



THE CRIME OF ECOCIDE: THE FUTURE OF ENVIRONMENT PROTECTION?

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ABSTRACT:

In the last decade, the term 'Ecocide' has been doing the rounds in legal and environment protection circles. The term was first coined by Arthur W. Galston at the Conference on War and National Responsibility in Washington, where he also proposed a new international agreement to ban ecocide. On the surface, it seems to be a concept with promise, aimed at protecting our planet and holding accountable, those who have caused it harm.

Stop Ecocide International, the foundation that has been carrying this movement upon its shoulders has done robust work in a short period of time. From garnering international support, fundraising and instituting an Independent Expert Panel with leading attorneys and environmental activists to help create a definition, i.e. (Art. 8 ter) to be added to the Rome statute, they have been relentless in their pursuit for the criminalization of Ecocide.

Their work although has highlighted the need to come up with ways to protect our environment, it has also led to questions such as whether criminalization of Ecocide is the answer, whether it will have the widespread effect that its proponents are promising. Like any new concept, this concept too has to go through a trial by fire to get to the other side.

The aim of this research is to identify the pros and cons of the criminalization of Ecocide, the process to be undertaken, the roadblocks and to make an attempt at identifying whether its criminalization could be the future of environment protection.

KEYWORDS:

INTRODUCTION

This story began in 2019, with the foundation of the Stop Ecocide Foundation, created to support the growing movement of environmental protection. The foundation is focused at pushing for global support for adopting Ecocide as an international crime by having it codified within the Rome Statute.

The Foundation has defined Ecocide as "mass damage and destruction of ecosystems severe harm to nature which is widespread or long-term", going onto list the different forms of crimes falling under Deforestation, Marine pollution, Land and water contamination and Air pollution.¹

There is no denying that, even though widespread environmental destruction occurs within national borders, it nevertheless has an impact on all of us. However, as it is, international law is unable to confront severe, intentional environmental damage.

International law is currently being strengthened as part of a global effort to strengthen its ability to safeguard our planet. Ecocide is defined as "unlawful or wanton acts undertaken with knowledge that there is a substantial chance that those activities will result in serious and either widespread or long-term damage to the environment" by the Independent Expert Panel for the Legal Definition of Ecocide in June 2021.

The first step towards making ecocide a global crime is this definition. Genocide, crimes against humanity, war crimes, and the act of aggression are currently included as four international crimes in the Rome Statute of the International Criminal Court. According to the Panel, adding ecocide to the list of crimes would result in the development of "a new and useful legal tool" for the preservation and defense of the Earth, our shared home.

Despite co-founder Polly Higgins' untimely passing in 2019, the movement has been gaining traction especially over the last few years. Ecocide has been on the radical periphery of the environmental movement for decades, but it is now being considered by lawmakers and world leaders.

The president of France, Emmanuel Macron, who has emerged as one of ecocide's most prominent advocates, is one of them. More than 99% of the 150 members of the French Citizens' Assembly, who were chosen at random to help shape the nation's climate policy, voted in favor of making ecocide a crime earlier this year. That prompted Macron to declare that the administration will seek advice from legal professionals about how to enshrine it in French law. But he continued. For leaders to be held accountable before the International Criminal Court, "the mother of all wars is international: to ensure that this phrase is

inscribed in international law,"

In other parts of Europe, the two Green parties in Belgium have submitted an ecocide bill that calls for addressing the problem on both a national and international level. Swedish lawmakers also support this notion. "We comply with all customs and objectives. Rebecka Le Moine, a Swedish MP who submitted a proposal to her national parliament, stated that the lovely visions must be put into practice. "It must become law if these activities are to amount to anything more than kindness or activism."

Pope Francis has also urged the international community to recognize ecocide as a crime, and Greta Thunberg has endorsed the cause by giving €100,000 (£90,000) of her own prize money to the Stop Ecocide Foundation.

Within the bounds of its existing jurisdiction, the International Criminal Court has placed an increasing emphasis on prosecuting environmental crimes. The court's propensity to pursue offences involving illegal natural resource extraction, land grabbing, and environmental harm was emphasized in a 2016 strategy paper on case selection. Although nothing changes, this "may be seen as an essential step towards the formation of a crime of ecocide under international law," even though nothing changes.

International attorneys and environmental scientists collaborated in 2020 to create an updated, clear, and entirely legal definition of ecocide. A head of state who is prepared to suggest the change to the ICC would then receive this definition for examination. Obtaining the two-thirds majority required for it to be included in the Rome Statute would be the ideal next step. The term that was suggested was seen as a positive step towards making ecocide an international crime. It is considered a crime against both humanity and nature.

