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Crime Without Punishment: Exploring Corporate Liability for Climate Crimes at the International Criminal Court

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Abstract

This research considers a future possibility of corporate defendants facing prosecution for crimes against the climate and environment at the International Criminal Court (ICC). Anthropogenic climate change and tandem ecological damage from human activity is recognized to endanger human rights, and even organized human society, worldwide, with especially acute dangers for the Global South, Indigenous populations, and impoverished communities. Calls have emerged to consider ongoing contributions to climate change, particularly by fossil fuel companies, a crime against humanity. However, the practical likelihood and possible implementation of such proposals are less well-explored than normative and legal-theoretical justifications. This paper contributes to the former questions around feasibility from a legal-sociology point of view, utilizing qualitative interviews with members of the Court's Office of the Prosecutor to explore how those within the ICC perceive the prospects of international corporate climate liability with regard to ICC jurisdiction, the structure of criminal law, and political elements of prosecuting environmental harm. This group of subjects suggests the ICC possesses some capacity to act on environmental corporate crimes, but this is significantly circumscribed by the strictures of international criminal law, the ICC's organizational and jurisdictional restrictions, and limited global political will. The paper suggests that, at least from perspectives within the Court, the ICC cannot act as a significant source of accountability for corporate environmental and climate crimes in the short term; the need to explore other legal and policy mechanisms of addressing the climate crisis persists given the apparent feebleness against it of international legal architecture.

Keywords
environment, international law, climate change, environmental crime, legal

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1.0 Introduction: Climate Crisis & the International Criminal Court

> 'It is to rob the poorest and most vulnerable people on the planet of their lands, their homes, their livelihoods, even their lives and their children's lives—and their children's children's lives . . . These are crimes.'
>
> — Climate activist Wen Stephenson (2014: 3)

Earth is experiencing unprecedented, unequivocal warming, driven by human emissions of greenhouse gases (GHGs) such as carbon dioxide. In August 2020, when this research was completed, the Arctic was burning at a rate scientists projected as the worst-case scenario for 2050 (Freedman & Tierney 2020). Climate change endangers human rights to life and health, most acutely among vulnerable Indigenous and low-income communities (United Nations Human Rights Council 2011), and could threaten organized human society as we know it (Dyson 2005; Agnew 2012). Yet global carbon emissions reached an all-time *high* in 2018 (Global Carbon Project 2019). Recognizing the devastating implications for human dignity, this paper explores one possible response within international criminal law (ICL).

Scientists, activists, and legal scholars have suggested that climate breakdown represents a criminal transgression with clear perpetrators: corporations burning fossil fuels and destroying nature with full knowledge of the damage (White & Kramer 2015). Geneticist David Suzuki terms climate change 'an intergenerational crime' (quoted in Baker 2014: 1); journalist Kate Aronoff (2019) has called for trying fossil fuel executives for crimes against humanity. This stance marshals the fact that 100 companies account for over 70 percent of global GHG emissions since 1988 (Griffin 2017) and evidence that the fossil fuel industry orchestrated a disinformation campaign to thwart climate action (Cook et al. 2019). The International Criminal Court (ICC) itself, the principal international forum for substantial criminal justice, has highlighted environmental destruction as potentially falling within its ambit. The 2016 Office of the Prosecutor Policy Paper on Case Selection and Prioritization, which inspired this article, indicated the office would 'give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in . . . *the destruction of the environment*, the illegal exploitation of natural resources or the illegal dispossession of land' (14).

Climate change as a crime against humanity has received recent scholarly attention, though many investigations of climate crime *per se* remain limited to grey literature.[1] This article seeks to assess the prospect of prosecuting corporate entities or executives for harms against the climate or environment internationally, based on qualitative research among current and former ICC personnel.

1 Grey literature includes research and literature produced by government, academia, or business (Auger, 1998).

1.1 Research Question

The paper asks: *What are the prospects for corporate entities or individual corporate agents being tried for climate crimes at the International Criminal Court?*

The Hague-based Center for Climate Crime Analysis (CCCA) defines climate crimes as criminal activities resulting in, or associated with, significant GHG emissions. While most emissions are legal, a significant share are associated with illicit conduct, such as illegal logging, fraud, and corruption; emissions themselves may be criminal when directly linked to harms such as serious injury or property damage (CCCA 2020a). Climate change (global warming) and broader ecological crisis (pollution, species loss, ecosystem destruction) are inextricably intertwined; thus, I frequently refer to climate and environmental crimes, though not identical, simultaneously in terms of legal territory the ICC might chart. I also treat environmental and climate harms as convergent with human rights violations, although real-world legal frameworks of environmental destruction constituting human rights harm are limited (see Durney 2018). Even for apparently slow-moving climate dangers, there will always be a (human) victim, if only because 'somewhere down the line, environmental damage and degradation has an effect on dependent species – which includes us' (South 2014: 375). While admittedly anthropocentric, per Prosperi and Terrosi (2017), 'the time is propitious to embrace the "human factor"' in environmental harms (510). This approach extends the spirit of the European Court of Human Rights

recognition of human rights and the environment as 'mutually reinforcing' (Council of Europe 2012) and the African Charter of Human and Peoples' Rights guarantee of a right to a satisfactory environment.[2]

2 Par. 1, Chapter 1, Article 24, 1986 African Charter of Human and Peoples' Rights.

The significance of what role ICL, and the ICC as one of its foremost institutions (Glasius 2006), might play in deterring and punishing corporate perpetration of climate harm is immense. Future academic work, like future policy and law, will have no alternative but to grapple directly with a decreasingly habitable world. The implications even if we do—and especially if we do not—mitigate the most extreme scenarios of temperature increase, habitat destruction, and biodiversity loss are literally life and death. Deferring to environmental sociology and criminology scholar Rob White: 'The future of humanity is inextricably linked to climate change,' and there may not be 'a liveable future that lies ahead of us' (2011: 51). This paper interrogates international criminal law's role in a liveable future. It focuses on the ICC as the primary international body with authority to prosecute atrocity crimes, or 'the gravest crimes of concern to the international community' (ICC 2021). This jurisdiction fits the notion of climate *crime* much more closely than the International Court of Justice role in settling inter-state legal disputes (ICJ 2017) or the Permanent Court of Arbitration's dispute resolution services (PCA 2021).

Using the framework of climate crime is a normative move, though my methods are empirical. Discussing climate harms as criminal, when much of the fossil fuel industry's contributions to GHG emissions, let alone everyday actions by billions of individuals cooling their homes, pursuing economic development, and traveling, are legal, is very minimally reflected in *de jure* reality. This may render the ICC, though, a fitting venue for investigation, as a body created to prosecute—though not necessarily successfully, to date—extreme crimes of genocide, war crimes, crimes against humanity, and aggression (ICC 2021). Without addressing *all* contributing acts to climate change, the ICC still offers a compelling venue to contemplate criminalizing the *very worst* corporate climate misconduct.

