapporteur on Ecocide

First, establishing a Special Rapporteur on ecocide under the UN Human Rights Council (UNHRC) mandate would provide a non-judicial, high-profile mechanism to hold states accountable.[163] This independent expert would be tasked with investigating, reporting, and advising on cases of severe environmental harm resulting from military actions, occupation, and state activities during times of conflict. This role could help document evidence, provide expert analysis, and increase international awareness, laying the groundwork for future legal action.[164]

A Special Rapporteur would reframe ecocide within the human rights discourse, emphasizing the indivisibility of environmental and human rights harms. Specifically, rapporteurs contribute to the development of international norms by issuing thematic reports, country-specific recommendations, and best practices.[165] This could help mainstream the concept of ecocide in international law and policy, even before formal criminalization occurs. An official monitoring mechanism would also establish a systematic way to track and report instances of environmental destruction in conflict zones, serving as an early warning system to prevent

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2024), https://www.stopecocide.earth/2024/mass-destruction-of-nature-reaches-international-criminal-court-icc-as-pacific-island-states-propose-recognition-of-ecocide-as-international-crime.

162. *See generally* Alexandria M. Hanna, *Killing Our Home: The Case for Creating an International Crime of Ecocide*, 6 WILLAMETTE U.C.L. SOC. JUST. & EQ. J. 1 (2023) (outlining why active engagement from states is not just helpful, but essential for advancing ecocide recognition at the ICC).

163. *Human Rights and the Crime of Ecocide: Conversations with the OHCHR and UN Special Procedures*, UCLA L., https://law.ucla.edu/academics/centers/promise-institute-europe/human-rights-and-crime-ecocide (last visited Nov. 28, 2025) (noting that Special Rapporteurs witness the impacts of severe environmental damage across their mandates, and that their ongoing work is "procedural and substantive" to the emerging crime of ecocide).

164. *See* Kate Mackintosh & Lisa Oldring, *Watch This Space: Momentum Toward an International Crime of Ecocide*, JUST SEC. (Dec. 5, 2022), https://www.justsecurity.org/84367/watch-this-space-momentum-toward-an-international-crime-of-ecocide/ (describing the newly created climate-change mandate and explaining that the Rapporteur is "tasked with recommending ways to address and prevent the adverse effects of climate change on human rights," showing how a thematic rapporteur can spotlight environmental harms and press States toward accountability mechanisms).

165. *See generally* INT'L SERV. FOR HUM. RTS., A PRACTICAL GUIDE TO THE UN SPECIAL PROCEDURES 4 (2019) (stating that mandate-holders make recommendations and present reports to the HRC, and that special procedures have played a key role in normative development of rights).

escalation and provide evidence for future accountability.[166] For smaller nations like Armenia, which often lack the geopolitical leverage to pursue ecocide claims against more powerful aggressors like Azerbaijan, a Special Rapporteur would offer a credible international platform to voice concerns and push for global attention.

This mechanism would not depend on the ICC's jurisdictional limitations but rather complement ongoing efforts by keeping ecocide in the global spotlight and maintaining pressure for eventual legal codification. Similar mandates have been established for issues like human rights, toxics, and the adverse impacts of unilateral coercive measures.[167]

B. Amending International Instruments to Include Cultural Heritage

Second, amending existing legal instruments—such as the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the UNESCO World Heritage Convention—to explicitly recognize the destruction of cultural heritage as a form of environmental harm would ensure that acts of cultural destruction are addressed as attacks on identity and history, and as serious environmental crimes.

As previously mentioned, cultural heritage law and international environmental law operate in separate legal silos.[168] This separation overlooks the holistic nature of the harm caused by acts like the deliberate targeting of cultural monuments in war. Recognizing the cultural-ecological nexus would create a more comprehensive legal protection mechanism against environmental and cultural erasure. Furthermore, UNESCO and the UN Declaration on the Rights of Indigenous Peoples already hint at the interdependence of cultural and environmental preservation.[169] Codifying this relationship into binding legal treaties would build upon these soft law instruments.

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166. *See generally* ERICA HARPER & BAINA UBUSHIEVA, GENEVA ACAD., RESEARCH BRIEF: ENVIRONMENTAL HUMAN RIGHTS AS A TOOL IN EARLY WARNING AND CONFLICT PREVENTION: THE ROLE OF THE HUMAN RIGHTS COUNCIL 3 (2024) (stating that a systematic mechanism for monitoring environmental rights violations would generate trend data, act as an early warning tool and "[feed] through to relevant organs with programming and conflict de-escalation mandates").

