

ECOCIDE—PROTECTION OF ENVIRONMENT: AN INTERNATIONAL CRIME

Written by Utsa Sarkar

LLM Student, The West Bengal National University of Juridical Sciences, Kolkata, India

ABSTRACT

In this 21st century, environmental destruction has become a global problem that needs urgent attention. The definition of ecocide as stated by Higgins, “the extensive destruction, damage to or loss of ecosystems of a given territory, whether by human agency or by other causes, to such an extent that the peaceful enjoyment by the inhabitants of that territory has been severely diminished.”^{vi} In other words, this destruction poses threat to humanity more in recent times and demands immediate intervention by all the states. Till now, it has been considered as individual problem and individual states were responsible to deal with it within the boundaries itself. The havoc causes as a result of this destruction includes mass extinction, ecological collapse and climate change. The different incidents from time to time for instance the Chernobyl explosion, or the Gulf of Mexico disaster had not only took human lives but also left an irreparable damage to the areas, lands, marine animals, birds, etc. The International Criminal law includes four crimes as ‘Core Crimes’ and the International Criminal Court have jurisdiction over these four crimes. These crimes are mainly being categorized as those that are major threat to humanity. Similarly, these ecocidal acts also pose major threat to humanity, human rights and social justice and have lasting consequences as well.

Thus, this paper tends to focus on the moot question that whether the crime of ecocide can be brought under the purview of International Criminal Law as fifth crime at par with the other core crimes dealt by the International Criminal Court. The author will try to look into the responsibility or liability that may arise in such cases and to who shall be held responsible for such crimes.

INTRODUCTION

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for presentation and future generations.”

-1972 Stockholm Declaration of the U.N Conference on the Human Environmentⁱⁱ

The concept of human rights in the past few years has evolved considerably in the international scenario. Nature and the environment are intrinsically connected to the basic idea of human rights. Different forms of environmental destruction have existed since primitive times; however, the threat and concern of ecocide began taking a global dimension from the second half of the 20th century. In the past few decades, there have been numerous challenges and efforts to protect the natural environment. In light of the destructions in the environment, it becomes a major issue of concern for international lawyers and scientists. The definition of the term ‘ecocide’ has always been a debatable issue among the legal fraternity. In common parlance, it refers to the destruction of the natural environment detrimental to human lifeⁱⁱⁱ. The coining of the term may be new, but the processes and tactics of destruction had been an age-old phenomenon. The consequences of destruction or damage of the environment entail over a particular region but may spread over an entire large region, resulting in the disastrous effect of the area in particular and humankind at large. Such kinds of damages cannot be repaired and undone easily.

Historical warfare always played a significant role in shaping these courses of events. The rampant degradation of the environment remains one of the constant elements of warfare in the history of humankind^{iv}. For instance, the 1991 Gulf War is considered to have set the hostilities' stage before the international platform. Professor Galston defined the term ecocide as, “it denotes different methods of destruction and devastation that aimed at damaging and destroying the ecology as a whole and are detrimental to human life, animal life and plant life.”^v Thus damage and destruction or devastation of ecosystem frequently and relentlessly is the principle elements to constitute the crime of ecocide. The situation is aggravated by the big corporations, causing irreparable damage to the environment. The accountability of the military leaders cannot be ignored because, over time, ‘environment’ had been taken as a means of warfare. However, these damages are not globally established as an international crime to

impose criminal liability and are still largely permitted. The companies can easily procure the license or permit for their business and there are no repercussions for the unchecked occurrence of environmental destruction. In the light of the ongoing crisis, Higgins' tried to include ecocide as a new generation of future generations' rights and indigenous people's rights^{vi}. The destruction during the international armed conflict over the environment damages sustainability and hampers animal, plant, and human life. This active damaging of the environment does violate international law and the law of war. The want of evidence of these crimes is unnecessary and can be deduced from the widespread destruction of the environment. The nature of 'ecocide' entails the elements of 'most serious crimes'^{vii} that can shock the international community's conscience as a whole. However, the legal recognition of ecocide and its inclusion in the Rome Statute has always been a debatable issue. Many legal scholars and lawyers in the international arena have argued it to include the category of other four 'core' crimes of the Rome Statute and International Criminal Court (*hereinafter referred to as 'ICC'*) shall have the jurisdiction to prosecute these crimes. However, another group of scholars has argued against recognizing as a separate crime under international law.

Thus, this article demonstrates whether ecocide is considered an international crime and be included along with the other four core crimes, namely Crimes Against Humanity, Genocide, Crime of Aggression, and war crimes under the Rome Statute. This paper seeks to analyze whether ICC should have jurisdiction considering the nature of such events during international armed conflicts and the incidents that qualify as ecocide.

