The international legal dimensions of environmental peacebuilding

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1. INTRODUCTION

Environmental factors increasingly define today's global security landscape. According to the United Nations (UN) and the World Bank, more than 40 per cent of internal armed conflicts over the past 60 years have been linked to natural resources, with mismanagement and inequitable distribution among the key drivers for such conflicts.[1] These alarming numbers prompted the UN Secretary-General to state before the UN Security Council that '[p]reventing, managing and resolving such conflicts is one of the major and growing challenges of our time'.[2] Arguably, any successful effort to tackle this challenge starts with understanding the diverse and complex interconnections between environmental factors and armed conflict.

These interconnections have been the subject of an impressive body of scholarship, dating back to the 1990s and early 2000s. Much of this scholarship has focused on establishing and clarifying causal relationships between environmental factors on the one hand and the onset, prolongation, escalation and resolution of armed conflicts on the other. Two main theories have emerged from this scholarship, namely grievance theories on the one hand and greed and feasibility theories on the other.[3]

Grievance theories, on the one hand, focus on perceived injustices as an explanation for the escalation of a situation into armed conflict. The hypothesis is that communities that feel left out or ignored, for instance because natural resources (e.g., land) or environmental burdens (e.g., pollution) are distributed inequitably among segments of the population, may at a certain point resort to violence in an attempt to correct the perceived injustices. Grievances also provide fertile breeding grounds for the recruitment of youth by armed (terrorist) groups. Feelings of being left out combined with a lack of prospects to provide in one's livelihood have proved to be an incentive for individuals from marginalised communities to join an armed group.[4]

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[1] See *United Nations and World Bank Group, Pathways for peace: Inclusive approaches to preventing violent conflict* (2018), xxiii; and United Nations Department of Political Affairs (UNDPA) and United Nations Environment Programme (UNEP), Natural resources and conflict, guide for mediation practitioners (February 2015), 11.

[2] See UN Security Council, *Maintenance of international peace and security: Root causes of conflict — the role of natural resources*, UN Doc. S/PV.8372 (16 October 2018), 2.

[3] See e.g., Karen Ballentine and Jake Sherman (eds.), *The Political Economy of Armed Conflict: Beyond Greed and Grievance* (International Peace Academy, Lynne Rienner Publishers 2003).

[4] Katharina Nett and Lukas Rüttinger, *Insurgency, Terrorism and Organised Crime in a Warming Climate: Analysing the Links Between Climate Change and Non-State Armed Groups* (Adelphi, October 2016), 16–18 (case study on Boko Haram in the Lake Chad region), 24 (case study on ISIS in Syria), 33 (case study on the Taliban in Afghanistan).

Greed theories, on the other hand, focus on rent-seeking behaviour as a trigger for armed conflict and a disincentive for peace. Such theories help to explain patterns of continued violence that seem to be motivated primarily by economic reasons.[5] However, greed theories have become highly contested and have largely been replaced by feasibility theories, which focus on opportunities rather than motivations.[6] More specifically, feasibility theories are based on the presumption that the availability of natural resources simply provides the means to finance armed conflict and that it is therefore more likely that conflict erupts in resource-rich regions (whether motivated by grievances, greed or by other factors), especially as many of these regions are plagued by weak governance or repression.

Grievances, greed and feasibility theories are furthermore intrinsically linked to resource scarcity and environmental degradation on the one hand and resource abundance on the other as underlying risk factors for conflict. Where greed and feasibility theories are primarily connected to situations of resource abundance, grievance theories are more encompassing and equally apply to situations of resource scarcity and environmental degradation.

Resource scarcity and environmental degradation are increasingly at the root of armed conflicts, especially now that the devastating effects of climate change on livelihoods are gradually materialising. According to the 2021 Ecological Threat Register, of the 15 countries facing the worst ecological threats, 11 'are currently in conflict, and another four are at a high risk of substantial falls in peace'.[7] The 2020 Global Peace Index furthermore estimates that about a quarter of the world will face catastrophic water and food stress by 2050 because of climate change and biodiversity loss.[8] Such stress may easily lead to competition between States and communities over access to environmental services and shared natural resources, potentially fuelled by grievances; and may escalate into local or regional armed conflict.[9] It may also induce individuals to join armed groups or criminal gangs to secure alternative livelihoods.[10]

Resource abundance on the other hand is primarily associated with opportunities for armed conflict (feasibility). However, here again, grievances can play an important (secondary) role, for instance when mining takes a heavy toll on livelihoods and the health of local communities. Many conflicts over the past decades have been fuelled or financed by valuable natural resources, such as diamonds (Angola, Sierra Leone, Côte d'Ivoire), timber (Cambodia, Liberia) or gold (DR Congo, Central African Republic, Colombia).[11] These conflicts are difficult to end, so long as the main protagonists retain access to natural resources. The armed conflict in the east of the DR Congo is a case in point. This conflict has a long history, dating

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5 Paul Collier and Anke Hoeffler, *Greed and Grievance in Civil War* (Working paper, May 2000).

6 Paul Collier, Anke Hoeffler and Dominic Rohner, *Beyond Greed and Grievance: Feasibility and Civil War* (Working paper November 2007).

7 Institute for Economics & Peace, *Ecological Threat Report 2021: Understanding Ecological Threats, Resilience and Peace* (October 2021) http://visionofhumanity.org/resources accessed 23 March 2023, 2.

8 Institute for Economics & Peace. *Global Peace Index 2020: Measuring Peace in a Complex World* (June 2020) http://visionofhumanity.org/reports accessed 23 March 2023, 71.