2.0 The Distance Between Corporate Liability, Climate, and International Law

Scholars and international institutions broadly recognize that climate change threatens human rights (Vanderheiden 2008; Caney 2010; UN Human Rights Council 2011; Bell 2013; IPCC 2014; Humphreys 2015; Adelman 2018; Samandari 2018; Boyle 2018), and existing literature brings together (1) international corporate liability and (2) environmental crime, including climate crime. This paper introduces (3) perspectives of practitioners within international institutions. How ICL may interact with corporate actors driving climate change, through mediating institutions, is critical to future climate governance; this paper examines this nexus from an internal ICC perspective, which scholarship has not done.

2.1 International Corporate Crime and Corporate Criminal Liability

Research on international corporate criminal liability focuses on the lack of accountability among transnational corporations and their executives for human rights abuses related to business activity.[3] Global corporate power, often rivalling or contesting government power, renders state responsibility alone for human rights violations sub-comprehensive (Ratner 2001). Voluntary codes of business conduct (see Morgera 2006), such as the United Nations (UN) 'Protect, Respect and Remedy' framework (Ruggie 2008) and Global Compact (UN 2017), have been criticized for their nonbinding modes of operation, imposing neither substantial monitoring nor reprimand upon corporate misconduct (Thérien & Pouliot 2006), the harms of which by some metrics outpace the dangers of terrorism or war crimes (Gilbert & Russell 2002). Several scholars propose international corporate criminal liability to bridge this impunity gap (Kaleck & Saage-Maaß 2010; Van den Herik & Černič 2010; Bernaz 2015); Slye (2008) argues this should be no more controversial than national-level business liability. Legal, moral, and political bases for assigning human rights responsibility to transnational corporations are disputed (Karp 2009; Karp 2014), but there is broad agreement for international corporate criminal liability given transnational corporate misconduct (Gilbert & Russell 2002; Kaleck & Saage-Maaß 2010;

3 National-level corporate criminal liability (Hill 2003; Beale & Safwat 2004; Clough 2005; Manirabona & Diniz 2016; Modlish 2017) is beyond my scope.

Kremnitzer 2010; Sundell 2011; Bernaz 2015). I build on this legal-theoretical consensus to explore international criminal liability for corporate misconduct, specifically climate harms, from a sociological, interpretivist-empirical standpoint.

There is also substantial movement in national civil law toward allowing firms and/or their executives to be sued in the country of incorporation for environmental and human rights violations abroad, though the extent of asserted domestic jurisdiction over extraterritorial conduct varies (Zerk 2013). This paper focuses on the criminal, not civil, and international, not domestic, sphere because climate-destructive corporate misconduct should arguably 'be of concern to the international community as a whole due to its widespread and irreversible consequences, which go far beyond national borders,' and therefore ought to be held criminally accountable internationally to reflect 'the outraged conscience of the world' (Minha 2020: 493-4). Simultaneously, corporate environmental accountability policy at the international level is more rudimentary and in need of advancement.

2.1.1 Defining Criminal Corporate Liability

Because international corporate liability for environmental, let alone *climate* harms, is fairly emergent, I explore liability for both corporations as juridical persons and individual corporate officers as potential elements of climate-related atrocity crimes. Extant scholarship devotes great attention toward this distinction and which form of liability best exerts corporate accountability (DiMento & Geis 2007; Fisse & Braithwaite 1988; Voiculescu 2009). Importantly, one need not substitute for, nor preclude, the other (Slye 2008; Kremnitzer 2010; Stewart 2013). The ICC has jurisdiction over natural persons, not corporate entities; during Rome Statute drafting, a proposal to include legal entities within ICC jurisdiction was rejected on the basis that too many state concerns could not be resolved (Summary Records of the Meetings of the Committee as a Whole 1998; Clapham 2000).[4] With rare exception, the court has not prosecuted business executives.[5] Thus, both liability mechanisms remain relatively original possibilities.

2.1.2 Corporate Liability at the ICC

Proposals of international criminal liability frequently posit expanding ICC jurisdiction, governed by the Rome Statute (adopted 1998, in force 2002) to include corporations and corporate atrocity crimes (Van Den Herik 2010; Sundell 2011; Kyriakakis 2017). Grey literature echoes the proposal.[6] Per the International Commission of Jurists, 'there are no insurmountable conceptual obstacles to imposing criminal liability on businesses' or their officials for human rights abuses amounting to crimes under international law (2008: 58). The proposition is contested on various grounds, including ICL's applicability to abstract corporate entities often held responsible in civil capacities like fines (Jørgensen 2000), but having, in Coffee's (1981) words, 'no body to kick and no soul to damn' (Van den Herik 2012; Stahn 2018). I suggest those within the ICC offer a relevant perspective on the pragmatic dimensions of these controversies.

4 Article 25, July 17, 1998 Rome Statute of the International Criminal Court, 2187 UNTS 90.

5 In 2016, the Trial Chamber vacated charges of using coded messages to facilitate crimes against humanity against Joshua Arap Sang (Scheffer 2016).

6 Grey literature can broaden a review's scope (Mahood, Van Eerd & Irvin 2013) and is useful to this policy-relevant subject.

2.2 International Environmental and Climate Crime

2.2.1 Theory of Corporate Environmental & Climate Crime

This paper aligns theoretically with White's call for 'eco-criminology' attentive to environmental harm, particularly climate harm, by transnational corporations 'at the apex of global social and economic power' (2011: 40). As White emphasizes, 'present action and lack of action around climate change will most likely constitute the gravest of transnational environmental crimes' (2011: 36), for despite ever-growing scientific evidence of catastrophic damages, powerful enterprises continue to exacerbate warming.

White's linkage between established environmental crimes, global warming, and other criminal acts (Figure 1) suggests a number of already-illicit actions, many relevant to business activity, could fall within 'climate crime.' More normatively, Kramer's (2020) definition of climate crime as acts that cause global warming, deny climate change is real and anthropogenic, fail to mitigate warming, and/or adapt to climate change in unjust ways suggests a more expansive field into which climate crime could develop. Literature link-

ing particular environmental crimes to corporations includes analysis of oil extraction in Nigeria's Ogoniland region (Skogly 1997; Eaton 1997; Joseph 1999) and Uhlmann's (2011) argument for criminal prosecution of BP, Transocean, and Halliburton after the 2010 Gulf of Mexico oil spill, none of which examines *climate* crimes as such. Overall, scholarship on climate crime as a distinct legal category (Kramer 2020) typically assesses them in normative and representational terms, arguing the criminal *nature* of environmental harms from GHG release and leaving aside enforcement, though Bryne (2010) explores various potential enforcement mechanisms for climate damage and finds the odds of 'moral responsibility being translated into criminal responsibility' (289) slim.[7] Climate criminality language, then, remains largely symbolic, conveying an unmet need to sanction (in)action driving global warming (White and Kramer 2015). This *thinking* of climate change as a crime is distinct from *making* it a crime, and this paper begins to interrogate this disjuncture.