Part I of the paper will give a brief background and timeline of the introduction of the act of ecocide. Part II of the paper determines the aspect of criminalization of those acts that damages the environment and takes into account the nuances through various existing treaties and conventions. Part III of the paper analyzes and put forward certain suggestions as how ecocidal acts can be interwoven into the international community and thus how can the perpetrators of those acts can be prosecuted for the same. Part III of the paper finally concludes the study by providing a roadmap as to how criminalization of ecocide can lead to improvement in the present situation of environmental damage and destruction.

BACKGROUND

The movement for ecocide began with the outbreak of the war in Vietnam. In the Conference on War and National Responsibility, 1970, Professor Arthur Galston asked for a new international regime and agreement to regulate ecocide prevention. The war of Vietnam had seen the use of chemicals causing extreme environmental destruction; this incident ignited the discussion over whether the United States is engaging in ecocide on Vietnam. The International Court of Justice in the *Barcelona Traction Case*^{viii} identified and upheld the principle of *erga omnes* i.e., the obligation of the states to the international community for protection and promotion of the basic values and common interest of all. This case identified the principle that environmental destruction should not be done in the light of the community's interest as a whole.

Further, in 1972 the United Nations Stockholm Conference^{ix}, the draft International Convention on Ecocide was formulated to revise ecocide in the Genocide Convention and to recognize it as a crime against peace against the international community. The convention developed certain principles that oblige to protect the equality and adequate condition of life from the toxic environment. However, it does not explicitly include a comprehensive definition of the term 'ecocide'; instead, it provides a list of acts that will qualify under the event of such massive destruction. In 1978, a Draft Code of Crimes against Peace and Security of Mankind^x and International Law Commission's Yearbook on 'Draft Articles on State Responsibility and International Crime'^{xi} was formulated to examine the breach of an international obligation to protect and preserve the environment. However, due to the lack of proof of criminal intent ecocide was dropped out to consider as an international crime.

The period of 1982-1992 saw the enactment of environmental law in the international law regime. During this period, environmental law had been considered an intergenerational right interlinking with the concept of human rights. It was recommended to include 'cultural genocide', 'ecocide' under the purview of genocide in the Whitaker Report,^{xii} like the acts of the nuclear explosion, use of chemical weapons during warfare, and the actions that threaten the human generation as a whole. It was only after the 1991 Gulf War, where human destruction was sought as one of the main reasons for ecocide. The Chernobyl incident also left a mark in the history of environmental destruction. The Ukrainian power plant that exploded in 1986 left the place deserted and radioactive till date. From 1991-1996, various drafts were prepared to

consider and include ecocide as an international crime but failed due to lack of support by the member states. Article 26 of the 1991 Code^{xiii} had an aspect of environmental destruction as ‘wilful and severe damage to the environment and in such case criminal sanction would be imposed. The assembly also voted for the inclusion of the same. In 1998, the Rome Statute was enacted, and the final draft did not include ecocide as a separate international crime, and Article 26 had disappeared. Instead, it was incorporated under the category of war crimes—considered the environmental damages caused during war crimes. The Rome Statute included the ecological damage as ‘widespread, long-term and severe’, modifying the Environmental Modification Convention, 1977. The non-inclusion of the Article under the statute led to the loss of environmental protection occurring outside war crimes.

Again in 2010, British Attorney Poly Higgins’ proposed to the United Nations Law Commission to designate and re-consider ecocide as a separate crime—as a crime against peace under the Rome Statute. Subsequently, in 2013 nine European Union countries launched an initiative titled ‘End Ecocide in Europe’^{xiv}, and urged the United Nations to consider it an international crime. Some countries like Vietnam, Russia, and other former Soviet countries had included ecocide as a crime in their domestic laws. However, it is still considered a crime at the domestic level and hence does not prove effective in its implementation. The International Monsanto Tribunal (*hereinafter referred to as IMT*) heard the matter between U.S and Columbia on the supply of anti-narcotic substances that affected human health and damages to agriculture^{xv}. Considering various evidence that proved the actual damages, IMT holds Monsanto criminally liable for the environmental hazard and degrading condition of human health. The Tribunal considered ecocide an international crime and argued to integrate it with other core crimes in Rome Statute. It ascertains the presence of mens rea and actus rea involved in the commission of the crime. It sets forth some legal parameters that qualify to include it as an international crime. The principle of complicity—aiding and abetting was also considered and advised that both individuals and corporations be equally criminally liable under the Rome Statute for the crime of ecocide. It expounded the principle of corporate criminal liability for the corporations and proposed an amendment in the Rome Statute for the inclusion for the successful prosecution of the crime. Although the international environmental law had evolved in the past century, it is not adequate to determine liability for indeterminate territories that are not oriented within the state boundaries. Large corporations often take advantage of these existing gaps within the law to operate in the grey areas. Chernobyl or the