167. An example of this can be seen in the case of the Special Rapporteur who led the push that kept the right to a healthy environment on the UN agenda until its eventual codification. *See* Maria Alejandra Serra Barney & Richard Harvey, *The UN Officially Recognized the Right to a Healthy Environment. Here's What That Means*., GREENPEACE (Aug. 9, 2022), https://www.greenpeace.org/international/story/55098/un-resolution-right-healthy-environment-legal-historic/.

168. *See infra* Part II.E.

169. G.A. Res. 61/295, *supra* note 54, at art. 29.

C. Integrating Mandatory Environmental Impact Assessments

Lastly, integrating binding Environmental Impact Assessments (EIAs) into international humanitarian law (IHL) would establish legal obligations for states and armed forces to assess, document, and mitigate potential environmental harm during armed conflicts, thereby creating a proactive framework for environmental protection.[170] Currently, IHL provisions vaguely prohibit environmental harm but lack specific operational tools.[171] Mandating EIAs introduces a preventative and evidence-based mechanism to minimize environmental damage before it occurs.

EIAs would also generate official records, providing crucial documentation for future legal action in cases of ecocide, shifting environmental harm from being an invisible casualty of war to a legally traceable violation. Mandatory EIAs would also increase state accountability and transparency, forcing militaries to consider and justify the environmental consequences of their actions publicly.[172] Many states are already obligated to conduct EIAs under environmental treaties (e.g., the Espoo Convention) for peacetime activities.[173] Extending this obligation to wartime conduct is a logical progression, especially in the context of climate and biodiversity crises.

CONCLUSION

This Article has shown that: (1) the factual record in Artsakh meets most of the severity, geographic-spread, and long-term-harm thresholds found in leading draft definitions of ecocide; (2) evidentiary and jurisdictional barriers currently limit ecocide prosecution; and (3) existing instruments offer a state-centered, if under-utilized, legal hook that Armenia could wield to frame deliberate large-scale environmental damage as a breach of emerging

170. Note that this suggestion is loosely inspired by Environmental Impact Statements (EISs) and general record-keeping procedures established under the National Environmental Policy Act. *See e.g.*, 42 U.S.C. §§ 4321–70.

171. Lydia Millar, *Warfare's Silent Victim: International Humanitarian Law and the Protection of the Natural Environment During Armed Conflict*, 2022 CAMBRIDGE J.L. POL. & ART. 186, 186–87 (stating that "IHL's anthropocentric focus has stunted the development of thorough and coherent laws for the protection of the environment during armed conflict, and what has been achieved has been criticized as ineffective.").

172. Tseming Yang, *The Emergence of the Environmental Impact Assessment Duty as a Global Legal Norm and General Principle of Law*, 70 HASTINGS L.J. 525, 531–33 (2019) (describing how mandatory EIAs "enhanc[e] transparency" and "promote accountability" by requiring decisionmakers to disclose environmental information publicly, thereby allowing civil society to scrutinize harmful actions).

173. U.N. ECON. COMM'N FOR EUR., GUIDANCE ON THE PRACTICAL APPLICATION OF THE ESPOO CONVENTION 5 (2006) (stating that the Convention requires that assessments are extended across borders between parties when a planned activity may cause significant adverse transboundary impacts).

customary norms. Complementary policy measures would bolster prevention, documentation, and accountability.

Ultimately, this Article argues that ecocide's most significant promise lies in its capacity to make environmental integrity per se a protected legal interest rather than a collateral value derivative of human welfare. If codified, it would: (1) create individual criminal liability for ecological devastation; (2) operationalize the precautionary principle by stigmatizing reckless military or corporate conduct before the damage becomes irreversible; and (3) encourage the development of evidentiary methodologies that could spill over into other areas of international adjudication. While the challenges are real, they are not insurmountable, and the potential benefits of establishing ecocide as an international crime for the future of the planet outweigh the difficulties in its implementation. Furthermore, the Artsakh case illustrates how a live conflict can supply the fact pattern and political urgency needed to propel the concept from advocacy to treaty text and ultimately to courtroom practice. More broadly, codifying ecocide would rebalance international law toward an ecocentric paradigm, where states and non-state actors alike owe duties not only to other peoples but also to the Earth that sustains them.

In sum, Artsakh's forests may already bear the scars of war. Still, the legal response to those scars can chart a forward-looking path: one in which environmental stewardship becomes a core obligation of international society, and where the language of war crimes finally speaks for the voiceless ecosystems that wars too often consume.