7 Gilbert (2014) also practically analyses applying ICL to climate change-induced displacement.

	Subject of Offence	Nature of Offence
Environmental offences (contributing to climate change)	Forestry Air pollution Industrial pollution Illegal land clearance Clearing native vegetation	Illegal felling of trees Emissions of dark smoke Unlicensed pollution Destruction of habitat and forests Reducing biotic mass
Environmental offences (consequences of climate change)	Water theft Wildlife poaching Illegal fishing	Stealing water Illegal killing of animals Diminishment of fish stocks
Associated offences (civil unrest and criminal activities)	Public order offences Eco-terrorism Trafficking Violent offences	Food riots Arson, tree spiking Migration and people smuggling Homicide, gang warfare
Regulatory offences (arising from policy responses to climate change)	Carbon trading Carbon offsets Illegal planting Collusion	Fraud Misreporting Unauthorized use of genetically modified organisms Regulatory corruption

Figure 1: White's (2018: 45) schema of transnational environmental crime and climate change

Finally, while sociologists and economists concur that climate change is a crime of the powerful (Kramer 2020) and wealthy (Timmons Roberts 2001; Ulvila & Wilén 2017), morphologically, climate crime is considered state-corporate crime, a public-private coordination (Lynch, Burns & Stretesky 2010; Kramer & Michalowski 2012; Kramer 2020). While policy doubtless abets emissions and fossil fuel extraction, I do not find this frame helpful for conceiving criminal liability for *corporate* actors, given states' ongoing inaction on climate change, state incentives to defer to powerful economic actors, and the fact that current international law does not attribute to states criminal responsibility for international crimes (Gilbert 2014; Jørgensen 2000). Further, viewing *trans*national corporate misconduct through a state-corporate lens of singular national units is inadequate. Corporate climate crime merits examination without treatment as analytically coterminous with state wrongdoing.

2.2.2 Environmental Crime at the ICC

Nongovernmental organizations (NGOs) greeted the ICC's 2016 Policy Paper as a landmark shift toward potentially prosecuting executives for peacetime atrocities committed for profit (Global Witness 2016). Academic literature, however, split over whether it had a modest role to play (Mistura 2018; Stahn 2018) or could represent a 'game changer' (Bernaz 2017: 541). I probe which assessment hews closer to perspectives within the Court.

Scholarly discussion of environmental liability at the ICC burgeoned in the late 1990s with the Court's establishment. Bruch (2001) and Drumbl (2001) examined the limits of international law in addressing environmental harm during armed conflict; Berat (1993) argued for an international crime of geocide (destroying the planet). Sharp (1999), Smith (2012), Durney (2018), and Mistura (2018) provide sustained considerations of the Rome Statute's modest means for environmental protection. They also outline, however, how environmental harms such as continuous, knowing discharge of waste into Indigenous lands or land-grabbing targeting persecuted groups could constitute crimes against humanity.[8] Similarly, Prosperi and Terrosi (2017) argue that in light of the 2016 Policy Paper, environmental harm as a means of perpetrating widespread human suffering (e.g., resource extraction, contamination) could merit prosecution under ICC jurisdiction. I aim to advance these outlines and White's analysis of global warming as criminal to explore climate change as a potential atrocity crime within ICC jurisdiction, an angle not to be overlooked given the urgency of deploying every available apparatus to mitigate climate disaster.

Several commentators have proposed creating an international environmental court but suggest the International Court of Justice or UN Environmental Programme as venues for this adjudicatory body rather than an international criminal court (Dehan 1992; Rest 1994; Eaton 1997; Stahn 2018). This paper brings the still-emergent notion of climate crime into conversation with the ICC specifically. Bryne (2010) suggests that climate change damage could come under ICC jurisdiction, while Minha (2020) offers the most useful assessment of *corporate* climate crime at the ICC, suggesting the 2016 Policy Paper might indicate future Court aims to prosecute environmental crime, which may require broadening perpetrators to encompass corporations due to their massive impact on environmental issues. Minha concludes that overcoming procedural hurdles to such prosecution is largely a question of Court willingness to interpret international law to apply to such cases; to that analysis, this paper brings internal ICC perspectives, exploring what ability and willingness to travel this path may actually exist at the Court.

8 Climate crime could fall within ecocide, proposed as an additional Rome Statute crime against peace (Higgins 2012; Higgins, Short & South 2013; Hellman 2014) to hold corporate executives responsible for environmental harm (Hellman 2014). Hellman, contra Sharp, suggests environmental crimes cannot meet crimes-against-humanity criteria, necessitating ecocide. I do not focus on this counterfactual future Rome Statute amendment, alone providing relatively little grist for conceptualizing corporate climate liability at the ICC, though interviewees were able to expand upon ecocide.

2.3 Perspectives within the ICC

This paper places the ICC's own personnel, rarely utilized as research informants, in conjunction with corporate liability and climate crime. The few investigations featuring ICC staff do not relate to environmental, let alone climate, prosecutions. Dezalay (2016) and Trahan (2018) interview ICC staff to explore—respectively—the current and future status of the field of international criminal justice. Wemmers (2010) interviews 23 Court representatives about victims' right to participate in proceedings under the Rome Statute; I draw upon her argument that the views of people within the ICC may influence how victims are treated to make a claim for the influence of ICC personnel's opinions on the (non-)pursuit of environmental corporate prosecutions.

3.0 Methodology

This research adopts a dual qualitative methodology, supplementing primary interviews of a purposive sample of ICC legal personnel with secondary document analysis of literature referenced by informants. The Court is constituted by people with differing perspectives, whose attitudes inform their interpretation and application of law (Wemmers 2010). Individual actors also change institutions endogenously (Battilana, Leca & Boxenbaum 2009), meaning these perceptions may influence any future ICC role in climate and corporate-liability contexts. ICC personnel hold an especially important role where litigation has not fully defined the bounds of the ICC's responsibilities (Wemmers 2010); environmental crime and corporate crime are two such ambiguity-shrouded concepts. Given that the meaning one attaches to something influences her behavior toward it (Blumer 1969),[9] the views of those within the ICC toward corporate climate crime have importance for future implementation.

9 This assertion draws on sociological perspectives of symbolic interactionism.

The paper takes an interpretivist approach, treating knowledge as situated (Gemma 2018) and drawing on the position of those closest to ICC prosecutions. Interviewees' views are not dispositive reflections of any one objective reality of Court functions, but given informants' location and competencies within the institution, their views and opinions influence practice and therefore real-world outcomes. I take a sociological approach to ICL and the ICC: legal sociologist Carole Smart (1989) highlights that law derives power from the appearance of singularity and unity, but is actually refracted in many interpretations. For Smart, particularly as law regulates increasing areas of social life, it holds different meanings for different groups and occupies multiple positions rather than developing linearly. Interviewing actors developing the international legal landscape attempts to ascertain these fractals. I conducted inductive, semantic thematic analysis of the interviews, complemented by review of participant-referenced texts.