Bhopal Leak Gas Tragedy incidents indicate the need for a shift in liability of these crimes from civil to criminal by prosecuting the perpetrators of these crimes. In 2016, the office of the Public Prosecutor of ICC announced to widen the ambit of ICC to include those acts that include 'illegal exploitation of natural resources,' 'land grabbing' and 'destruction of the environment.'^{xvi} However, in the absence of amendment in Rome Statute, the future of this crime seems to be less realistic in implementing practically.

CRIMINALISATION: THE CRIME OF ECOCIDE

The case of *Chevron*, in recent times came to be known as Amazonian Chernobyl^{xvii}, took a new toll in cases of environmental destruction. A hefty amount of fine was imposed and against it, an international law suit was filed by Chevron before the global platform. This case works as a backdrop against the harm caused to the environment by multinational corporations due to mining toxic waste leaving many people affected and homeless; thus violating the basic fundamental human rights as well as the environment. In the light of this, the discussion in the present context becomes very important. An international legal regime for environmental crimes will sanction the corporations and heads of state to consider consequences for their actions, although the acts are limited to transboundary effects. The definition of the terminology 'environmental crimes' also seems to be descriptive. Among the many international organizations, the International Police Organization Strategic Plan 2009-2010^{xviii} addressed environmental crimes as any acts that are not in accordance with the treaties and conventions existing for the protection and sustainability of the environment. On the other hand, the United Nations Environment Programme (*hereinafter referred to as UNEP*) referred to the term 'environmental crimes' as a set of illegal activities committed by individuals or corporations for their benefits by harming the environment^{xix}. However, these definitions fail to identify the substantive behavior on the parts of individuals and corporations as to what acts would qualify to be recognized as the crime of ecocide. The basic principle of international criminal law is *nullem crimen sine lege i.e.*, no punishment without law, and in this case, the legal connotation needs to be explicitly defined to prevent the possibility of expanding the term to those norms and behaviors that may not be intended to be included within the norm itself. The criminalization of the crime necessitates a proper legal framework of the term. It looks into whether the international criminal liability will arise directly and what will happen in the

case of transnational crimes when the liability arises indirectly but the harm caused are almost equal.

Ecocide: A Jus Cogens Crime

There is an existing gap between the humans and the environment due to the destructions caused to the environment by the human authorities. There is an inadequacy in the international law regime that failed to denote the sufferers who largely depend on the environment for their survival. The essence of enactment of Rome Statute aims to protect from the acts that threatens human lives per se and led to violation of their rights. As far as the debate of ecocide as a crime is concerned, it also threatens the interdependency and sustainability of human rights through the act or omission of damaging the environment. However, there exists a gap in the legal framework to criminalize those acts or omissions. For instance, Article 3 of the Geneva Convention explicitly stated the prohibition of acts against the Marsh Arabs, and it is only addressed for the individual murderers and extra-judicial killings. However, it failed to address the destruction of wetlands happening out of it and lead to deprivation of certain people's rights^{xx}. Some treaties and conventions address environmental degradation, but they are the part of customary international law or what may be called jus cogens. For instance, the Additional Protocols of Geneva Convention 1949 includes provisions that address prohibiting any acts against the environment but that is a non-derogable norm. What essentially is an international discourse that addresses environmental destruction not only during war-times but also during peace? The extension of customary international law's applicability would pave the way for the prosecution of individuals and transnational corporations involved in such activities against the environment.

Transboundary Nature of Damage: Environment and Ecology

The debate of infusion of act of environmental degradation into the realm of criminal law poses some transboundary characteristics as well. Transnational nature of damage o environment can be defined as^{xxi}:

- Those acts or omissions that are against the law and hence subjected to criminal sanction
- The acts or omissions includes crimes like air pollution, water pollution, land pollution and crime against wildlife
- Those acts or omissions that involved cross-border aspect and an international dimension;

Although there are many international treaties and conventions that governs the international environmental law, yet the geographic perspective of the acts gives this crime an international perspective. The nature of acts affects the world ecology as a large in the form of depletion of natural resources, the problem of waste disposal, or the declining nature of species. This actually revolves around the question of transnational crimes of environment. This is the main reason, why an internationally criminal sanction is necessary to denote this problem and to establish a transparent system eradicating the loopholes from the system. It can be seen that there are problems relating to dumping of hazardous and harmful waste between two countries and mostly, the lives of the vulnerable people gets affected out of this litigation. So, the issue of environmental degradation at the transnational level is not only concerned with the harm caused but also to provide an effective remedy to prevent such damage. The new forms of incidents are emerging for instance the issue of piracy or the declining coast of Somalia indicates that such environmental harms have some undesired consequences that is important across the boundaries of several states.