9 *Report of the Advisory Group of Experts on the Review of the Peacebuilding Architecture, Challenge of sustaining peace*, UN Doc. A/69/968–S/2015/490 (30 June 2015), paras 16–18.

10 Nett and Rüttinger (n 4).

11 See e.g., Philippe Le Billon, *Wars of Plunder: Conflicts, Profits and the Politics of Resources* (OUP 2014).

back to the 1990s, when neighbouring countries invaded the DR Congo to plunder its resource wealth.[12] Even today multiple armed groups are controlling mines throughout the region, hampering genuine prospects for peace.[13]

However, environmental factors are also connected with armed conflict in other ways. First, they can be used as weapons in armed conflict. For instance, conflict protagonists can take control of critical water infrastructure to induce flooding of a region under the control of the adversary or, conversely, to interrupt the flow of water. Second, the environment can also be a victim of armed conflict. Environmental destruction is a prevalent feature of armed conflict and one that seriously hampers post-conflict reconstruction.[14] To complicate matters more, the chaotic circumstances of post-conflict situations can also present new opportunities for armed groups and transnational criminal gangs to access sites that were previously not accessible because of the armed conflict,[15] thereby provoking or renewing grievances among segments of the population that see their livelihood opportunities being compromised.

Given the challenges that conflicts relating to the environment and natural resources pose at the local, regional and even global level, there is an urgent need to develop strategies that transform environmental factors from engines for conflict to engines for peace. Environmental peacebuilding, which is the subject-matter of this book, aims to do precisely that. As a growing field of practice and research working on the interconnections between environment, conflict and peace,[16] it investigates both positive and negative dimensions of the environment-conflict nexus: its principal purpose is to find ways to break the interconnections between the environment and armed conflict (negative dimension) on the one hand and to harness the potential of the environment to foster sustainable peace and development (positive dimension) on the other.

Research and practice in the field of environmental peacebuilding revolve around three broad societal objectives. First, environmental peacebuilding aims to improve environmental governance within and across States for the purpose of preventing conflict occurrence and relapse. As part of this effort, it addresses the role of natural resources and the environment in causing tensions between and grievances among communities (negative dimension), but it also capitalises on the contribution of the environment and natural resources to jobs and livelihoods and to the improvement of basic services benefitting the population (positive dimension). Second, it aims to protect the environment and natural resources against damage and illegal exploitation during and after armed conflict, as important factors hampering conflict resolution and post-conflict recovery. Third, it aims to enhance cooperation between

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[12] See the reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo, in particular the *Final Report* of 16 October 2002, UN Doc. S/2002/1146, which describes in great detail the involvement of Uganda, Burundi and Rwanda in the illegal exploitation of Congolese natural resources.

[13] See *Final report of the Group of Experts submitted in accordance with paragraph 6 of resolution 2582 (2021)*, UN Doc. S/2022/479, 14 June 2022.

[14] For an example, see Paul Davies and Nic Dunlop, *War of the Mines: Cambodia, Landmines and the Impoverishment of a Nation* (1994). Reported in Nao Shimoyachi Yuzawa, Linking demining to post-conflict peacebuilding: A case study of Cambodia, in David Jensen and Stephen Lonergan, *Assessing and Restoring Natural Resources in Post-Conflict Peacebuilding* (Earthscan 2012), 185.

[15] For an example, see Gena Steffens, 'In the Colombian Amazon, Peace has Environmental Consequences' (3 May 2018) *Global Post*.

[16] See Tobias Ide et al., 'The Past and Future(s) of Environmental Peacebuilding' (2021) 97(1) *International Affairs* 1.

States and communities in environmental management, using environmental governance as an entry point for dialogue between and within States and communities. Here again, one can distinguish a negative dimension (preventing a (re)lapse into armed conflict) and a positive dimension (fostering sustainable peace through cooperation).

2. OBJECTIVES OF THE BOOK

There is an emerging body of scholarship in the field of environmental peacebuilding. This scholarship is however primarily informed by perspectives from political science, peace and conflict studies, economics and social geography, with international legal perspectives being only marginally addressed.[17] Conversely, international legal scholarship has focused primarily on environmental protection during armed conflict and post-conflict reparations,[18] but there has been little engagement with the broader conflict-environment nexus.[19]

The current book aims to remedy these gaps by examining the impact of international normative and institutional frameworks on environmental peacebuilding. The basic idea that underlies this book project is that international law can play a pivotal role in addressing the social, economic and environmental challenges that have been identified as part of scholarship and practice on environmental peacebuilding. It argues that international legal mechanisms can contribute greatly to the management of risks to prevent a relapse into armed conflict on the one hand and to create opportunities for environmental conservation and benefit-sharing on the other. International human rights law, for example, formulates rights for individuals with respect to access to food, water and sanitary facilities as well as participatory rights, thereby providing a useful normative framework for post-conflict States to help them prioritise the needs as well as representation of the population in decision-making. Likewise, multilateral environmental conventions provide several mechanisms, including with respect to financial and technical assistance, which may help States to restore their damaged environment after the armed conflict. Furthermore, international law contains institutional mechanisms to address

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[17] See e.g., Päivi Lujala and Siri Aas Rustad, *High-Value Natural Resources and Post-Conflict Peacebuilding* (Routledge 2011); David Jensen and Stephen Lonergan, *Assessing and Restoring Natural Resources in Post-Conflict Peacebuilding* (Routledge 2012); Jon Unruh and Rhodri C. Williams, *Land and Post-Conflict Peacebuilding* (Routledge 2013); Erika Weinthal, Jessica Troell and Mikiyasu Nakayama, *Water and Post-Conflict Peacebuilding* (Routledge 2014); Helen Young and Lisa Goldman, Livelihoods, *Natural Resources, and Post-Conflict Peacebuilding* (Routledge 2015); Carl Bruch, Carroll Muffett and Sandra S. Nichols, *Governance, Natural Resources, and Post-Conflict Peacebuilding* (Routledge 2016); and Ashok Swain and Joakim Öjendal, *Routledge Handbook of Environmental Conflict and Peacebuilding* (Routledge 2018).