3.1 Data Collection

3.1.1 Sampling

I interviewed eight purposively- and snowball-sampled informants. Purposive sampling was used to select participants who illustrated the matter of study (Silverman 2005); snowball sampling was used for this approaching difficult-to-access population (Atkinson & Flint 2001). Twelve candidates were initially identified using a LinkedIn search for individuals currently or formerly employed within the ICC Office of the Prosecutor (OTP), which prosecutes crimes under ICC jurisdiction. The sample inclusion criteria specified the Office's Prosecution Division, which prepares and conducts litigation strategies, or Jurisdiction, Complementarity and Cooperation Division, which advises on issues of jurisdiction and admissibility (ICC 2020).

Per ICC policy, individual interview requests were submitted to the Court's Public Affairs Unit and OTP News Desk, including an informed consent form (Appendix A, available with all other appendices at dx.doi.org/10.17504/protocols.io.bvzzn776). Initial contacts recommended three colleagues with relevant expertise, ultimately recruiting two additional participants. Seven potential informants declined to participate or had recently left the ICC and were not contactable. The resulting sample included individuals with current or former experience as legal assistants, trial lawyers, appeals counsel, and case managers within OTP.

3.1.2 Interviews and Transcription

Interviews were conducted and recorded via Zoom videoconferencing software given constraints imposed by the COVID-19 pandemic. I conducted semi-structured interviews with a guiding theme schedule (Appendix B) and transcribed verbatim each interview to enable immersion in the data (Willig 2013).

3.1.3 Ethical Considerations

Human subject involvement and data protection compliance were conducted in accordance with the London School of Economics Research Ethics Policy and Procedures (2018). Interview transcripts were anonymized; prior research into government officials' views on climate change suggests anonymity is vital to gaining insight into often-private, nuanced deliberations (Willis 2019).

Centering the ICC inevitably centers international criminal jurisprudence that is basically western (Kelsall 2010), complicit in suppressing Indigenous legal systems (Anaya 2007), and critiqued as perpetuating neo-imperialism in Africa (Cowell 2017; Fyfe 2018). This research may exacerbate the exclusion of the disproportionately climate-vulnerable Global South from climate change litigation scholarship (Peel & Lin 2019). Anticipating such criticism, I defer to Hannah Arendt: 'Each time you write something and you send it out into the world . . . everybody is free to do with it what he pleases, and this is as it should be' (1973). Such critiques are valuable and hopefully augur further work by Global South scholars, along with greater attention to it; I believe my contribution can be built upon in less explicitly western contexts.

3.2 Data Analysis

3.2.1 Thematic Analysis

I utilized thematic analysis, a method for identifying, analyzing, and reporting patterns to richly describe data (Braun & Clarke 2006; Willig 2013). I employed inductive ('bottom-up') and semantic analysis, describing explicit patterns and interpreting implications (see Braun & Clarke 2006). After multiple readings, the interviews were systematically manually coded in NVivo, then collated into higher-order themes following Braun and Clarke's (2006) six-phase thematic analysis framework (Appendix E).

3.2.2 Document Analysis

Re-contextualizing and re-using data to gain insights not available at the time of research (Irwin & Winterton 2011) was used to complement interviews. When key informants alluded to a specific report or text not encountered in the above scholarship review—frequently legal and policy grey literature—I explored it with textual document analysis (Fitzgerald 2012).

3.3 Methodological Limitations

The key informants are not representative of the fields of ICL or environmental law but provide in-depth insight into a specific faction of practitioners. Sampling from the Court's most prosecution- and law-oriented branch was an intentional choice to obtain in-depth articulation of these practitioners' perspectives, but one that inevitably excludes views among other branches of the Court, global civil society, and national or local stakeholders in Court activity. Given the time-intensiveness and complexity of interview transcription (Halcomb & Davidson 2006), the sample was also relatively small, and those within the Court may not offer the greatest probative value as to its shortcomings, particularly those perceived by outsiders.[10] Risk also exists in all literature surveys of unintentionally overlooking key arguments (Barrientos 2007), but the secondary document analysis only supplemented the primary interview data.

10 See Newell (2008) on civil society's shift from government toward corporate accountability regarding climate change, Ford (2012) and Dancy et al. (2019) on social-psychological factors influencing perceptions of international criminal court legitimacy or bias, and Glasius (2009) on perceptions within civil society of ICC efficacy in meeting victim needs.

4.0 Findings: High Expectations, A Limited Court, and Remaining Possibilities

Interviews and secondary data analysis revealed a set of dyads. The ICC prosecuting environmental or climate-related crimes remains unlikely, but the case can be made; the ICC possesses capacity to act, but any path toward a significant climate-governance role is long; domestic law will dominate environmental crime enforcement, but international law has a role to play. The results also highlighted the need to temper expectations of the ICC and the defining nature of political will (more accurately, lack thereof) to criminalize and pursue climate harms.

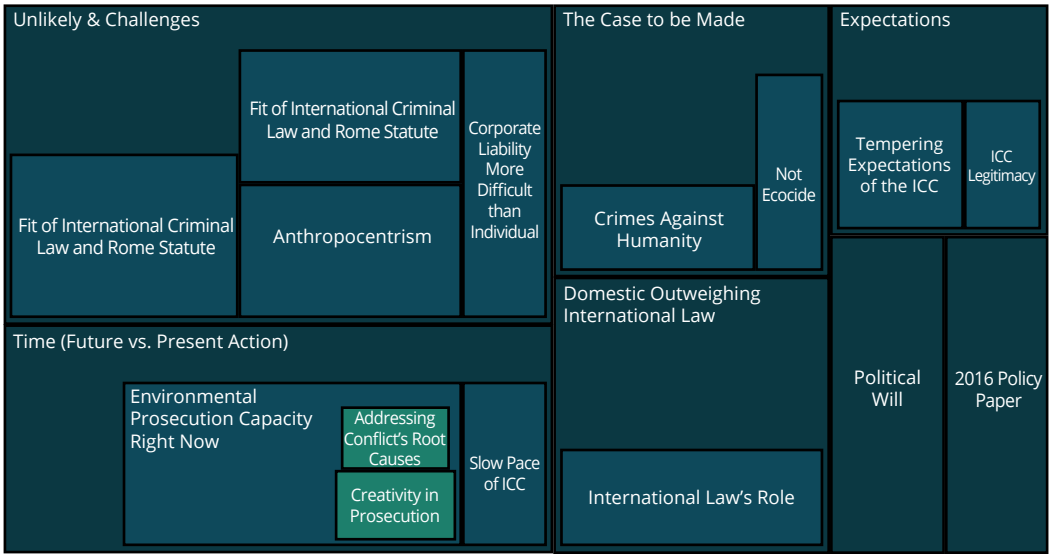

Figure 2: Themes Revealed in Data Analysis (Appendix D). Lighter coloured sub-themes are nested within darker coloured major themes, and the size of each rectangle corresponds to how many references were coded.

