1. Introduction

In 2012, the International Law Commission decided to start consideration of the topic of protection of the environment in relation to armed conflict.\footnote{United Nations, *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10 (A/66/10)*, paras. 365–367.} Harm to the environment during armed conflict has been a concern for several thousand years.\footnote{For that history, see J. Wyatt, ‘Law-making at the intersection of international environmental, humanitarian and criminal law: the issue of damage to the environment in international armed conflict’, 92:879) *International Review of the Red Cross* (2010) pp. 593–646, at pp. 596–599. See also C. Thomas, ‘Advancing the Legal Protection of the Environment in relation to Armed Conflict: Protocol I’s Threshold of Impermissible Environmental Damage and Alternatives’, in this volume.} It is thus a wonder that the topic has not warranted its own legal regime before. Granted, there are certain rules of international humanitarian law (IHL), both customary and treaty-based, which grant some sort of protection to the environment. However, in the modern international legal era, during which environmentalism has been a central topic since at least the 1972 Stockholm United Nations Conference on the Human Environment,\footnote{Declaration of the United Nations Conference on the Human Environment (Stockholm, June 1972).} and much conflict-caused environmental harm has occurred, no dedicated legal regime for protection of the environment during armed conflict has been developed. Assuming there should be such a regime the question arises as to what that regime would look like.

An oft-used strategy when devising a new legal regime is to look for analogous regimes. In this respect, the regime for the protection of cultural heritage
in time of armed conflict may be a suitable candidate. This regime is currently comprised of the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999⁴ and has spawned a (mostly) successful regime for safeguarding cultural heritage during times of armed conflict. While the Convention and Protocols refer to cultural ‘property’ rather than ‘heritage’, the term ‘heritage’ is used here as being the more contemporary term. The use of this comparator can be justified on the basis of the highly specialised nature of the two legal regimes. Moreover, like parts of the environment, much of heritage falls under the notions of ‘global commons’, or ‘common heritage of mankind’, thus making the two legal goods (heritage and the environment) somewhat comparable.

This study investigates what lessons, if any, can be drawn from the regime for the protection of cultural heritage in the event of armed conflict for the design of a new regime relating to protection of the environment with respect to armed conflict. Before doing so, however, it is necessary to provide an account as to why the environment has so far been mostly neglected in IHL. In this respect ecofeminism provides a useful theoretical framework. By feminising the environment, ecofeminism provides a narrative of the environment’s relative neglect in certain fields (including the regulatory field). This explanation is necessary if we are to understand how we have arrived at this point, and whether a broader change of attitude towards the environment is necessary not only to ensure a regime is ever put into place, but that it is also embraced by States and becomes effective.

This study proceeds as follows: Section 2 introduces the ecofeminist perspective and how it bears on the relationship between environment, war and culture. Section 3 focuses more specifically on certain key features of the regime for the protection of heritage protection in wartime, stressing the extent to which these features could (or could not) be incorporated into an eventual regime for the protection of the environment in wartime. Section 4 concludes the study.

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