[18] See e.g., Onita Das, *Environmental Protection, Security and Armed Conflict: A Sustainable Development Perspective* (Edward Elgar 2013); Daniëlla Dam-de Jong, *International Law and the Governance of Natural Resources in Conflict and Post-Conflict Situations* (CUP, 2015); Carsten Stahn, Jens M. Iverson and Jennifer S. Easterday (eds.), *Environmental Protection and Transitions from Conflict to Peace: Clarifying Norms, Principles, and Practices* (OUP 2017); Britta Sjöstedt, *The Role of Multilateral Environmental Agreements: A Reconciliatory Approach to Environmental Protection in Armed Conflict* (Hart, 2020).

[19] An exception is Eliana Cusato, *The Ecology of War and Peace: Marginalising Slow and Structural Violence in International Law* (CUP 2021). However, this book focuses on unravelling the assumptions on which international legal approaches have been based and, as such, does not engage with the role of international law in environmental peacebuilding.

past injustices, such as dispossession of land, providing remedies and reparations for the victims of these injustices. As such, international law therefore provides a universal normative and institutional framework which can help to reduce tensions in post-conflict States in order to build a positive peace.

This is not to say that international law is a unified and consistent framework, which protects inherently compatible values.[20] States may sometimes have competing obligations under international law, which can seriously hamper implementation of peacebuilding strategies. States have, for instance, obligations under human rights law to ensure access to natural resources that are essential for individuals' and communities' livelihood. Land reform agendas can be a way to implement these obligations, while also bringing social justice as an important condition for preventing a relapse into armed conflict. States however also have obligations towards the protection of foreign investment and the conservation of the environment, which may contravene such policies.[21] It is therefore equally important to assess how the gaps and inconsistencies of the current international legal framework can be reconciled in order to build a positive peace. What is needed, in other words, is an integrated approach to international legal obligations to ensure a coherent normative framework for environmental peacebuilding.

This book therefore embarks on an inquiry into the impact of international law on environmental peacebuilding, focusing on opportunities and constraints that international law presents to environmental peacebuilding and on ways to achieve a more coherent normative framework for environmental peacebuilding. In this way, the book aims to pave the way for a more advanced understanding of the contribution of normative approaches to the existing body of research and practice in the field of environmental peacebuilding. It targets a mixed audience. On the one hand, it aims to introduce legal scholars to the emerging field of environmental peacebuilding. On the other hand, it provides tools to other social sciences scholars to better understand the interplay between political interventions on the one hand and the international legal framework on the other.

3. DEFINITION OF ENVIRONMENTAL PEACEBUILDING

As may be apparent from the description of the objectives of this book, we have opted for a fairly narrow understanding of environmental peacebuilding, which focuses primarily on post-conflict situations. Even though research and practice in the field of environmental peacebuilding encompasses the whole conflict cycle, including conflict prevention,[22] we prefer to

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[20] See on this problem, Mads Andenas and Eirik Bjorge (eds), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (CUP 2015).

[21] See e.g., Eric De Brabandere, '*Jus Post Bellum* and Foreign Direct Investment: Mapping the Debate' (2015) 16 *The Journal of World Investment & Trade* 590; Andrei Gomez-Suarez, 'Foreign Investors and the Colombian Peace Process', (2016) 18(6) *International Community Law Review* 223 on investment law. As regards environmental conservation, clashes have occurred in relation to the establishment of protected areas. See e.g., Robert Flummerfelt, *To Purge the Forest by Force: Organized Violence Against Batwa in Kahuzi-Biega National Park* (Minority Rights Group International Investigation Report, 2022).

[22] This is also reflected in current definitions of environmental peacebuilding. For instance, a recent contribution by Tobias Ide and others defines environmental peacebuilding as comprising 'the multiple approaches and pathways by which the management of environmental issues is integrated in and can

remain closer to the original understanding of 'peacebuilding' as it emerged in the practice of the UN. In UN discourse, peacebuilding refers to post-conflict recovery, while conflict prevention is included in the more encompassing 'sustaining peace' approach.[23] For the purposes of this book, we have therefore decided to hold on to this distinction.

Based on this choice, we define environmental peacebuilding as comprising the integration of natural resource management and environmental protection in conflict resolution and recovery strategies to prevent conflict relapse and to lay the foundations for sustainable peace and development. In line with this definition, conflict prevention is covered through the lens of conflict relapse,[24] while environmental harm caused during the conflict is considered from the perspective of post-conflict remediation and reparations. Furthermore, the definition used in this book places emphasis on the two principal dimensions of environmental peacebuilding, namely the negative 'security' dimension and the positive 'sustainable development' dimension. We consider these dimensions to be essential for understanding the principal objectives of environmental peacebuilding.