The event of 1998 caused devastating effects in areas of Central America or the melting of ice caps in Greenland being ignited from carbon emissions and forest fires. These environmental destructions pose a threat not only to the international community but also demand the need for criminal sanction. The prosecution of the perpetrators of the crime is outside the purview of Article 8 of the Rome Statute. The act of criminality is not considered within the boundaries of national jurisdiction fails to provide an enriched system to punish the prosecutors. There are several treaty-based obligations and customary international law to protect the environment during warfare^{xxii}. Certain rules protect the environment during a global armed conflict like the principles of necessity, proportionality, and humanity. The provisions under Hague Convention, 1907, the Geneva Gas Protocol, 1925, Geneva IV Protocol 1949, and the Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Techniques (ENMOD) 1977^{xxiii} has been considered as part of international customary laws that aimed to protect the environment during international armed conflicts. The provision of the Rome statute extends its applicability during the conflict between governments and organized armed groups or between any such groups. It is not applicable in situations of internal disturbance like riots or any other acts of violence^{xxiv}. The BASEL Convention^{xxv} on the Transboundary movements of hazardous waste provided a set of rules and regulations and liability on the State parties to manage and prevent waste and punish them if any infringement

with the provision. This convention can be considered criminal in terms of compliance with waste management.

On the other hand, the United Nations Convention on the Law of Sea (UNCLOS) criminalizes a specific activity relating to the right to fishing and conservation of living resources under Article 117^{xxvi}. So, there is a dichotomy between those being criminalized under international law through treaties and conventions and the behaviors and acts that are not yet been classified to impose criminal sanctions. Those acts may have a vast and severe impact on the environment, like marketing ozone-depleting substances and transnational efforts to prevent them.

Apart from the BASEL Convention, the London Convention and the MARPOL Convention attributed criminal sanctions for the breach of environmental norms^{xxvii}. However, the international agreements lacked efficacy in providing harmonized and comprehensive punishment for the breach of norms and led to judicial cooperation failure. Although enacted but are not binding upon the international arena, domestic legislation is merely recommendatory. There is no deterring effect on the perpetrators of the criminal sanction imposed by domestic laws; the most plausible remedies could be fines which the big corporations may have paved away quickly compared to the benefits they gained from using the environment.

Criminalization of Ecocide as a crime under International Criminal Law

As far as the other four ‘core’ crimes under the Rome Statute are concerned, the question raised is whether these crimes include the elements of ecocide, for which criminal liability can be imposed. The ambit of international law extends to the acts that pose a threat to humanity broadly; however, a cursory glance at the other four crimes reveals a limited application to the crime of ecocide.

Firstly, Genocide is stated under Article 6 of the Rome Statute^{xxviii}. This provision does not entail the crime of ecocide specifically and is not directly related. Ecocide has an indirect connection with the crime of genocide. The wordings ‘bodily harm or mental harm’ can be attributed to environmental destruction to any national, ethnic or religious groups. But this interpretation lacks evidence when it comes to the prosecution of the crime of ecocide. The elements like the condition of life depend on the physical destruction of the group or the acts of deprivation of resources that are necessary for survival comes under the broad heading of

genocide. The impact of genocide can be linked with the destruction of the environment due to the intrinsic relation between the status of people of indigenous groups and their rights. For instance, during 1940, the Navajo Tribes were exposed to the harmful uranium radiation that left the people of tribes with lung cancer and other respiratory diseases for the next 25 years^{xxix}. The contours of *mens rea* are limited in genocide as it is associated with only ‘intentional killing to destroy a particular group’. The requirement of *mens rea* to prove environmental destruction requires a much higher threshold, and if it is linked with genocide it will have a limited application in its true essence.