4.1 What is Environmental or Climate Crime?

Informants repeated several examples of crimes within these spheres, including displacement, such as the eviction of Kenya's Ogiek people from their ancestral land (Participant H; Roesch 2017); deforestation, including illegal Amazon logging (Participant C; Escobar 2020); toxic waste dumping, such as commodity firm Trafigura dumping waste in Côte d'Ivoire (Participant H; Amnesty International 2016); mining pollution; and land grabbing. Participant H offered the 'Dieselgate' scandal, when automobile manufacturers embedded 'defeat devices' in diesel cars to evade nitrogen oxide pollution limits (Gardiner 2019) as a quintessential climate crime. Generally, however, participants suggested that classifying environmental harms as atrocity crimes was legally challenging. Participant H expounded:

> 'Environmental crimes can vary greatly, from regulatory breaches like failure to keep records of effluent from a chemical process right through to burning of the oil wells in Kuwait by Saddam Hussein's forces . . . One big question is, will there be a minimum level of gravity or severity required? Where would you draw the line?'

Participant C, whose career has involved promoting prosecution of crimes exacerbating climate change, commented:

> 'The term "climate crime" doesn't exist. I made it up.'

Climate crime remains a rudimentary concept in international law, and environmental crime more imaginable in particular illicit acts than a comprehensive category. Many of these acts align with White's schema of eco-crimes associated with climate change but not limited to GHG emissions.

4.2 Theme One: Environmental Crime Unlikely but Possible

Interviews and secondary literature revealed an underlying tension: ICC prosecution of environmental, even less climate, crimes remains practically, legally, and politically remote, but litigators and scholars sensitive to global warming's dangers maintain the possibility and need.

4.2.1 Court Limitations

The fit of international criminal law

ICL and the Court's governing Rome Statute are fairly limited in terms of what they permit and can accomplish. Criminal law is a conservative tool for addressing harm and approaching justice, particularly at the ICC:

> '[The ICC] has the highest standard of proof because the crimes in our jurisdiction are very complex and complicated to establish. There is no easy investigation' (Participant C).

In Participant D's words, even successful prosecutions bear limited fruit:

> 'Criminal law can accomplish very modest things. It can provide justice for a wrong, and it can vindicate interests. But it can't bring back loved ones.'

These impressions dovetail with Dezalay's (2016) analysis of global justice, and the ICC within it, as a 'weak field.' Dezalay suggests the ICC's dependence upon adjacent fields, such as policy and the NGO sector, leaves it reliant upon external support for operational necessities such as evidence production. The ICC's and international law's limitations extend to addressing environmental harms: ICL cannot encompass the world's climate response and should not be 'seen as a panacea' (Gilbert 2014: 554).

Linkage and intent

Almost all informants specified linkage evidence (demonstrating that individuals often remote from an atrocity bear responsibility) and intentionality (evidence that the crime was deliberate or at least a predictable outcome) as challenges to prosecuting corporate agents for environmental harm. Participant G articulated:

> 'Unless you have a document that says explicitly that a company's toxic waste is to be disposed of in the ocean, you're not going to find that linkage, and you're going to find it very difficult to hold that person accountable.'

Linkage and intentionality requirements present an especially pronounced challenge in the corporate-crime context. While the ICC targets those most responsible for atrocity, corporate organization muddles the nexus between any individual executive and ultimate firm activity. Participant H explained:

> 'The difficulty with corporate crime is that it's often an amalgamation or composite of a lot of acts by individuals who won't necessarily have the full picture or the full authority . . . you can easily get a situation where no one is fully responsible for the final result, which is an awkward fit with the concept of individual criminal responsibility.'

The US Environmental Protection Agency notes environmental crimes are often convoluted, involving many people and particularly timed events, e.g. when moving waste (Suggs et al. 2001). Climate change, accumulating on decades- or centuries-long timescales, compounds the challenges. An actor can contribute to global warming, but the action may remain too remote from the ultimate crime, such as displacement, to demonstrate intention or causality and thus to attribute liability (Gilbert 2014):

> '. . . climate change is such a grand-scale, multi-party, multivariable issue that I think it will be extremely hard to prove in the context of criminal charges' (Participant H).

This conclusion circumscribes even the ICC's most explicit engagement with environmental crime. Informants generally concurred with scholars finding the 2016 Policy Paper's role relatively modest (Mistura 2018; Stahn 2018), suggesting that while not 'just rhetoric'

(Participant A), it did not substantively alter the ICC's trajectory. This seems partly due to ICC attorneys' training and background:

> 'most of us come from war crimes tribunals, so the background instinct is, [environmental destruction] isn't the type of criminality we prosecute' (Participant C).

Organizational limits

The ICC's resource limits also curtail its ability to prosecute atrocity-level environmental crimes. Participant C called the court 'massively underfunded.' Participant D explained the minuteness of OTP's yearly budget:

> 'The South Dakota Highway Patrol has a similar budget. If you say that the world expresses [its] value of something through money, which generally it does, then the States Parties [to the Rome Statute] value the Office of the Prosecutor about as much as the [US] state of South Dakota values the Highway Patrol.'[11]

11 The Office of the Prosecutor's 46.8 million-euro budget in 2019 (ICC 2019) compares to the South Dakota Highway Patrol's 2019 budget of 34.4 million US dollars (State of South Dakota 2020).

Prosecuting environmental crime, then, hits a funding wall for expensive processes like locating and protecting witnesses.

> 'Expanding the jurisdiction, going after corporate actors, going after environmental crimes, it all sounds very exciting, but I don't think it's very realistic considering how under-resourced we really are.'

Participant E suggested it might be 'more effective to take this to a civil court rather than a criminal court.' Steinitz (2019) proposes an International Court of Civil Justice, offering a forum that currently does not exist for victims of cross-border mass torts to pursue legal action against multinational corporations—an international extension of current efforts to apply civil domestic liability to multinational corporations for misconduct abroad. Steinitz offers the devastation of the Ecuadorian rainforest by Chevron's predecessor, and the multi-decade fruitless attempt by a class of Ecuadorians to receive compensation, as a case for an ICCJ. Civil remedy could well be an important element of future international responses to climate and ecological breakdown. I am skeptical, however, that the creation of an entire novel international court can arrive on a timescale even remotely commensurate with climate change's immediacy. Nor does the possibility detract from the ICC's role in *criminal* prosecution.