4. ORGANISATION OF THE BOOK

This book is organised in three parts. Part I provides a normative perspective, introducing international legal concepts and approaches that are highly relevant for environmental peacebuilding. Part II takes an institutional perspective, zooming in on the most important international actors in the field of environmental peacebuilding, inquiring into their mandates, their legal tools and their capacity to make meaningful contributions to environmental peacebuilding. Finally, Part III presents reflections on how the normative and institutional perspectives presented in Parts I and II function in practice and what is needed to ensure an integrated approach to environmental peacebuilding.

In line with the objective of this book, we have asked all authors to engage with the question of what the law can and cannot do, and whether there are any tensions or contradictions in the law – specifically, whether there are circumstances where the law hinders, rather than aids environmental peacebuilding efforts. We have further asked all authors to reflect on the definition of environmental peacebuilding presented in Section III, which, it may be recalled, defines environmental peacebuilding as comprising the integration of natural resource management and environmental protection in conflict resolution and recovery strategies to prevent conflict relapse and to lay the foundations for sustainable peace and development. The following sections set out how the chapters have engaged with these questions.

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support conflict prevention, mitigation, resolution and recovery'. See Tobias Ide et al., 'The Past and Future(s) of Environmental Peacebuilding' (2021) 97(1) *International Affairs* 2.

[23] *Report of the Secretary-General, Peacebuilding and Sustaining Peace*, UN Doc. A/72/707–S/2018/43 (18 January 2018).

[24] In practice, post- and pre-conflict often overlap, as many of the countries that are most at risk of experiencing violent conflict already have a history of oppression and conflict. This has been referred to as the conflict trap. See Paul Collier et al., *Breaking the Conflict Trap: Civil War and Development Policy* (OUP 2003).

4.1 Part I: International Law as a Normative Framework

Part I focuses on the normative framework both in terms of substantive content and procedural safeguards provided by international law. The chapters of Part I explore key concepts underpinning environmental peacebuilding, including sustainable development, equity, natural resource management, participatory rights in decision-making, environmental rule of law and anti-corruption. All chapters have a strong emphasis on how these concepts impact questions relating to the distribution of natural resources to ensure sustainable peace. While the first three chapters focus on concepts related to equitable sharing of natural resources, the last three chapters take a closer look on how to safeguard the realisation of these concepts in post-conflict settings.

Onita Das (Chapter 2) examines the application of the concept of sustainable development in peace processes. While the exact legal content and status of this concept remains uncertain it has become a part of international legal argumentation and hence, a useful tool to guide policy and law to ensure sustainable peace. Das underscores the importance to understand the drivers of conflict and the local conditions in order to build peace. She points out the illegal exploitation of natural resources and the emergence of shadow economies in relation to armed conflicts as such drivers of conflicts. According to Das sustainable development sets out an important framework for natural resource management and regional cooperation to combat illegal economies. Thus, the concept of sustainable development can help turning shadow economies into legal economies and in this way can help to ensure peacebuilding.

Virginie Barral (Chapter 3) focuses on the principle of equity which is inherent in the concept of sustainable development. Equity as explained by Barral has both substantive as well as procedural dimensions that can contribute to achieving environmental peacebuilding. The substantive dimension of equity refers to equitable sharing of natural resources and equitable access to management of natural resources, which links it to Das' chapter. The procedural dimension concerns how equitable sharing can be achieved by ensuring local communities have the right to participate in decision-making in regard to the management of natural resources. Participatory rights contribute to local ownership. Hence, local participation in the decision-making contributes to creating legitimacy, which contributes to overcome tensions and thereby prevent relapse into armed conflict. Barral also discusses how State responsibility in relation to environmental degradation in post-conflict states can be re-assessed by applying the principle of common but differentiated responsibility (CBDR). The CBDR principle is central to equity and it builds on the idea of sharing responsibility between developing and developed states. Barral argues that equity re-interprets environmental management going beyond the classic understanding of transboundary harm to share the burden of environmental damage occurring in armed conflicts between States. As fault in armed conflict is not easy to establish and thereby raises difficulties for demanding State responsibility, Barral argues that equity via CBDR is an alternative path to get the international community to be part of restoration and compensation of environmental damage in post-conflict states.

Eliza Morgera (Chapter 4) continues to explore the application of the concepts of sustainable development and equity raised by Das and Barral. She also discusses local ownership, particularly on how fair and equitable benefit-sharing can complement procedural equity to ensure human rights of indigenous peoples, local communities and rural women. Morgera discusses the minimum guarantees for local communities to ensure non-repetition of human rights violations and access to justice in relation to biodiversity, showing the close relationship

between human rights law and international environmental law. Morgera argues that equitable benefit-sharing may entail another protection layer for these groups to be ensured a cut of the wealth of a country. Morgera underscores that unclear standards of fair and equitable as stated in biodiversity law can be clarified through interpretation using standards of human rights law. By applying benefit-sharing obligations in a peace-building process as an ongoing partnership with local communities is a way to support indigenous peoples' continuing agency in peace-building as argued by Morgera. Such support can also consist of non-monetary compensation, such as getting concession rights for exploitation of natural resources.

Jens Iverson (Chapter 5) examines anthropocentric and ecocentric approaches and the consequences of applying these respective approaches to peacebuilding. Iverson states that anthropocentric needs are difficult to reconcile with those of an ecocentric nature, which demands that choices are made between different values standing behind the approaches. For instance, an ecocentric approach may not include the needs and the views of local communities, which poses a problem for environmental peacebuilding that puts much emphasis on the participation and influence of local communities, as argued in the first three chapters of part I of the book. In regard to the choices between ecocentric and anthropocentric approaches, Iverson highlights that ecocentric approaches may not lead to the best result for achieving environmental peacebuilding, although these may preserve more options for future generations. Iverson argues that peacebuilding must ensure that future communities have the option to continue to build 'societies of opportunity', as defined by the people themselves.

