



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Ecocide: A new International Crime

Aditi Jain^a Charu Soni^b

^aRajiv Gandhi National University of Law, Patiala, India ^bSymbiosis International University, Pune, India

Received 24 January 2022; Accepted 09 February 2022; Published 12 February 2022

Ecocide occurs when a person intentionally harms the environment with the knowledge that doing so poses significant risks of serious, widespread, or long-term damage. Internationalizing the crime of ecocide has been attempted on several occasions. Considering that ecosystem harm, destruction, and/or loss can increase the risk of conflict, increase infringement on nature and humanity, ecocide is considered a crime against peace. To act as a check on irresponsibility and to help in preventing environmental disasters in the first place, laws against ecocide are needed. The International Criminal Court was officially established in 1998, but it rejected the idea of ecocide as a new international crime. The existing legal system falls short of appropriately addressing the vast problem of environmental degradation. The paper addresses the need for a law against ecocide and what could it address, and it concludes with the alternative to International Criminal Court as a forum for the new international crime.

Keywords: *international criminal court, peace, crime.*

INTRODUCTION

Ecocide refers to any human activity that causes significant environmental harm or destruction. There is currently no law that makes such harm illegal, though many

environmentalists are advocating for it to be changed.¹ In recent years, there has been a growing demand for more comprehensive environmental protection. The idea of criminalizing environmental damage is nearly 50 years old, and NPR, a US-based news organization, points out in a recent article. "The massive devastation caused by indiscriminate bombing, the widespread use of bulldozers and herbicides is a cruelty often referred to as ecocide," Sweden's Minister of Statistics said in his speech.² The term 'ecocide' may justifiably be applied to peacetime activities that destroy or damage ecosystems on a massive scale. Normally, the environment that has been destroyed or harmed would be rather big. It might be a significant river, an enclosed sea, a mountain range, an aquifer, a forest, a wetland, or another terrain with unique plant or soil types. The ramifications of its degradation might extend throughout a vast region, or possibly the entire world, posing a serious threat to the health of many other ecosystems in a chain reaction. In many cases, the harm would be irreversible, and the environment would be irreparably damaged.

HISTORY OF ECOCID

The phrase "ecocide" was initially used in the 1970s, most frequently regarding the Vietnam War. The US military was employing chemical warfare and wreaking havoc on the environment; these activities sparked debate about whether the US was committing "ecocide" in Vietnam.³ A new international agreement prohibiting 'ecocide' was proposed by Arthur Galston to the conference on war and national responsibility in 1970.⁴ After Galston coined the term, it began appearing in news articles about Agent Orange, legal studies, and other papers on the Vietnam War. Ecocide was historically referred to as a form of warfare rather than an all-encompassing concept that encompassed crimes committed in times of peace. Percy Pettigrew, an Ohio University professor, contended in his 1971 article, "A Constitutional Right

¹ 'What is Ecocide' (*Young People's Trust For the Environment*) <<https://ypte.org.uk/factsheets/ecocide/what-is-ecocide>> accessed 23 January 2022

² Heather Alberro & Luigi Daniele, 'Ecocide: why establishing a new international crime would be a step towards interspecies justice' (*The Conversation*, 29 June 2021) <<https://theconversation.com/ecocide-why-establishing-a-new-international-crime-would-be-a-step-towards-interspecies-justice-162059>> accessed on 16 January 2022

³ Doctor Damian Short, *Redefining Genocide: Settler Colonialism, Social Death and Ecocide* (Zed Books Ltd 2016)

⁴ Anja Gauger, Mai Pouye Rabatel-Fernel et. al., 'Ecocide Is the Missing 5th Crime Against Peace' (*Human Rights Consortium*, 2012), <https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf> accessed 13 January 2022

of Freedom from Ecocide," that the Constitution involves a human right to be free from ecocide, and that courts must intervene to safeguard this human right against ecocidal acts. Ecology is made up of ecosystems, which are interconnected natural processes, both organic and inorganic, that all play a role in maintaining the environment. He defines ecological destruction as "the considerable destruction of a vital portion of a specific ecosystem or the unjustified degradation of the environment at large." It is the failure of one cycle that causes the failure of the entire system.⁵ In the summer of 1972, 113 nations assembled in Stockholm, Sweden, for the United Nations Conference on the Human Environment (also known as the Stockholm Conference). This was the United Nations' first major summit on global environmental concerns. During his inaugural address, Olaf Palme, the Swedish prime minister, referred to the Vietnam War as an "ecocide" because of "the destruction wrought by indiscriminate bombing, the indiscriminate use of bulldozers and herbicides," an outrage that demands international attention.