Fit of the Rome Statute

Finally, the ICC's governing treaty frustrates the corporate climate liability proposal. Informants described the Rome Statute as highly rigid; for example, Participant H noted that Article 22 explicitly prohibits expansive or analogical readings of enumerated crimes. Beyond the obvious limitation on corporate-entity liability given the Statute grants ICC jurisdiction only over individuals, its anthropocentrism means any climate or nature-related harms must be made criminally legible through human injury.

> '. . . the Rome Statute has this very anthropocentric view of what is harm. Harm really only exists if it negatively affects people, not necessarily the environment' (Participant B).

Multiple interviewees noted the statute mentions the environment only once, in Article 8(2)(b)(iv), an international-armed-conflict provision prohibiting launching an attack knowing it will cause excessive, severe, long-term environmental damage. Despite being the only remotely eco-centric statute element, Article 8(2)(b)(iv) is very limited in addressing environmental war crimes (Heller & Lawrence 2007). That it is also the environment's only statute appearance reflects how the judiciary more generally includes only human subjects as its agents and beneficiaries (Grear 2015), although the resulting focus on human interests only is ethically dubious (McShane 2016).[12] Neither ICL nor the ICC, then, structurally fit closely with environmental harms.

12 Eco-centric law recognizing 'rights of nature' is limited to Ecuador's constitution and several national ordinances (Borràs 2016).

4.2.2 The Case for Corporate Environmental Crime at the ICC

However, corporate criminal liability for environmental harm is not impossible. Participant C advocated breaking from the Court's historical abstention from corporate and environmental crime:

> '. . . since its inception, [ICC] prosecutors have decided to exercise discretion to almost exclusively replicate the types of criminality that have been prosecuted by other courts [war crimes tribunals], which, in my view, is an unnecessary set of limitations, and we are not using the full potential this court has.'

This full potential could include prosecuting climate crimes:

> 'There's a significant share of greenhouse gas emissions that are either directly illegal or they're linked indirectly to illegal activity. This is where law enforcement can come in.'

Crimes against humanity

Of the Rome Statute core crimes, crimes against humanity (CAH), under Article 7, offer the most 'promising' umbrella for environmental/climate damage (Participant B). Participant D argued climate crimes as CAH would allow the existing statute to further environmental protection:

> '. . . clearing a rainforest could also involve the forcible transfer or displacement of populations, and you may prosecute the forcible transfer. You're trying to vindicate the interest you have in making sure that civilians aren't forcibly transferred, which is a crime against humanity or a war crime. But you're also attempting, at the same time, to vindicate the important interest of making sure that land is left alone for the civilians who live there, and that would vindicate the environmental interest.'

An instance of environmental degradation must meet, or be associated with an incident meeting, core-crime stipulations to fall within ICC jurisdiction (Mistura 2018). Robinson (2020) argues harms such as egregious pollution can meet these stipulations: they cause great suffering and constitute a prohibited inhumane act, meeting the legality principle; corporate polluters can have knowledge of substantial certainty of harm; and a profit aim does not absolve infliction of large-scale harms.[13] Finally, environmental harms can meet the CAH criterion of furthering an organization or state policy; a company policy to extract metals through mining, when extraction foreseeably results in severe environmental degradation affecting human communities, 'becomes tantamount to an official policy to carry out attacks against a civilian population' (Sharp, 1999: 239). This element may be particularly important regarding climate crimes; thorough scientific documentation of (Höök & Tang 2013; Oreskes 2017), and widespread public concern over (Lorenzoni & Pidgeon 2006), climate change's dangers to human society render the results of contributing corporate activity eminently foreseeable.

13 See Article 7 for these prohibited/inhumane acts 7(1)(k), knowledge of the attack 7(1), and pursuant-to-policy 7(2)(a) conditions.

Ecocide

Prosecution under a novel core crime of ecocide rather than Article 7—as some scholars propose (Higgins 2012; Hellman 2014)— is extremely remote. Participant A offered:

> 'I definitely don't see environmental crime becoming its own category. I've actually asked the [Chief] Prosecutor that first-hand and she said, we have way too much to deal with right now.'

Ecocide's improbability also stems from close linkage to issues of corporate responsibility, per Participant H:

> 'Even if, let's say, we get a decent majority of States Parties wanting to adopt an environmental crime, then there will be quite a strong push, particularly on the part of many NGOs, to say that it needs to cover corporations, quite understandably. But that's where states will come under a lot of pushback and pressure from their own constituencies, and that could easily sink the whole boat.'

Rogers (2020) argues we need not wait for ecocide, as Article 7 affords space to act on crimes that drive climate change (Chayes 2017), such as land-grabbing by Cambodia's kleptocratic ruling elite. Protecting the natural environment should be a priority for an ICC created to address crimes that threaten the world's well-being (Rogers 2020), but the prospect of facilitation through major change to the international legal architecture via ecocide—at least in any proximate future—is faint.

4.3 Theme Two: Contemporary Versus Future Action

Temporal differentiation constituted the second major dyad. While the ICC has capacity today to act on some crimes in the climate sphere, namely on core crimes committed by means of environmental destruction, any substantive role in prosecuting crimes against the climate *per se* remains only a future possibility. Participant H summarized this view:

> 'I could see, in the next five to ten years, an investigation having a component that really dealt with an environmental crime, and that would be a milestone . . . in the near future, I don't see the ICC having any major role in relation to climate.'

4.3.1 Existing Capacity

Despite numerous legal and organizational challenges, informants suggested the ICC could still take shorter-term action to address environmental harms. Participant C endorsed this approach, criticizing the ICC's lack of engagement with corporate environmental harms:

> '. . . you have a smartphone and you use it only to make telephone calls. There's so many applications that we are simply not using.'

Investigatory advantages

While acknowledging the narrow path to ICC jurisdiction over environmental harms, several informants suggested that a corporate crime may not be more difficult to prosecute than other cases and could even present investigatory advantages. In Participant B's words:

> '. . . transactions, et cetera, might be well documented, and that could potentially be useful evidence in demonstrating responsibility of business leaders . . . the difficulty would be not dissimilar to the challenges we face in other investigations and prosecutions.'

Participant C took this view further, suggesting prosecuting corporate executives could improve the ICC's crime-deterrence effect:

> '. . . we are limiting ourselves to prosecuting, basically, military or political leaders, where I think the real strength of criminal prosecution lies in targeting economic actors. Economic actors are much more rational and receptive to the risk of a criminal prosecution than political or ideological extremists.'

Participant C also highlighted potential advantages of investigating corporate officers as opposed to government leaders:

> 'People in economic power do not have the entire state apparatus behind them [to undermine investigations]. It is not comparable to a head of state controlling the judiciary, the intelligence, the finances—everything in the state.'

That corporate defendants may be more responsive to deterrence and straightforward to investigate than political actors also confirms that treating climate change as state-corporate crime may not offer the most useful practical tools.