Certain procedures must be accomplished for Ecocide to become an ICC member. The first step is the suggested definition of ecocide, which is then followed by:

1. The proposed concept of Ecocide must be submitted to the UN secretary-general by a member state of the ICC (apart from India, China, and the US).
2. During the annual meeting, there will be voting. The remaining stages won't be taken until the plan has a majority vote in favor.
3. Member nations are required to put the law into effect one year after it is passed. According to the principles of universal jurisdiction, any ratifying country may also detain a foreigner for a crime committed elsewhere on its territory.

This process may turn out to be labor intensive and complex.

SUPPORT FOR THE AMENDMENT

The law makes it illegal to harm or murder others. However, intentionally injuring the environment for one's own gain is not a crime, however. Environmental laws

currently demand financial reparations from businesses and other offenders who harm the environment. To go even further and make Ecocide a crime, there will probably need to be a great deal of pressure. This is especially true given that the fossil fuel and extractive sectors currently have a firm grip on businesses and economies, and they also happen to be one of the major causes of ecological degradation.

However, certain developments present a more optimistic picture, one that indicates that society's support for making ecocide a crime may continue to increase over time. The People's Tribunals are a good place to start since they work to inform the public about ecocide and create compelling arguments that will hold up once the application for the amendment is made.

If Ecocide were declared a crime, it would be very different from the endless worldwide discussions that frequently end in empty promises and no action. Criminal prosecution and jail will be the only penalties available to offenders rather than just a fine. Naturally, this gave rise to objections that such a move would tip the scales too far away from meeting human needs.

Vanuatu, an island nation in the Pacific, boldly proposed that the International Criminal Court (ICC) seriously examine including ecocide as a crime during its annual Assembly of States Parties on December 3 in The Hague. Ambassador John Licht addressed the Assembly's full plenary session on behalf of his country and made the following statement: "Acts that constitute ecocide could be made illegal by a Rome Statute modification. This bold notion, in our opinion, requires careful consideration."²

This occurred in the context of Vanuatu's stated commitment to equal punishment for all those who commit the worst crimes, as well as the fact that sea level rise and other climate change effects continue to jeopardize Vanuatu's ability to pursue sustainable development in accordance with the 2030 SDG Agenda.

THE INCENTIVE

The creation of a new crime of "ecocide" will obviously increase worldwide responsibility for environmental harms. The proposed crime supposedly makes it possible to hold people accountable for harms like ocean pollution brought on by oil spills, deforestation, land and oil contamination, and air pollution outside of the setting of conflict.³

The International Criminal Court is a court founded on the principle of individual criminal accountability, which means that rather than companies or nations, those in charge of leading businesses, financial institutions, and governments would be held accountable. The deterrent impact that creating a new crime will have on business owners and financiers who are hesitant to be lumped in with war criminals is a common argument made by supporters of the new crime.

Although the ICC will be confined by the boundaries of its jurisdiction, it is important to note that there may be

opportunities for accountability outside of the ICC. State parties to the ICC that approve the crime of ecocide may decide to pursue prosecutions in their own legal systems in accordance with the principle of universal jurisdiction. As universal jurisdiction permits the prosecution of individuals regardless of where they are from or where the crime was committed, this may increase accountability.⁴

The legalization of ecocide may also have a significant symbolic purpose by indicating to the world that environmental damage is one of the "most severe crimes of concern." By doing this, people would be a part of the growing awareness of the need to stop and seriously address the injuries done to the natural world.

THE ISSUES

The idea of ecocide is not immune from issues. Environmental degradation will not be stopped by international law, according to David Whyte, professor of socio-legal studies at the University of Liverpool and author of the book *Ecocide*.⁵ Whyte notes that corporations are not subject to international criminal law, which only relates to individuals, and therefore imprisoning a CEO might not actually have any impact on the company as a whole.

"It's absolutely necessary to change our terminology and the way we think about what's destroying the earth; we should push through this crime of ecocide," he argues. "But unless we simultaneously change the model of corporate capitalism, nothing will change."

Additionally, an international law on ecocide presents difficulties and challenges from the legal perspective. From deciding the ground for prosecution, establishing a threshold to deciding which individual is responsible, proving intention for the destruction of a certain territory or area. Simply put, all the elements of a criminal trial become further complicated when we talk about ecocide.