Professor Falk suggested an International Convention on the Crime of Ecocide in 1973. The proposed ecocide law was fully analyzed, defined, and framed in this draught. "The Contracting Parties confirm that ecocide, whether committed in times of peace or in times of war, is a crime under international law that they undertake to prevent and punish," the draft convention read. A needed criminal intent "to disrupt or destroy, in whole or in part, a human ecosystem" is included in the Proposed Convention.⁶ The UN Sub-Commission on Genocide was tasked with assessing the effectiveness of the Genocide Convention and making recommendations for revisions. The Commission issued a "Study on the Question of Genocide Prevention and Punishment" in 1978. This study looked examined the possibility of creating new agreements to criminalize acts of genocide that were not included by the original 1948 Convention. The research looked into whether ecocide and cultural genocide should be included in the Convention. Several other attempts have been made to make ecocide a crime international. The ICC was officially established in 1998, but the ICC rejected the idea of ecocide. The Stop Ecocide Foundation undertook this task in 2017. In 2021, the Stop Ecocide

⁵ Anastacia Greene, 'The Campaign To Make Ecocide An International Crime' (2019) 30 (3) Fordham Environmental Law Review 1 <www.jstor.org/stable/10.2307/26954620> accessed 20 January 2022

⁶ *Ibid*

Foundation's Independent Expert Panel on the Legal Definition of Ecocide completed a proposed modification to the Rome Statute to incorporate an ecocide offense.

ECOCIDE - A CRIME AGAINST PEACE

Despite the fact that Roman law has replaced the code of crimes against humanity, some governments have incorporated draft crimes against peace, including ecocide, into national criminal law. From the experience of the prolonged Vietnam War after the collapse of the Soviet Union in 1991, Vietnam was the first country to introduce ecocide crime into domestic law, followed by Russia in 1996. Since it was no longer on the UN table, the government, which wanted to include all proposed crimes against peace in its criminal law, took on the crime itself. Seven years after the dissolution of the Soviet Union, a new country emerged.⁷ Seven years after the collapse of the Soviet Union, the newly formed republic drafted domestic criminal law. Ecocide is a crime against peace, according to many countries, including Armenia, Belarus, Moldova, Ukraine, and Georgia. Ecocide is defined by Georgia as a crime "punished by imprisonment for 8 to 20 years."⁸ Kazakhstan, Kyrgyzstan, and Tajikistan are the next three countries. Some members of the international community support the ecocide legal concept and deliberately include it in domestic criminal law. Ecocide was a crime previously introduced to be adopted around the world.

Ecocide is specifically included in various federal criminal laws as a crime against human peace and security.⁹ The draft crime against human peace and security can be seen as a direct reference to this law. An attorney, Polly Higgins, suggested that ecocide be declared a crime against peace in a document to the UN Law Commission in 2010. According to the paper, ecocide is a crime against peace because ecocide's consequences increase the risk of conflict, result in infringements against nature and humanity, and hurt health and quality of life for individuals in the affected region as a result of pollution, disasters, and abnormal climate

⁷Anja Gauger, Mai Pouye Rabatel-Fernel et. al. (n 4)

⁸ *Ibid*

⁹ Kerti Sharma, 'Ecocide: will it be the fifth international crime' (*SCC Blog*, 26 November 2021) <<https://www.sconline.com/blog/post/2021/11/26/ecocide/>> accessed on 16 January 2022

change.¹⁰ Further research is needed to assess whether ecocide is a strictly accountable crime under certain national laws and to analyze how successful these laws are. What is clear, however, is that ecocide was considered a very serious crime and was included in the International Criminal Court's criminal bill for human peace and security. As this study shows, much of the basic work needed to draft the ecocide law has already been done. The United Nations has been discussing this issue for almost a decade. It's time to add what was missing: Ecocide, the fifth international crime against peace.

WHY IS A LAW AGAINST ECOCIDE NEEDED?

Ecocide laws act as a check on irresponsibility and can help prevent environmental disasters in the first place. According to the current system of governing, corporate directors and individuals have an obligation to make profit their only objective, but “different, new, radical laws such as those that we advocate here can easily change the current framework in which we do business.” Laws against ecocide would force them to consider the environment when making decisions.¹¹ Ecocide advocates believe corporations and individuals can be held responsible for destroying the environment if a law of ecocide is enacted. Legalizing ecocide would require companies and people to take responsibility for the environment. Directors, CEOs, and top officials might face criminal charges for the environmental disasters they cause. This would provide an incentive for businesses to be more environmentally conscious and avoid the irresponsible or profit-driven acts that have resulted in several environmental disasters. The factor of loss - environmental destruction on a magnitude that violates duty of care due to mankind as a whole - is the fundamental component that raises ecocide from a tortious act to a crime. Mark Allen Gray states that the “International intolerance towards environmental destruction increasingly mirrors the moral outrage underlying the Nurnberg Charter and Judgment” that resulted in the formation of new humanitarian laws.