Secondly, Crime against Humanity covers a wide range of ambit under the Rome Statute. Article 7 of the Statute enumerates the elements of crime against humanity and states that any act or attack that is directed towards the civilian population will constitute a crime against humanity. However, it does not take into account the destruction or damage of the environment. Since it aimed to protect the civilians at large, environmental destruction can be indirectly relevant in the context of the crime. Article 7(1)(g)^{xxx} included another perspective of crime against humanity as those acts that are done intentionally to deprive the people of their fundamental rights. So, the right to a healthy environment is per se a fundamental right, and the crime of ecocide deprives the people of their basic rights. But this aspect is open to interpretation and can vary from case to case basis. The ambit of crime against humanity can only be extended to the crime of ecocide if the nature and gravity of the acts committed under Article 7 are similar to the nature of actions that the nascent form of crime demands. But, this also leaves a gap in interpretation and application in its’ real sense by the courts.

Thirdly, it is only under the purview of war crimes where it is explicitly mentioned to prosecute for ecocide. It is included under Article 8.2(b)(iv) of the Rome Statute. It is the only provision in the Rome Statute that attributes liability for the environmental destruction and degradation in the interests of the environment itself and not from a human rights perspective, unlike other crimes. However, it has some limitations in application. It is only limited to its application during international armed conflicts. Nowadays, most of the armed conflicts are non-international^{xxxi}. But the provision does not extend to destruction during non-international armed conflicts. The question arises; can the requirement be extended to non-international armed conflict as well? And if so, does the element for application of the provision change or remains the same? The elements of Article 8 are widespread, long-term, and severe. So, if an act or omission does not meet the three requirements, the act will not be considered a war crime,

and there will also be no criminal sanction for the same. These terminologies are subjected to interpretation by ICC depending on the facts and circumstances of the case. However, the International Law Commission Draft Code on Crimes against Peace, 1991^{xxxii} provided some interpretation regarding the ‘long-term damage’ as those damages that may have a long-lasting effect on nature and will continue subsequently as well. Also, the damage needs to be proportionally linked with the existing military anticipated attacks. Ecocide, although it entails criminal intent but is a result of greed and aggravated negligence^{xxxiii}. The phenomenon is intrinsically linked with an indifference to human life and is applicable just as international humanitarian law applies to international armed conflict. The 1991 Gulf War qualified to be included under Article 8.2(b)(iv) as it was held to have ‘long-term’ and ‘severe’ elements. But, this may not be the case every time, which may often lead to the escape of prosecuting for the acts of ecocide.

Fourthly, Rome Statute was amended in 2010 to include the crime of aggression. The impact of this crime may have a negative effect on the environment. Still, the unwillingness to directly identify the linkage with ecocide blocks the prosecution of crimes before ICC.

Thus, it can be seen in the existing provisions that the Rome Statute does not directly ensure the protection of the environment per se. It only includes the widespread damage of natural resources during warfare and fails to address the situation when most extreme forms of environmental destruction occur during peaceful conditions.

A WAY FORWARD

Thus, the above analysis concludes that the inclusion of the crime of ecocide within the international criminal law regime is restricted and limited. The criminal sanction of those acts has attributed liability to the State parties through some multi-lateral agreements and treaties. They are still now considered national crimes. But, in light of the above situation, they demand international co-operation and measures to prevent further damages. However, domestic laws often fail to provide the stigmatizing and deterrent effect on corporations and individuals. The fundamental essence of criminal law lies in deterring the accused from furtherance commission of the crime. These crimes are mainly motivated and driven by economic forces without fear of the further consequences of such acts. However, if criminal sanctions are imposed on perpetrators of these crimes, big corporations will think twice before making profits through

harmful methods. The recognition of ecocide as an international crime under the Rome Statute will enhance the state parties to transfer the cases to the global platform if it fails to prosecute the perpetrators of such crime.

Moreover, the adaption of ecocide as an international crime will bind the community to global responsibility, and the prevention will be possible in every possible means at the international community. The international criminal law intended to impose individual liability to prevent and punish acts or commissions that violate international law. Mostly, the non-state actors commit ecocide, so outside the purview of international law, the liability cannot be attributed. Thus, considering ecocide as an international crime will provide efficacious legal remedies to the individual's responsibility^{xxxiv}. Even if, a corporation is causing the crime, the attribution of criminal liability will not be difficult. International criminal law entails the principle of superior responsibility as well. In any big corporation, the guilt can be attributed to the person holding the highest authority or the person having the highest responsibility of the corporation. If no such person is holding the position, liability can be attributed to the directing minds of the corporation.

As far as the justifications of the threshold of mens rea are concerned to constitute the crime of ecocide, the criterion is much lower than the other four crimes. It majorly depends on the consequences of the act irrespective of the ill-will involved in the act. It is more destructive, devastating in nature, and a universal duty of care is needed to prevent the commission of such activities. Thus, the amendment to the Rome Statute to include ecocide as the fifth international crime will be a possible recourse to establish a global criminal framework for protecting the environment.

