

ECOCIDE

by

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Abstract

In order for ecocide to be recognized as international law, the International Criminal Court's Statute of Rome would have to be amended with the consent of 86 countries. Can political leaders and corporate executives be held accountable if the United States commits ecocide? To begin with, the International Criminal Court (ICC) was established to try those who had committed war crimes, crimes against humanity, or genocide. In order to prevent ecocide, it is necessary to consider not just human groups, but also the environment. Can we anticipate a genuine ecocide trial to take place in the near future now that the pretend court has been adjourned? In reference to the same battle, the then-Swedish Prime Minister Olof Palme branded it as an "outrage of ecocide" two years later. Lawyer turned legal environmental activist, Polly Higgins, the organizer of the trial, urged to the United Nations that ecocide — the systematic destruction of ecosystems — be designated as the fifth international crime against peace. Despite the fact that a fake ecocide trial was a wonderfully entertaining event, the ramifications of the trial might have serious consequences for economic and governmental decision makers. Those who support the new definition, on the other hand, aim to establish ecocide as a distinct crime with the same symbolic and normative power as genocide. The idea of ecocide, on

the other hand, refers to the treatment of nature and nonhuman animals as beings with intrinsic worth and rights that must be respected.

HAVE WE RUINED THE ENVIRONMENT ENOUGH, THAT WE NEED ECOCIDE?

Despite the fact that a fake ecocide trial was a wonderfully entertaining event, the ramifications of the trial might have serious consequences for economic and governmental decision makers.

The fictitious court case, which was backed by the Hamilton Group, was convened few years ago¹ and played out as if the crime of ecocide had already been recognized by the United Nations as a crime against humanity.

Two top executives were found guilty of worldwide offences equal to genocide and war crimes in front of a crowded supreme courtroom filled with attorneys, businesspeople and environmental activists, to the applause of the audience.

In contrast, the conduct of the accused was not responsible for even a single loss of human life. Instead, the defendants faced the potential of spending years in prison as a result of the severe environmental harm caused by their corporations' activities in the extraction of oil from Canada's Tar Sands. Birds on their migration routes were the primary victims of their atrocities, which they committed in large numbers.

Despite the fact that many onlookers would dismiss this legal manoeuvre as a fanciful dream, it is not as crazy as it may seem. Lawyer turned legal environmental activist, Polly Higgins, the organizer of the trial, urged to the United Nations that ecocide — the systematic destruction of ecosystems — be designated as the fifth international crime against peace.

In order for ecocide to be recognized as international law, the International Criminal Court's Statute of Rome would have to be amended with the consent of 86 countries.²

¹ Mark Maslin & Simon Lewis, *Anthropocene vs Meghalayan: why geologists are fighting over whether humans are a force of nature*, THE CONVERSATION, <http://theconversation.com/anthropocene-vs-meghalayan-why-geologists-are-fighting-over-whether-humans-are-a-force-of-nature-101057> (last visited Jan 28, 2022).

Hidden behind closed doors, Higgins said that there are indications of rising diplomatic backing for her initiatives.

The trial itself could not have been more authentic, and it would have sent shivers down the spines of corporate executives who were watching it live on several news channels. Although the senior executives in the dock were played by actors, the judge, attorneys and jury were all genuine people. This was also true of the situations that served as the basis for the charges – an oil leak in the Gulf of Mexico and the extraction of tar sands in Alberta.

In the first case, the jury delivered a not-guilty verdict in about 50 minutes, while in the latter case; the jury returned two unanimous guilty verdicts in little over an hour. At the dramatic conclusion of the session, the two performing executives shook their heads in disbelief as the judge handed down the decisions.

Can we anticipate a genuine ecocide trial to take place in the near future now that the pretend court has been adjourned? And, if so, would this be the most effective method of safeguarding the natural environment?

What Exactly Is Ecocide?

It is acknowledged worldwide that mankind is at a juncture in its history. In light of the scientific facts, it is reasonable to conclude that the present levels of greenhouse gas emissions and ecosystem damage would have disastrous repercussions for our shared environment.³ Aside from the actions taken at the national and worldwide levels to change our connection with the natural world, international law has a role to play in transitioning that relationship from one of damage to one of harmony.

The highly debated, anthropocene epoch refers to the current period in earth's history when human actions have had the greatest impact on the planet's natural condition. The most obvious example is the transformation of the atmosphere caused by the release of gases from the usage of

² LUDWIK A. TECLAFF, *Beyond Restoration—The Case of Ecocide*, 34 NATURAL RESOURCES JOURNAL 933–956 (1994).