Even if a state is found willing to propose its addition to the International Criminal Court, which could entirely depend on diplomatic positioning, said country would also be required to back this proposal at The Hague. The journey, however, would not finish there. A proposal would need the support of 82 countries in order to be adopted after being filed, which would need a two-thirds majority vote. No nation has a veto, and every country has an equal number of votes regardless of size or money.

One problem with the ICC is that many nations, including three of the top five economies in the world—India, China, and the US—are not members. They are not excluded from the rules of universal jurisdiction, but they can only be investigated with the UN Security Council's approval. This fact limits the scope of its impact and prospectively of accepting *Ecocide* as a crime, because some of the largest contributors will largely stay out of its remit.

This fact is accepted by Jojo Mehta, the co-founder of the Stop *Ecocide* Foundation, however she also maintains that the ICC still remains the most viable option because it is the sole international mechanism that has direct access to

all of its member states' criminal justice systems.⁶

There remain other issues too, for instance that many scholars seem to believe that the Expert Panel (charged with the responsibility to come up with a definition) have created an overly-restrictive definition, perhaps to over compensate for the slight chance of success they saw in the years to follow.

Not to forget that the ICC is currently ill-equipped to investigate, prosecute, and adjudicate cases involving this kind of criminality, any achievement in bringing ecocide under its purview will probably be largely symbolic.⁷

THE CRITIQUE

Many scholars have voiced concerns over the name 'Ecocide' as well, their major argument has been that when the threshold is admittedly far lower and the crime itself has nothing to do with the suffix *cide*, why steal from genocide.⁸

There are valid concerns that if someday the crime of *Ecocide* is accepted into the fold of the Rome Statute, it would be rendered equivalent to a system targeting smaller and politically weaker countries and the big fish, especially the Security Council states would still stay outside of its remit, which will render this whole exercise useless to some extent because these major states are the ones carrying out large scale violations of the this prospective crime.

It is not a matter of East vs West or North versus South. The US and China are strategic rivals, with Russia remaining a superpower only in terms of nuclear weapons. Protecting the environment (both locally and abroad) is purposefully given short shrift in the important national interests of sustaining superiority or catching up. Poorer states have even less leeway since they willingly trade short-term economic growth for the long-term advantages of a clean environment.

There are other practical issues too, the most prominent being 'Mens rea' and how to establish it. It has been considered as complicated because Article 8 ter seems to mix a couple of different mental elements. Basically, the meaning of the word 'knowledge' used in the definition is inconsistent with its meaning under the Rome statute, an inconsistency which cannot be allowed to continue if this crime is to for part of the statute.

CONCLUSION AND THOUGHTS

There is no doubt that the creation of the term "*ecocide*" could be very helpful in enhancing environmental destruction's accountability and accessibility to reparations. It has helped to clarify a concept that frequently gets buried in debates of technology and policy: that many people believe that damaging the environment crosses a moral threshold. It also serves as a reminder that people all throughout the world suffer as forests burn and the waves rise. Furthermore, those responsible for these crimes are not innocent. *Ecocide* should be made illegal, according to activists like Mehta, in order to put an end to the extinction of ecosystems and the people who depend

on them.

However, It's crucial to recognize the limitations of prosecution as a strategy for stopping environmental harm, too. Especially since the whole concept currently deals with many inherent issues, which can be expected from a concept that only has about four years worth of official history.

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In this light, it becomes pertinent to not only refine the term and its meaning, to bring it into harmony with the tenets and ideas of the Rome statute, to increase its likelihood of being added to the statute without clashes over legal concepts. As it is, the process of amending, if we are to ever get there, will prove to be challenging, owing to diplomatic interests and interference of the powerful states. There is no doubt that, the clearer and more precise the concept seems, the easier and the more lucrative it would be to be taken into fold.

This is not to say that the journey 'Stop Ecocide International' has been on is anything but inspirational and brave. To garner support, raise funds, bring learned environmentalists and lawyers on board could not have been easy.

To answer the criminalization of this crime could be the future of environmental protection is too much to ask, both from the budding concept and from any person who has familiarized themselves with it. Although, the evidence does suggest that it definitely holds the potential to be an answer, but it is not the only one. As discussed above, even if made part of the Rome statute, the true ambit of this crime would remain restricted, thanks to the veto powers of the Security Council and their sway with the International Criminal Court.

Another vital consideration is time, talking about the climate, we are losing time with each passing day and it has been accepted by Stop Ecocide International's co-founder Jojo Mehta herself, that this process will take up to seven years. So even if this is a long-term solution, reliance cannot be had on it, municipal laws around the world need to be strengthened, no tolerance policies need to be put in place to deter independent actors from flagrantly abusing the environment for their gain.

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