Now, the question arises, even if the crime of ecocide be included as a separate crime under the Rome Statute, what forum is suitable for the adjudication. Will ICC be the proper forum for adjudication and jurisdiction of the crime or should an independent adjudicatory body be established. It is well established that destruction caused during warfare is liable for criminal sanction by the ICC. But when environmental damages are being caused, there are no universal international law statutes that address a uniform mechanism for the same.

In the 18th Assembly of State parties in 2019^{xxxv}, in the light of this, a pertinent question was raised regarding the appropriateness of ICC's jurisdiction for effectively investigate, prosecute and adjudicate this nascent crime of ecocide. This article argued that the application of

universal jurisdiction is important. For the adjudicatory purpose, a separate International Environmental Court must be established. When the question comes up for adjudication of international criminal law instead of transnational law, the only forum left is the International Criminal Court. However, there are certain legal hurdles in adjudication of these matters by the ICC. ICC intends to prevent those crimes that threaten the peace and security of humankind, which may be a less favorable condition for the prosecution of environmental crimes. Since the crime of ecocide is very nascent, the ICC may not be well equipped to prosecute these ecological crimes. The present composition of ICC does not indicate any specialized body of jurists or prosecutors who may deal with such cases. Also, not all countries are signatories to the Rome Statute. So prosecution of ecocide as a crime by the ICC will not be much effective since it does not control all the countries. Instead, a separate International Environmental Court can be established to prevent the widespread destruction and damage of the environment. The realm of international environmental is increasing, as evidenced from the *Trail Smelter case*^{xxxvi}. This case recognized that liability could accrue from any actions that may result in widespread harm to the environment. The expanding jurisdiction stemming out from ICC may ease in the adjudication of the matters more efficiently. For instance, the African Court of Justice and Human Rights or the European Court of Human Rights has expanded its jurisdiction and expanded its scope and power. Apart from the complementary principle, there is also concurrent jurisdiction under international criminal law. In the light of this principle, the international courts and tribunals can request the court at any stage of proceedings to adjourn the matter by applying the provisions of the statute, Rules of Procedure and, evidence of the tribunal^{xxxvii}.

Thus, the concurrent principle will preserve the state's sovereignty, giving due recognition and a legal framework for the adjudication of the crime of ecocide.

CONCLUSION

The incident of Holocaust shook the conscience of the international community back in 1930s. The existence of crimes against the environment is not new and demands legal recognition in the international platform. Although the crime of ecocide does not meet the general criteria of criminal law, the impact of these crimes makes the legal fraternity re-consider the debate of including it as the crime and other four existing crimes under the Rome Statute. Recognition

of the crime of ecocide will be the first step in providing and accessing a practical justice framework and to the people in the international arena. The incidents of depletion, destruction around us globally do not leave a gap to prosecute such acts on temporary or voluntary basis. Rather it demands a mandate for legal recognition, so that the perpetrators of this crime shall not go unpunished. Apart from the enforcement of human rights, the very nature of harm to the environment must also be taken into consideration as it is our collective responsibility to protect the environment. The duty is to protect the human beings on earth and protect the non-human beings, the silent sufferers in the planet.

BIBLIOGRAPHY

- Afriansyah, A., 2010. State responsibility for environmental protection during international armed conflict. *Indonesian J. Int'l L.*, 8, p.474.
- Civic, M.A., 1997. Discovering and enforcing a human right to environmental protection. *J. Nat. Resources & Env'tl. L.*, 13, p.123.
- Crasson, A., 2017. The case of Chevron in Ecuador: the need for an international crime against the environment. *Amsterdam LF*, 9, p.29.
- de Santana Gordilho, H.J. and Ravazzano, F., 2017. Ecocide and the International Criminal Court. *Rev. Just. Direito*, 31, p.688.
- Drumbl, M.A., 1999. International Human Rights, International Humanitarian Law, and Environmental Security: Can the International Criminal Court Bridge the Gaps. *ILSA J. Int'l & Comp. L.*, 6, p.305.
- Gauger, A., Rabatel-Fernel, M.P., Kulbicki, L., Short, D. and Higgins, P., 2012. The Ecocide Project, "Ecocide is the missing 5th Crime Against Peace". *Human Right Consortium, School of Advanced Study, University of London*.
- Gray, M.A., 2017. The international crime of ecocide. In *International Crimes* (pp. 456-511). Routledge.
- Greene, A., 2018. The campaign to make ecocide an international crime: quixotic quest or moral imperative. *Fordham Env'tl. L. Rev.*, 30, p.1.
- Jaffal, Z.H. and Fouad Mahameed, W., 2018. Prevent environmental damage during armed conflict. *BRICS LJ*, 5, p.72.