³ Juliette Jowit, *British campaigner urges UN to accept “ecocide” as international crime*, THE GUARDIAN, April 9, 2010, <https://www.theguardian.com/environment/2010/apr/09/ecocide-crime-genocide-un-environmental-damage> (last visited Jan 28, 2022).

fossil fuels, such as carbon dioxide, methane, chlorofluorocarbons and other pollutants.⁴ The increasing demand from consumers associated with capitalism, according to criminologists, is accompanied with an almost complete disdain for the long-term consequences of these emissions, which include global warming and rising sea levels, among other things, according to criminologists. Patrick Hossay, an environmental thinker and activist from the United States, claims that the human race is committing ecocide as a result of the consequences of contemporary industrial civilization on the world environment.⁵

Ecocide was created in 1970 by the American scientist Arthur Galston to describe the enormous devastation caused by the United States' deployment of the poisonous pesticide, Agent Orange during the Vietnam War.⁶ The word has now been widely accepted. In reference to the same battle, the then-Swedish Prime Minister Olof Palme branded it as an "outrage of ecocide" two years later. In 1973, however, Richard Falk, a professor of international law at the University of Pennsylvania, published the first legal study and plea for the outlawing of ecocide in the United States.⁷

Ecocide, on the other hand, has never been recognized as such. To be sure, the Rome Statute, which was signed in Rome in 2002 and established the International Criminal Court, only mentions the environment once, and that is in regard to war crimes committed in conditions that are legally qualified to be considered armed conflicts. Aside from war crimes, the International Criminal Court's (ICC) sole alternative option for environmental protection is the prosecution of crimes against humanity, which is rare. Despite this, as the name implies, this category remains anthropocentric in nature, requiring environmental harm to be "committed as part of a widespread or systematic assault" against a "civilian population."⁸

Interspecies Genocide

⁴ José Lutzenberger, *Ecocide in Amazonia*, 4 EARTH ISLAND JOURNAL 37–37 (1989).

⁵ Alicia Rivero, *Ecocide in Paradise: The Turn of the Century in Fuentes' "Las Dos Américas"*, 32 LATIN AMERICAN LITERARY REVIEW 5–23 (2004).

⁶ Rudolf C. Heredia, *Ecocide or Eco-Ethic?*, 29 ECONOMIC AND POLITICAL WEEKLY 2175–2176 (1994).

⁷ Andrew Raingold, *Ecocide: crime against nature and the need for a law to prevent it*, THE GUARDIAN, October 10, 2011, <https://www.theguardian.com/sustainable-business/blog/ecocide-environment-green-policy-un-law> (last visited Jan 28, 2022).

⁸ Sophie Yeo, *Ecocide: Should killing nature be a crime?*, <https://www.bbc.com/future/article/20201105-what-is-ecocide> (last visited Jan 28, 2022).

"Human rights abuses" have often been used in support of recent climate change lawsuits, such as the 2019 Urgenda case against the Dutch government.⁹ Those who support the new definition, on the other hand, aim to establish ecocide as a distinct crime with the same symbolic and normative power as genocide.

Human-caused sixth mass extinction, as described by environmental ethicist Philip Cafaro, has been referred to as "interspecies genocide." It is necessary to prove the perpetrator's particular purpose to exterminate a protected human group in order to be found guilty of genocide in order to be punished. In order to prevent ecocide, it is necessary to consider not just human groups, but also the environment.¹⁰

As a result, establishing ecocide as an international crime would need challenging long-standing, primarily western beliefs of human separateness from and superiority over nature and nonhuman species, which continue to be seen as objects or resources.¹¹ The idea of ecocide, on the other hand, refers to the treatment of nature and nonhuman animals as beings with intrinsic worth and rights that must be respected.¹²

The Way Forward

There have been some positive advances in recent months. Animals such as elephants, apes and dolphins are among the clients of the ground-breaking Nonhuman Rights Project, which works to protect their legal personhood and rights across America, while the United Kingdom is working to introduce legislation that will recognize animals as legally sentient beings.¹³ The "rights to nature" have also been included into constitutions all across the globe, owing to the persistent demand by indigenous people - from India to New Zealand and Ecuador, among other places.¹⁴

⁹ Heather Alberro & Luigi Daniele, *Ecocide: why establishing a new international crime would be a step towards interspecies justice*, THE CONVERSATION, <http://theconversation.com/ecocide-why-establishing-a-new-international-crime-would-be-a-step-towards-interspecies-justice-162059> (last visited Jan 28, 2022).

¹⁰ Gar Smith, "Ecocide": *The Fifth War Crime?*, 25 EARTH ISLAND JOURNAL 15–15 (2010).