¹⁰ Harvey R, “Ecocide’ – Will This Be the Fifth International Crime against Peace?’ (2012) 61 Pluto Journals 11 <<https://www.jstor.org/stable/10.13169/socialistlawyer.61.0011>> accessed 18 January 2022

¹¹ Anja Gauger, Mai Pouye Rabatel-Fernel et. al. (n 4)

WHAT WOULD A CRIMINAL LAW FOR ECOCIDE INCLUDE?

Our current climate and ecological emergency is a result of repeated acts of ecocide over several decades.

ECOCIDE could deal with some of the following:

Crimes of water pollution: A quadrupling of the world's population, a sixfold increase in water consumption, and pollution of half of the oceans occurred during the twentieth century. There are many reasons why 58 percent of the world's reefs and 34 percent of all fish may be at risks, such as overfishing, poaching, and non-sustainable fishing tactics. In April 2010, freshwater and marine contamination became global news because of the explosion of the BP Deepwater Horizon oil well. Oil spills have, however, ravaged and destroyed areas of the world's oceans, coastal ecosystems, and businesses for centuries.

Crimes of air pollution: In high-density areas, air pollution affects everyone who lives and works there, but it cannot be said that pollution is equally damaging to everyone; those who are more fortunate to live in low-pollution areas won't have to suffer the same hardships as people in high-density areas. Air pollution is the main cause of climate change and ozone depletion, which affect all populations. Approximately two million people die every year worldwide due to the effects of poor air quality including respiratory infections, heart disease, and lung cancer, all of which are accelerated or directly caused by poor air quality.

Crimes of deforestation and spoiling of the land: Illegal logging is depleting forestry resources all around the world, which has grave repercussions for global warming. The Amazon basin, for example, has been devastated by the influence of large-scale industrial logging corporations. However, both illegal operations and respectable firms keep dumping toxic trash and disposing of it dangerously.

Crimes against animals/non-human species: Animal and bird violence, abuse at the hands, or death can be obvious and shocking in cases of loss of habitat caused by war, disaster, oil spills, or deforestation, or it can be less obvious and even socially acceptable in cases of farming,

laboratory experimentation, land clearing for construction, or damage caused by factors that cause air or water pollution, soil degradation, or climate change. Smuggling of wildlife is now as big a worldwide business as drugs and arms, but no matter whether it is legal or illegal, smuggling of live animals or trading of animal parts is poorly regulated.

ALTERNATIVES TO THE INTERNATIONAL CRIMINAL COURT

A new Ecocide Convention might be negotiated instead of revising the Rome Statute to include ecocide. Such a Convention may establish an International Environmental Court. It may handle cases involving transnational environmental crime. The Convention might incorporate eco-centric elements such as restitution and recovery for the impacted region, as well as injunctions to prevent additional ecological harm, under this proposal. An International Environmental Court might be made up of qualified environmental professionals who can assess environmental harm and potential solutions. A court like this might also rule on less serious activities that harm the environment, such as tort or civil claims. The International Environmental Court, rather than bringing ecocide claims to the International Criminal Court, may hear both criminal and civil matters.¹²

Ecocide claims might eventually be heard by human rights courts. Due to their primary concern with human rights, these courts have traditionally been reluctant to tackle environmental matters. For example, a claim brought by the Inuit against the United States for damages caused by climate change was dismissed in 2005 by the Inter-American Human Rights Tribunal as being beyond the reach of the IAHRT.¹³ Finally, ecocide might be made illegal on a nationwide basis. Although these crimes might have transnational consequences, the majority of the time the damage is limited to a single country or even a single location. In the event of rainforest deforestation or other long-term environmental problems, national laws against ecocide can have direct impacts on a country, which is especially important when

¹² Anastacia Greene (n 5)

¹³ *Ibid*

trying to stop continuous environmental harm. At the state or even municipal level, the crime can be identified.¹⁴

CONCLUSION

The existing legal system falls short of appropriately addressing the vast problem of environmental degradation, and international environmental criminal legislation might assist close the gap. However, there are major inconsistencies in the terminology used in the fight to establish ecocide as a crime. A more consistent definition of ecocide may develop as the discussion continues. A specialized international court should be created to decide ecocide cases if enacted. The Rome Statute does not include any remedy for ecocide, so a new convention might provide more flexible remedies (such as a global trust and injunctions). There could be new environmental conventions that focus on the entire ecosystem and include measures to prevent and recover from ecological degradation. Possibly, the new Convention would include separate provisions on climate change and other conditions difficult to punish. Practically speaking, it would seem that attempting to make ecocide an international crime is fruitless and pointless. Humans, however, cannot be practical creatures. Instead, they can generate new energy through creative ideas and make big changes with enough vision and determination.

¹⁴ *Ibid*