- Jambozorg, M., Pournouri, M., Poorhashemi, S.A. and Hermidasbavand, D., 2015. Challenges ahead of codification of environmental crime indices as an international crime. *International journal of environmental science and technology*, 12(11), pp.3719-3734.
- Jensen, E.T., 2005. The international law of environmental warfare: active and passive damage during armed conflict. *Vand. J. Transnat'l L.*, 38, p.145.
- Levie, H.S., 1996. Criminal Responsibilities for Environmental Damage. *International Law Studies*, 69(1), p.13.
- Lopez, A., 2006. Criminal liability for environmental damage occurring in times of non-international armed conflict: Rights and remedies. *Fordham Env'tl. L. Rev.*, 18, p.231.
- Lytton, C.H., 2000. Environmental human rights: Emerging trends in international law and ecocide. *Environmental Claims Journal*, 13(1), pp.73-91.
- MacCarrick, G. and Maogoto, J., 2018. The Significance of the International Monsanto Tribunal's Findings with Respect to the Nascent Crime of Ecocide. *Tex. Env'tl. LJ*, 48, p.217.
- Malhotra, S., 2017. The international crime that could have been but never was: An English school perspective on the ecocide law. *Amsterdam LF*, 9, p.49.
- McCarrick, G., 2016. Amicus curiae to the International Monsanto Tribunal on the Question of Ecocide. *The Hague*. http://www.monsanto-tribunal.org/upload/asset_cache/45823288.pdf.
- Mehta, S. and Merz, P., 2015. Ecocide—a new crime against peace?. *Environmental Law Review*, 17(1), pp.3-7.
- Minha, D., 2020. The Possibility of Prosecuting Corporations for Climate Crimes Before the International Criminal Court: All Roads Lead to the Rome Statute?. *Mich. J. Int'l L.*, 41, p.491.
- Mistura, A., 2018. Is There Space for Environmental Crimes under International Criminal Law: The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the Current Legal Framework. *Colum. J. Env'tl. L.*, 43, p.181.
- Neto, D.A.B. and Alverne, T.C.F.M., 2018. Ecocide: Criminalizing Policy of International Environmental Crimes or a Crime Itself. *Braz. J. Pub. Pol'y*, 8, p.210.

- Nistor, A.L., 2017. The Environment and International Law-an Overview of the 2017 ALF Annual Seminar. *Amsterdam LF*, 9, p.127.
- Paraschiv, D.S., 2019. The Culpable Ecological Catastrophes-Offences of International Criminal Law?. *Annals Constantin Brancusi U. Targu Jiu, Letters & Soc. Sci. Series*, p.35.
- Qudah, H., 2014. Towards International Criminalization of Transboundary Environmental Crimes.
- Quillin, W.J., 1926. REPORTS OF INTERNATIONAL ARBITRAL AWARDS RECUEIL DES SENTENCES ARBITRALES. *Cross-reference*, 20, pp.791-793.
- Schwabach, A., 2003. Ecocide and Genocide in Iraq: International Law, the Marsh Arabs and Environmental Damage in Non-international Conflicts. *TJSL Public Law Research Paper*, (03-08).
- Teclaff, L.A., 1994. Beyond Restoration-The Case of Ecocide. *Nat. Resources J.*, 34, p.933.
- Teclaff, L.A., 1994. Beyond Restoration-The Case of Ecocide. *Nat. Resources J.*, 34, p.933.
- Tignino, M. and Bréthaut, C., 2020. The role of international case law in implementing the obligation not to cause significant harm. *International Environmental Agreements: Politics, Law and Economics*, 20(4), pp.631

ENDNOTES

ⁱ Polly Higgins, *Eradicating ecocide: Exposing the corporate and political practices destroying the planet and proposing the laws needed to eradicate ecocide 3* (2010).

ⁱⁱ Sohn, L.B., 1973. Stockholm declaration on the human environment, the. *Harv. Int'l. LJ*, 14, p.423.

ⁱⁱⁱ Stop Ecocide. 2021. *FAQS - ECOCIDE & THE LAW — Stop Ecocide*. [online] Available at: <<https://www.stopecocide.earth/faqs-ecocide-the-law>> [Accessed 14 June 2021].