¹¹ Peter Cluskey in The Hague, *Environmental crime 'ecocide' back on International Criminal Court's agenda*, THE IRISH TIMES, <https://www.irishtimes.com/news/world/europe/environmental-crime-ecocide-back-on-international-criminal-court-s-agenda-1.4711088> (last visited Jan 28, 2022).

¹² Frank Wesselingh & Matteo Lattuada, *The Caspian Sea is set to fall by 9 metres or more this century – an ecocide is imminent*, THE CONVERSATION, <http://theconversation.com/the-caspian-sea-is-set-to-fall-by-9-metres-or-more-this-century-an-ecocide-is-imminent-152229> (last visited Jan 28, 2022).

¹³ Oscar Mwangi, *Hydropolitics, Ecocide and Human Security in Lesotho: A Case Study of the Lesotho Highlands Water Project*, 33 JOURNAL OF SOUTHERN AFRICAN STUDIES 3–17 (2007).

¹⁴ *Id.*

But there is still room for improvement in the current suggested definition. The word "ecocide" refers to "unlawful or wanton activities" that are very likely to inflict "serious and either widespread or long-term harm" to the environment, according to the dictionary definition.

In contrast to the term "unlawful," which implies that the action in question must already be criminal under domestic law, "wanton" is defined as "reckless disregard for harm that would be obviously disproportionate in comparison to the social and economic gains expected (*emphasis added*)."¹⁵

In other words, it is okay to cause environmental harm as long as the harm is not "obviously excessive" in comparison to the expected advantages to people. In doing so, the part contributes to the perpetuation of anthropocentrism, which was one of the goals of the definition.¹⁶

Not only do these advantages include those that are of a "social" nature, but they also include those that are "economic in nature", without expressly eliminating private profits from the picture. In addition, the criteria for "wanton actions" seems to demand that the culprit, rather than a court, determine whether or not the environmental damage was plainly disproportionate to the crime.¹⁷

To begin with, the International Criminal Court (ICC) was established to try those who had committed war crimes, crimes against humanity, or genocide. Can political leaders and corporate executives be held accountable if the United States commits ecocide? Perhaps.

It is now considered "ecocide" if "widespread devastation" occurs not just geographically, but also when "an entire ecosystem, species, or a significant number of humans" suffers as a result of the actions of a single individual or group of people.¹⁸ Top level executives from corporations accused of driving mass deforestation in Indonesia to produce palm oil, endangering species such as the orangutan, could potentially face criminal prosecution, while leaders such as Brazil's

¹⁵ Charles Waugh, "Only You Can Prevent a Forest": Agent Orange, Ecocide, and Environmental Justice, 17 INTERDISCIPLINARY STUDIES IN LITERATURE AND ENVIRONMENT 113–132 (2010).

¹⁶ Anastacia Greene, *THE CAMPAIGN TO MAKE ECOCIDE AN INTERNATIONAL CRIME*, 30 FORDHAM ENVIRONMENTAL LAW REVIEW 1–48 (2019).

¹⁷ Vishwas Satgar, *THE ANTHROPOCENE AND IMPERIAL ECOCIDE*, in *THE CLIMATE CRISIS* 47–68 (Vishwas Satgar ed., 2018), <http://www.jstor.org/stable/10.18772/22018020541.8> (last visited Jan 28, 2022).

¹⁸ New York Times Pushes 'Ecocide' as 'International Crime Against Peace,' NATIONAL REVIEW (2019), <https://www.nationalreview.com/corner/new-york-times-pushes-ecocide-as-international-crime-against-peace/> (last visited Jan 28, 2022).

President, Jair Bolsonaro, could potentially face criminal prosecution for their role in the assault on the Amazon Forest, which is currently under threat.¹⁹

Continued mobilization and global collaboration will be required to secure compliance from countries that have not ratified the applicable agreements, such as the United States or China.²⁰ But the movement represents a big step forward in the fight against ecological and biological collapse, as well as in the establishment of species equality.



¹⁹ Ernesto Londoño, *Imagine Jair Bolsonaro Standing Trial for Ecocide at The Hague*, THE NEW YORK TIMES, September 21, 2019, <https://www.nytimes.com/2019/09/21/sunday-review/bolsonaro-amazon-fire.html> (last visited Jan 28, 2022).

²⁰ Tara Smith, *Why the International Criminal Court is right to focus on the environment*, THE CONVERSATION, <http://theconversation.com/why-the-international-criminal-court-is-right-to-focus-on-the-environment-65920> (last visited Jan 28, 2022).