Evidence-wise, corporate-officer prosecution can rely on company records rather than witness testimony vulnerable to misremembering, tampering, and intimidation:

> 'Our cases need to be more document-based—electronic documents, various financial records, corporate records, transportation records, because you can't bribe a document . . . You can't intimidate a document. A document doesn't forget. It's simply much stronger evidence. It's also much cheaper evidence.'

Tension exists, then, between the challenges posed by corporate structures to proving direct responsibility and how corporate protocols could facilitate evidence collection. Both effects might emerge in such cases, but the balance will only become evident if the ICC pursues one.

Addressing conflict's root (resource) causes

Informants also suggested that because corporate actors obey a profit motive, prosecuting their crimes might help address the resource competition driving atrocity-generating conflicts. Participant C argued:

> 'We should look at the precursors, the drivers behind [conflict] . . . It's access to resources, to land. Very often . . . real control is in a penthouse in London, not necessarily in Bunia . . . We need to solve the source, the underlying cause, not some manifestation, the symptoms.'

A point also taken up by Participant E:

> 'I think the scarcity of resources will continue to be one of the major root causes to conflicts . . . I hope that the ICC can play a role in saying, there are better ways to resolve conflict over resources . . . not just the post facto outcomes of these conflicts.'

Stewart makes a similar argument for using international laws against wartime pillage to prosecute corporations for trading in conflict commodities, as resource wars are 'entirely dependent on commercial actors to purchase, transport, and market the resources that are illegally acquired in order to sustain violence' (2011: 9). Much as crimes against humanity potentially contain space for climate crime, natural resource-related corporate crimes could fit into the Court's existing mandate.

4.3.2 Slowness of International Law

This theme's second element was international law's ponderousness. For Participant A:

> 'The change surrounding [climate change] policy-wise has been very slow. And the speed of international institutions is even slower, on every front.'

Participant C contrasted the emergency of climate change with ICL's slow evolution:

> 'There are ideas to create an international environmental court, to change the Rome Statute. Great ideas. We don't have time for it.'

Temporal pressures, then, bound what steps the Court could take toward prosecuting this type of harm. In the urgent present, they remain limited.

4.4 Theme Three: National Law & A Complementary ICC

The informants all indicated that domestic jurisdictions will play a broader, more frequent role in any future enforcement of corporate environmental crimes than international law. Informants linked their expectation to the Court's ability only to prosecute a fraction of atrocities committed globally—a notorious example being the United States' refusal to join the Court or allow prosecution of US citizens (Johansen 2006). Participant D articulated:

> '. . . we're a court of last resort. It's really up to the domestic jurisdictions—and frankly, the domestic jurisdictions are far, far, far better placed to address environmental crimes. And they have the full panoply of tools available to them to address those issues, whereas we have a very specific subset of laws that really limit our jurisdiction.'

The ICC is explicitly an option when no case-hearing alternative exists. Moreover, states are vertical entities within which everyone is subject to domestic criminal law, while international law operates within a horizontal society, opted into by sovereign states (Tanzi 1987; Gilbert 2014). While domestic law rubs against *trans*national, cross-border crimes by multinational enterprises, national jurisdictions are therefore better poised to address corporate crimes within national borders, where many, such as deforestation and displacement, occur.

4.4.1 Symbolic, Expressive ICC Role

The international function, however, need not be negligible. Informants envisioned an important symbolic role. Participant H cautioned against dismissing symbolic impact:

> '. . . a big function of the ICC *is* its expressive function. It's only ever really going to deal with the small minority of the grave crimes out there. But the idea behind it is, in dealing with that small number of cases, it will have a deterrent influence and also a condemnatory sort of influence on the broader commission of crimes.'

Ultimately, in Participant E's words, both levels of law should 'play a role,' addressing multiple levels of environmental crime.

4.5 Theme Four: Moderating Expectations for the ICC's Climate Role

ICC staff expressed a strong sense that global expectations for Court achievements generally—and even more for environmental or corporate crimes—were unrealistically high. Participant D offered: 'expectations for the ICC are really beyond our capacity.' Participant B similarly downplayed the possible scale of an ICC role in climate governance:

> 'I think expectations have to be managed here a bit. The ICC is not suddenly going to become an environmental court. . . its mandate is narrow.'

Participant E further suggested that attempting to add environmental and/or corporate prosecutions to the already-stretched ICC docket might endanger its survival:

> 'I think for the sake of the ICC's survival and resilience, at least in these years, the ICC is still a fairly young institution, and we should be very careful. The wider we open the mandate, we set it up for failure.'

High expectations indeed greeted the ICC's creation in 2002; then-UN Secretary General Kofi Annan hoped it would 'bring nearer the day when no ruler, no state, no junta and no army anywhere will be able to abuse human rights with impunity' (quoted in Simons 2002). But as Goldsmith suggests and Cronin-Furman (2013) concurs, these 'are unrealistic dreams' (2003: 89). Moreover, applying international law to a situation, such as, potentially, GHG emissions, for which it is not appropriate or effective can risk discrediting the entire international law framework (Bassiouni 2008)—as Participant E alluded.

Legitimacy

The imperative of moderating expectations included a caveat: the ICC prosecuting climate crimes to maintain legitimacy and fulfill international anticipations. This echoes Kyriakakis' (2017) argument that prosecuting corporate misconduct, by engaging the global economic structures that shape local violence, could enhance the ICC's legitimacy, improving its image among skeptical Global South constituencies (where climate change is and will be felt most severely). Participant A predicted:

> 'I think it's going to get to a point where if the Court wants to be taken seriously, if they want to be part of relevant and real change, they're going to have to [address climate].'

Participant C elaborated similarly on corporate climate crime:

> '. . . [it] is one of the options that we have to put on the table, where we can succeed, where we can have an impact, and live up to the expectations that many people put on this court. At the moment, we are not.'

As with the investigatory implications of corporate crime, where consensus around the difficulties of establishing criminal responsibility allowed for potential case-building advantages, the predictions weighed toward expectations of the ICC overextending its potential but indicated possible counter-effects of improved efficacy.

4.6 Theme Five: Poor Political Will

Finally, the results highlight the extent to which the ICC depends on international political will. Particularly in the climate realm, political inaction does not merely create grounds for intervention by non-legislative institutions such as the ICC but restricts the Court itself. Informant G identified political forces, driven by short-term economic incentives to burn fossil fuels, as the defining impediment to prosecuting corporate environmental crimes:

> 'I think the biggest obstacle you're going to find is a lack of willpower, a lack of will to actually prosecute environmental issues as crimes. States are not willing at the end of the day—it's going to affect GDP, livelihoods . . . you can't force all countries in the world to enact laws in a domestic setting that would punish corporations and companies for contributing to climate change.'

Participant D made a similar suggestion about the bounds of extant law, a challenge given most GHG emissions remain legal:

> 'People have brought awareness to the problem of climate change. There has to be some commensurate political will to pass laws to protect against climate change, regulating greenhouse gas emissions . . . you can't prosecute a crime that doesn't exist.'