Carl Bruch and Isabelle Morley (Chapter 6) focus on the synergies and occasional tensions between environmental rule of law and environmental peacebuilding. They take a broad view of environmental peacebuilding, which encompasses the entire conflict cycle. They examine how environmental rule of law provides the institutions and governance structure surrounding the substantive environmental principles discussed in the previous chapters of Part I. They discuss how environmental rule of law provides means to solve conflicts before they occur and to respond to the collapse of environmental institutions, which is often the result of armed conflict. In this regard, Bruch and Morley also discuss the need to ensure equitable access to resources. Environmental rule of law provides ways for ensuring that environmental laws are implemented and enforced, while environmental peacebuilding often focuses on natural resource management. Bruch and Morley argue that the environmental rule of law must become more conflict sensitive to be more effective in relation to peacebuilding. This could be achieved by incorporating lessons learned from environmental peacebuilding.

Naomi Roht-Arriaza (Chapter 7) focuses on international law governing grand corruption, mainly in relation to exploitation of natural resources in post-conflict situations and in fragile states. Roht-Arriaza argues that unsustainable resource extraction as well as uncontrolled State capture and grand corruption are both causes and consequences of violent conflict. In order to establish peace both phenomena must be tackled. In this regard, Roht-Arriaza argues – like Bruch and Morley in their chapter – that building stable institutions is essential for environmental peacebuilding, as corruption in relation to natural resources creates a fertile ground for the shadow economies described in Das' chapter. Roht-Arriaza explains that the impunity of corruption is often built into the system of the shadow economies and needs to be corrected. Furthermore, Roht-Arriaza highlights that decentralization to a local level of natural resources management – as argued for in previous chapters in Part I – is not always the best solution, as it can make municipal governments more vulnerable to corruption.

4.2 Part II: International Law as an Institutional Framework

This part explores the role of international law as an institutional framework. It focuses on actors in environmental peacebuilding that have a key role to play in interpreting and applying international law as a normative framework, namely international organisations, treaty monitoring bodies and courts and tribunals. These actors have widely diverging roles in environmental peacebuilding, ranging from supporting States and communities to monitoring States' compliance with their treaty commitments. The chapters included in this Part highlight the specific contributions of these actors to environmental peacebuilding, focusing on opportunities and constraints ensuing from their mandates and on substantive contributions.

Albert Martinez and David Jensen (Chapter 8) focus on the contribution of the UN in strengthening protection for the environment and natural resources in connection to environmental peacebuilding. They discuss the normative and institutional innovations that have enabled the UN to engage with environmental peacebuilding in a meaningful way; some of them external, others initiated by the UN itself. The chapter contextualises these innovations through a case study on Sierra Leone, which represents one of the most comprehensive UN-led environmental peacebuilding efforts to date. An important finding of the case study is that soft norms were much more instrumental than formal international law in guiding Sierra Leone's post-conflict reforms. As much as this demonstrates the utility of soft law as a normative framework for environmental peacebuilding, it also shows the limitations of the traditional methods for international law-making to grapple with peacebuilding challenges. Furthermore, soft law suffers from several deficiencies. Martinez and Jensen argue that indeed one of the remaining challenges that the UN should urgently address includes implementing a systematic reporting mechanism for States to monitor their compliance with (soft) environmental and natural resources management norms, while it is equally important that a more comprehensive effort is made to address the fragmentation of norms, policies and mandates that hinder effective responses by the UN.

While Albert Martinez and David Jensen provide a comprehensive overview across the UN system, Daniëlla Dam-de Jong (Chapter 9) seeks to determine the position of the UN Security Council within the institutional framework on environmental peacebuilding. She argues that environmental peacebuilding is in fact a shared responsibility affecting the whole UN system. This is reflected in the UN's peacebuilding architecture, which assigns complementary roles to the Security Council, the General Assembly and the Economic and Social Council, based on each organ's respective function within the UN system. Dam-de Jong appraises the contributions made by the Security Council to environmental peacebuilding from this perspective. She argues that the institutional division of responsibilities between the three main UN organs provides a powerful rationale for explaining the differences in the substantive contributions by the Security Council with respect to 'conflict resources' on the one hand and to climate change and other ecological threats on the other. The Security Council is well placed to address environmental factors that are directly linked to armed conflict, while it can play an important secondary role in addressing indirect interconnections.

Britta Sjöstedt (Chapter 10) focuses on the contribution of multilateral environmental agreements (MEAs) to environmental peacebuilding by looking at five global environmental treaties. The references to sustainable development, equity and CBDR that were discussed in Part I are materialised in the MEAs. This means that MEAs have broader scope than environmental protection and include notions of social and economic justice. State parties are urged to

be mindful of equitable sharing of environmental resources and to cooperate to resolve environmental problems. While the MEAs in terms of normative substance are vague and unclear, the institutional systems established around them can play a key role in implementing MEAs in post-conflict States. Based on the notion of CBDR, MEAs are often implemented in larger projects in post-conflicts States. These projects are financed and operated by other States and international actors, often coupled with development aid. Sjöstedt argues that in these types of projects, MEAs could have a stronger role in guiding peacebuilding in a more environmental and sustainable direction.

Karen Hulme (Chapter 11) discusses how international human rights law and in particular human rights bodies can support environmental peacebuilding. She starts by explaining the process of the greening of human rights and how fulfilling human rights increasingly includes obligations for States to take steps to protect the environment. Hulme argues that this development has led to human rights monitoring bodies adopting a broader environmental rule of law approach, that emphasizes the obligations for States to respect, protect and fulfil human rights by respecting relevant environmental standards and processes. Besides the processes of greening human rights, the emerging right to a healthy environment may fulfill a complementary function, considering it has a broader scope. Hulme also examines the procedural human rights related to access to information, the right to participation and access to justice in relation to environmental matters, putting emphasis on community participation in decision-making, environmental impact assessments and planning. These rights, as argued by Hulme, may help to address any long-standing inequalities in post-conflict societies, and contribute to building the conditions necessary to attain positive peace.

Giulia Pinzauti and Merryl Lawry-White (Chapter 12) consider the ways in which reparation may map onto and contribute to environmental peacebuilding, as well as the limitations on the role that reparation may play. They also address the engagement of courts and tribunals with reparation for environmental damage and the implications for environmental peacebuilding. The role of courts and tribunals in providing reparation for environmental damage caused by armed conflict has been extensively discussed in legal scholarship. Yet, little attention has been given to the many different functions that reparation can play as part of environmental peacebuilding and the position of international courts and tribunals within that. As an accountability measure, reparation can have a normative and expressive function that is integral to peacebuilding efforts. Reparation may also contribute to remedying the damage caused and address structural causes of conflict, for example through the establishment of suitable governance frameworks. In addition, the process of seeking and awarding a remedy provides an opportunity to foster cooperation between former parties to an armed conflict, for instance through joint efforts to repair transboundary environmental damage or to design a protective system for shared natural resources. The role that reparation plays in fostering cooperation and participation in peacebuilding processes depends on various factors, including the manner in which the reparation program is designed and implemented. Pinzauti and Lawry-White engage with some of these considerations and highlight that, importantly, reparation measures must be carefully designed and tailored to address the particularities of the situation. This includes taking into account the relationships between stakeholders in the peacebuilding process, the causes of the conflict and the needs of the victims, as well as the relational impact of and engagement with different constituencies with the substance and process of reparation. Pinzauti and Lawry-White therefore argue in favour of taking a holistic approach to reparation

in peacebuilding processes, given the far-reaching implications on the success of the process as a whole.

Ole Kristian Fauchald (Chapter 13) also engages with the role of courts and tribunals, but as part of a broader assessment of the functions that international investment law may perform in environmental peacebuilding. He uses an empirical approach to assess whether and to what extent international investment law contributes to improved distribution or management of natural resources or to increased flows of foreign direct investment (FDI) into natural resource sectors in post-conflict settings. Fauchald argues that international investment law can contribute to these purposes through providing an effective means for settling natural resources related disputes between foreign investors and host countries in post-conflict situations; by serving as a transitory legislative and judicial framework for the management of and access to natural resources pending the establishment of domestic rules and institutions to manage FDI in natural resource sectors; and by promoting (high-value) FDI in natural resource sectors in post-conflict settings. However, his findings also show that – even though this is an area of international law that has the potential to greatly contribute to environmental peacebuilding – much more needs to be done to ensure that foreign investment effectively benefits post-conflict States.

4.3 Part III: Way Forward – an Integrated Approach

This part builds on the normative and institutional frameworks presented in Parts I and II and explores how these frameworks impact on environmental governance in post-conflict states. Three of the chapters zoom in on normative and institutional frameworks governing key natural resources for environmental peacebuilding, namely land, water and extractives (minerals, oil and gas). These chapters seek to explore how and to what extent international law can be used to contribute to reducing tensions between the various (economic, social and environmental) functions that these natural resources perform in peacebuilding, instead of amplifying them. The remaining two chapters focus on the impact of normative and institutional frameworks on the possibilities for marginalised groups to contribute to environmental governance. They focus on two distinct groups, namely women and indigenous peoples, that are disproportionately affected by environmental degradation and mismanagement of natural resources, while at the same time being recognized as important agents of change. The objective of this part is to discern the functions that the different normative and institutional frameworks perform in environmental peacebuilding and to discuss what (more) is needed to ensure that international law contributes to an integrated approach to environmental peacebuilding.

Daniëlla Dam-de Jong (Chapter 14) explores the international legal framework that applies to land. The chapter is based on the assumption that addressing land issues is an essential aspect of peacebuilding, as conflicts over land (uses) play a major role in contemporary armed conflicts. Dam-de Jong argues that international law does not offer a coherent framework to address tensions between and within the three key peacebuilding priorities relating to land, namely land (re)distribution and return of (dispossessed) land; the restoration of degraded land for biodiversity conservation and the delivery of ecoservices; and the promotion of economic recovery through attracting foreign investment. Even though international law impacts on these priorities in myriad ways, the rules that apply to them replicate rather than resolve the existing tensions. In order to address this problem, she explores whether the notion of environmental peacebuilding can play a useful role in mainstreaming international legal responses.

Dam-de Jong argues that environmental peacebuilding offers a distinct lens for addressing the tensions between peacebuilding priorities and in this way provides important building-blocks for a more integrated approach to land in peacebuilding processes.