Informants also emphasized political will as a barrier to including corporate entities within ICC jurisdiction. Participant C assessed the odds of such Rome Statute expansion succinctly:

> 'Under the current political circumstances in which we live, absolutely not. Zero chance.'

Participant D echoed:

> '. . . the Rome Statute was negotiated in the late peacetime 1990s, a very optimistic era . . . I'm not confident that the current international terrain would be open to expanding the scope of the jurisdiction . . . I would guess that today, the ICC would never be created.'

Paradoxically, imagining climate change as a crime attempts to condemn and move beyond inadequate government responses to global warming, but legally instantiating climate crimes is dependent on political dynamics rather than curative of them. Though some legal and prosecution capacity exists for ICC pursuit of corporate defendants over environmental destruction, it is restricted by the global politics failing to address such destruction in the first place.

5.0 Discussion and Conclusion: What of Human Rights on a Devastated Planet?

The ICC Cannot Save Human Rights

This paper poses the research question: what possibilities exist of international-level corporate criminal liability for climate destruction? It concludes, essentially: limited potential for the ICC pursuing environmental crimes against humanity in the near term, and anything more—such as ecocide prosecution—only imaginable in a relatively distant future, constrained by the ICC's nature as a court of last resort, the strictures of ICL, and poor political will to address company misconduct. Even were we to reject the accuracy of ICC personnel's perspectives, these prevailing internal sentiments will shape the Court's application of law and its organizational endeavors from a legal sociology standpoint.

The findings ultimately demonstrate the substantial gap between what international criminal law and the ICC as its foremost organ symbolize to outsiders and what the ICC can practically accomplish, particularly from the internal perspective. An apparent desire exists for international criminal law to act as a panacea for, or at minimum a fail-safe against, corporate entities' grave climate impacts. Figures as high-profile as erstwhile UN High Commissioner for Human Rights Mary Robinson (quoted in Joubert 2019) and US President Joseph Biden (quoted in Caralle 2019) have called firms' carbon pollution crimes against humanity or suggested jailing fossil fuel executives for environmental damage. But as informants repeatedly emphasized, political energy to furnish the resources and authority the ICC would require for this role is non-existent. This mismatch reproduces, perhaps, the reality that climate action has been too little, too late (NASA 2020), evoking a desire to accelerate response through heretofore underutilized mechanisms such as ICL. But as an anthropocentric body, barely funded sufficiently to function as a court of last resort, dependent on international politics and constrained by the strict evidentiary standards of criminal law, the ICC's ability to address climate crimes is stubbornly modest.

I would not discount the important symbolic potential of classifying environmental destruction in pursuit of corporate profit under CAH; as Participants C and H especially suggested, the ICC exerts influence through expressive and deterrence effects. And climate change will require a multi-faceted, multi-level response, of which international prosecution can be one part. But as White and Kramer (2015) illustrate, much popular and academic language of criminality in the climate context is symbolic, expressing concern over harms that *should* be sanctioned rather than *making* them illicit, given criminal prosecution's specificity and conservativeness. Condemning the destruction of a habitable earth may seem the appropriate province of a court created to punish severe atrocities against humanity, but the ICC lacks commensurate ability to assume this complex, ponderous responsibility. As informants indicated, there is a discrepancy between law in practice and the moral condemnation we express through language of crime. Criminal law may not be capable of *establishing* as criminal activity we wish to *reject* as criminal.

The ICC's capacity to act on environmental damage under the Rome Statute, particularly already-illicit acts exacerbating climate change, may redeem ICL's relevance, and prosecuting high-level corporate officers could intervene in the financial incentives underpinning many resource conflicts. Informants' case that extant law can be creatively applied to corporate environmental harms at the ICC is not negligible. Yet with such a possibility lying in the future and at the margins of the Court's established mandate, profound climate threats to human rights to life, health, and housing (Human Rights Council 2011) cannot be resolved at the Office of the Prosecutor. Corporate climate crime remains *lex ferenda*—law as it ought to be—though possibly near the cusp of *lex lata*—as it is. The ICC could help generate symbolic legal milestones in this transition but will rely on state willingness both to support any such effort and to address environmental harms domestically.

The inauspiciousness of international corporate climate liability embodies the larger crisis of human rights reliant on judicial enforcement. Contemporary human rights are treated as legal instruments more than political or moral projects (Gearty 2006), creating a misguided 'legal idolatry' assuming where rights exist, justice must follow (El-Enany 2015). Yet the international court created to punish the worst human rights violations has a tightly constrained ability to act on misconduct posing arguably the greatest threat human rights have ever encountered. Scholars have proposed extricating human rights from le-

gal foundationalism, conceptualizing them in human solidarity (Gearty 2006) or political activism (Gregg 2016). It is beyond my scope to interrogate those schemes here, but a legalistic approach heralding the ICC site for protecting human rights from corporate violation is inadequate.

Political Futures

Political inertia underpins these concerning implications for human rights in a warming world, as several informants lamented. But such political arrangements may be untenable, particularly because climate change *will* worsen; even in a counterfactual scenario where the world stops emitting GHGs today, past emissions have already 'baked in' decades of warming (NASA 2000). Mann and Wainwright (2018) offer a political theory of how coming environmental crisis will transform world government, arguing that global warming will likely cause 'consolidation and expansion of extant power structures' (173) into a 'climate leviathan,' a sovereign 'capable of acting both at the planetary scale' and 'in the name of planetary management—for the sake of life on Earth' (29). The possibility of global political organization responsive to climate change leaves open the possibility of an ICC, or quasi-ICC, with the ability to genuinely hold accountable corporate agents and entities responsible for warming. This would be a future eventuality and does not alter today's obstacles to a Court role in corporate environmental accountability. In time, however, the climate breakdown international institutions are not preventing now may—arguably must, for human rights to survive—bring about more potent international responses.

The breach between the *possibility* of corporate liability for climate crime and its *realization* frames a pessimistic outlook for the ICC as a climate-governance and corporate-accountability venue. However, climate change is too significant not to demand all response mechanisms, including what limited capacity the Court currently possesses, and I hope future scholarship and advocacy will account for the international corporate-prosecution avenue among many climate-action mechanisms, from investment in climate resiliency infrastructure to sheltering climate migrants. Given existing efforts to instantiate domestic civil accountability for corporate conduct abroad and informants' many references to domestic criminal law, I also hope that these areas may offer more robust complements for climate accountability. In closing, I refer to Participant C, the informant who argued most for prosecuting corporate climate crime.

> 'Hegel always said progress is never linear, it comes in ups and downs. We are totally in a down phase now. But who knows?'

Data Availability Statement

Data not available due to ethical restrictions: due to the nature of this research and efforts to preserve informant anonymity, participants did not agree for their data to be shared publicly, so full supporting data is not available. Appendices are available to view at dx.doi.org/10.17504/protocols.io.bvzzn776

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