Mara Tignino and Tadesse Kebebew (Chapter 15) explore the legal framework that applies to the nexus between access to water and peacebuilding, assessing the contribution of a rights-based approach to water for environmental peacebuilding. The chapter is based on the assumption that water plays a vital role in fragile post-conflict societies through sustaining food security, stimulating economic recovery and poverty alleviation and promoting sustainable development. Tignino and Kebebew argue that these dimensions are not sufficiently taken into consideration in current approaches to water management. In their view, a truly integrated approach to water management would have to rely on international human rights on the one hand and the concepts of equitable utilisation and participation from international freshwater law on the other. These would provide the foundations for a more balanced approach to water management, one that properly takes into consideration the needs of local populations and enables them to participate in decision-making regarding water management. For this reason, they argue in favour of making the human right to safe drinking water central to peacebuilding strategies.

Marco Pertile and Sondra Faccio (Chapter 16) explore the legal framework that applies to the extractive sector, examining the potential role of investment contracts (i.e., contracts concluded between host States and foreign investors in relation to specific projects) in fostering benefit-sharing and community-building in the extractive industry and, more generally, sustainable development in the host state. The chapter is based on the assumption that the extractive sector can greatly benefit post-conflict States by creating local employment and generating revenues needed for peacebuilding, but that it can also increase the risk of conflict relapse if resource extraction infringes on the needs of local communities. Pertile and Faccio examine whether and to what extent contractual provisions imposing upon foreign investors obligations with respect to local content, training of local workers, support for the economic, social and cultural development of local communities and respect for the environment strengthen the benefits generated by the extractive industry for post-conflict states. Their analysis, which is based on 53 investment contracts concluded between 2016 and 2018, demonstrates a stark contrast between local content and training provisions on the one hand and social and environmental provisions on the other. Whereas the former are often formulated in a precise way and strengthened by monitoring mechanisms, the latter are much more generic and therefore difficult to enforce. Pertile and Faccio argue that remedying these problems in investment contracts is only part of the solution, as social and environmental clauses touch upon broader societal interests and power dynamics which investment contracts cannot fully cater.

Sarah Mead and Marie Jacobsson (Chapter 17) explore environmental peacebuilding from a gender perspective. They argue that the connections between gender, environment and peacebuilding are often overlooked in peacebuilding processes. Women are often excluded from such processes, which presents a missed opportunity to capitalise on their perspectives on and knowledge of the environment and natural resources management. Mead and Jacobsson argue that an integrated approach to environmental peacebuilding must consider the interaction between human rights, environmental sustainability and conflict prevention. Such an approach is based on three foundations: the integration in peacebuilding strategies of existing human rights obligations for States that seek to empower women; improving understanding regarding the gendered aspects of environmental and natural resources management in con-

flict and post-conflict settings; and ensuring meaningful, informed and effective participation of women at all stages of the peacebuilding process. Mead and Jacobsson however identify several challenges to the adoption of such an approach. Specifically in relation to the role of international law, they highlight fragmentation as the main hurdle: the scattering of relevant rules over various fields of international law and the lack of a holistic approach towards them presents a genuine challenge for adopting an integrated approach. They see the solution to be outside the legal context: it is first and foremost political will that is needed.

Where Mead and Jacobsson's chapter focuses on enhancing women's agency in environmental peacebuilding, Bas Rombouts' chapter (Chapter 18) focuses on transposing innovations from the indigenous peoples' rights framework, most importantly the principle of free, prior and informed consent (FPIC), to environmental peacebuilding for the purpose of strengthening participatory mechanisms in this field. Rombouts argues that the principle of FPIC is highly relevant for environmental peacebuilding, as the goals of FPIC processes overlap with the central objectives of environmental peacebuilding, namely to prevent and solve conflicts associated with natural resources and the environment, to mitigate human rights violations and to enable indigenous communities and others to benefit in a self-determined way from their territories, environments and natural resources. He concludes that decision-making processes that are based on proper consultation and consent processes based on FPIC can promote environmental peacebuilding and have the capacity to alleviate tensions in long-lasting conflicts over lands and resources. Most importantly, Rombouts argues that these processes, if conducted successfully, may serve as a long-term social and environmental licence to operate.

5. REFLECTIONS ON THE CONTRIBUTION OF INTERNATIONAL LAW TO ENVIRONMENTAL PEACEBUILDING: SETTING A RESEARCH AGENDA

This book has embarked on an inquiry into the impact of international law on environmental peacebuilding, focusing on opportunities and constraints that international law presents for environmental peacebuilding and on ways to achieve a more integrated normative framework for environmental peacebuilding. This last section presents cross-cutting observations derived from the chapters and proposes further avenues for research.

A first observation that follows from the discussions in this book relates to international law as an object of inquiry in relation to environmental peacebuilding. Much of the international law relevant to guide environmental peacebuilding activities consists of open-ended norms that are not fit for purpose. This explains why several chapters demonstrate the relativity of international law *stricto sensu* (referring to the formal sources of international law outlined in Article 38 of the Statute of the International Court of Justice) in comparison to soft norms and informal mechanisms, such as non-binding resolutions by international organisations, General Comments of human rights bodies, multistakeholder informal instruments such as the Kimberley Process for the Certification of Rough Diamonds (KPCS) or decisions of conference of the parties (COPs) or meeting of the parties (MOPs) in the context of MEAs. The latter fulfil an important complementary function in environmental peacebuilding, not in the least because they operationalise open-ended norms, such as in relation to MEAs, or because they fill gaps in the normative regimes, such as is the case for the KPCS. These soft norms and informal mechanisms, precisely because they are usually more specific and tailored to the

situation, can even operate as principal frameworks for environmental peacebuilding projects, as demonstrated for instance in Chapter 8 on the contribution of the UN in strengthening protection for the environment and natural resources in connection to environmental peacebuilding and in Chapter 10 on the contribution of MEAs to environmental peacebuilding. A major advantage of soft norms and informal mechanisms is that they are flexible and can be more easily tailored to reflect the needs of environmental peacebuilding. More research is however needed regarding the interplay between these soft norms and informal mechanisms on the one hand and binding legal frameworks on the other.

A second observation relates to the fragmentation of normative and institutional regimes. While international law provides an essential framework for environmental peacebuilding, the fragmentation of its rules and institutions can seriously hinder environmental peacebuilding. In order to counter this fragmentation, many authors propose to use specific legal concepts as lenses for harmonizing and integrating normative approaches to environmental peacebuilding, whether this is sustainable development (Chapter 2), benefit-sharing (Chapters 3 and 4), environmental rule of law (Chapter 5), a human rights approach (Chapters 15) or free, prior and informed consent (Chapter 18). Alternatively, environmental peacebuilding itself could serve as a lens to channel and prioritise legal responses (Chapter 14). The use of lenses raises important questions for further research: does environmental peacebuilding serve as an ordering mechanism to reconcile competing normative frameworks, as is argued in Chapter 14, or does it require the prioritisation of specific normative frameworks or legal concepts, such as is argued in other chapters? And how can the use of such lenses prevent normative conflicts? More generally, there is a need for more research on how norms from different fields of international law can inform each other. For instance, Chapter 4 demonstrates how unclear or open-ended international environmental obligations can be informed by the application of human rights law. Thus, part of the research agenda is to find further avenues where relevant international law bodies can be integrated to strengthen international obligations for the purposes of environmental peacebuilding.

A third observation relates to how environmental peacebuilding is more concerned with achieving distributive justice and building institutions able to equally distribute resources than it is with restorative or transitional justice. For instance, Chapters 2, 3 and 4 focus on how to ensure equitable access to resources, and Chapters 6 and 7 with ensuring strong governance structures. In this sense, environmental peacebuilding is less focused on questions regarding accountability, which is the main focus of transitional justice. Instead, environmental peacebuilding focuses more on how to transform post-conflict societies by re-distributing natural resources and building stronger institutions often influenced by ideas originating from the New Economic Order (Chapter 3). Thus, environmental peacebuilding favours a certain type of justice that may influence the application of international law. For instance, the concept of distributive justice appears in international environmental law, such as in concepts of equity, CBDR and sustainable development, which then may be prioritised over other international legal obligations that may favour more neo-liberal ideas, i.e., international investment law. Also, certain values protected by international law may be prioritised in environmental peacebuilding. For instance, local communities as the principal actors and benefiters of peace are a common theme within the broader scholarship of environmental peacebuilding. Several of the chapters in this book emphasise the legal safeguards of international human rights law as well as international environmental law to ensure a strong role for local communities in decision-making. However, there are conceptually challenging issues with the term ‘local

communities'. Treating local communities as a homogenic mass ignores that they consist of diverse groups representing vast interests without a unified agenda. Even though international environmental law embraces the idea that local participation in decision-making in regard to environmental matters results in better environmental protection (e.g., Principle 10 Rio Declaration), it is important to realise that the inclusion of local voices may not necessarily ensure better environmental protection (e.g., preserving options for unborn generations, as argued in Chapter 5) nor peace (local communities may be unable to agree and become peace spoilers). However, ensuring local voices in peacebuilding remains an important legitimacy aspect, as many peacetime democratic safeguards may not be respected in times of armed conflict and post-conflict.

Fourth, the discussions in the chapters demonstrate the relevance of empirical research for testing assumptions regarding the functions that normative regimes perform and for assessing their effectiveness in relation to environmental peacebuilding. This point is explicitly made in Chapter 12, where Pinzauti and Lawry-White note that 'there is no empirical study examining whether reparation awarded in respect of, or allocated for, environmental damage during conflict contributes to, or detracts from, a lasting peace'. Empirical studies would further contribute to clarifying other assumptions underlying the chapters. For instance, Chapter 15 which advocates the adoption of a human rights approach to water management argues that this approach presents better prospects for a lasting peace, but this assumption has yet to be tested. The relevance of empirical data comes to the fore in Chapter 13 on investment tribunals, which effectively demonstrates inconsistencies between theoretical approaches in relation to the functions that international investment law performs in post-conflict States and actual practice. More research is needed to determine the precise impacts of normative regimes on environmental peacebuilding.

Finally, this *Handbook* demonstrates that the impact of international law on environmental peacebuilding, even if it is not always helpful in addressing the challenges that post-conflict States face, is undeniable. In this way, the *Handbook* seeks to contribute to a broader debate on the interaction between international law and environmental peacebuilding and on ways to strengthen the positive contributions that international law can make to environmental peacebuilding. This should not be interpreted as a plea for the strengthening of top-down approaches to environmental peacebuilding, based on the use of international law as a universal framework setting out obligations for States that may not be adapted to local circumstances and particularities. To the contrary: this *Handbook* clearly shows that international law provides space for and promotes bottom-up approaches to environmental peacebuilding by empowering local communities. In addition to this, it is of key importance to reflect on how international normative and institutional frameworks can be made more conflict-sensitive. Whether this concerns environmental programming (Chapters 6 and 10), the application of investment law (Chapters 13 and 16) or institutional interventions (Chapters 8 and 12), the particularities of post-conflict States and the specific challenges they face should inform the application of the law. This *Handbook* provides a first attempt to achieve this, but more research is needed to strengthen such an approach, informed by the lessons learned in peace processes.