^{iv} Okorodudu-Fubara, M.T., 1991. Oil in the Persian Gulf War: Legal appraisal of an environmental warfare. . *Mary's LJ*, 23, p.123.

^v Short, D.D., 2016. *Redefining genocide: Settler colonialism, social death and ecocide*. Zed Books Ltd..

^{vi} Higgins, P., Short, D. and South, N., 2013. Protecting the planet: A proposal for a law of ecocide. *Crime, Law and Social Change*, 59(3), pp.251-266.

^{vii} Icc-cpi.int. 2021. [online] Available at: <<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>> [Accessed 14 June 2021].

^{viii} *Barcelona Traction, Light, and Power Co., Ltd (Belgium v. Spain)* [1970] ICJ Rep 3

^{ix} Sohn, L.B., 1973. Stockholm declaration on the human environment, the. *Harv. Int'l. LJ*, 14, p.423.

- ^{ix} top Ecocide. 2021. *FAQS - ECOCIDE & THE LAW — Stop Ecocide*. [online] Available at: <<https://www.stopecocide.earth/faqs-ecocide-the-law>> [Accessed 14 June 2021].
- ^xLegal.un.org. 2021. [online] Available at: <http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf> [Accessed 14 June 2021].
- ^{xi}Legal.un.org. 2021. [online] Available at: <https://legal.un.org/ilc/publications/yearbooks/english/ilc_1978_v2_p1.pdf> [Accessed 14 June 2021].
- ^{xii}Preventgenocide.org. 2021. *Whitaker Report on Genocide, 1985 - Prevent Genocide International*. [online] Available at: <<http://www.preventgenocide.org/prevent/UNdocs/whitaker/>> [Accessed 14 June 2021].
- ^{xiii} *Id.*
- ^{xiv}Endecocide.org. 2021. *End Ecocide on Earth – For a common future for all life!*. [online] Available at: <<https://www.endecocide.org/en/>> [Accessed 14 June 2021].
- ^{xv}O'Shaughnessy, H. and Branford, S., 2005. *Chemical warfare in Colombia: The costs of coca fumigation* (Vol. 5). Latin America Bureau.
- ^{xvi}Mistura, A., 2018. Is There Space for Environmental Crimes under International Criminal Law: The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the Current Legal Framework. *Colum. J. Envtl. L.*, 43, p.181.
- ^{xvii}OpenDemocracy. 2021. *democraciaAbierta*. [online] Available at: <<https://www.opendemocracy.net/en/democraciaabierta/>> [Accessed 14 June 2021].
- ^{xviii}Interpol.int. 2021. [online] Available at: <<https://www.interpol.int/en/content/download/5088/file/INTERPOL-UNEP%20Strategic%20Report%20-%20Environment,%20Peace%20and%20Security%20-%20A%20Convergence%20of%20Threats.pdf>> [Accessed 14 June 2021].
- ^{xix}Nelleman, C., Henriksen, R., Kreilhuber, A., Stewart, D., Kotsovou, M., Raxter, P., Mrema, E. and Barrat, S., 2016. *The rise of environmental crime: a growing threat to natural resources, peace, development and security*. United Nations Environment Programme (UNEP).
- ^{xx} The *Covenants on Economic and Cultural Rights and Civil and Political Rights* provide human rights protections, and provide that a people may not be deprived of its means of subsistence.
- ^{xxi}Eman, K., 2012. Rob White: Transnational Environmental Crime: Toward an Eco-global Criminology. *Varstvoslovje*, 14(2), p.205.
- ^{xxii}Afriansyah, A., 2010. State responsibility for environmental protection during international armed conflict. *Indonesian J. Int'l L.*, 8, p.474.
- ^{xxiii} Cassese, A., 2005. *International law*. Oxford: Oxford University Press.
- ^{xxiv} S 8(2)(d) and S 8(2)(f) of Rome Statute.
- ^{xxv} Basel.int. 2021. *Basel Convention Home Page*. [online] Available at: <<http://www.basel.int/>> [Accessed 14 June 2021].
- ^{xxvi} Duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas: All States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.
- ^{xxvii} Moncayo, G., 2021. *Testing the boundaries between the Basel and MARPOL regimes: are they complementary or mutually exclusive?*.
- ^{xxviii}Genocide For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.
- ^{xxix}Brook, D., 1998. Environmental genocide: Native Americans and toxic waste. *American Journal of Economics and Sociology*, 57(1), pp.105-113.
- ^{xxx} Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.
- ^{xxxi}Lopez, L., 1994. Uncivil wars: the challenge of applying international humanitarian law to internal armed conflicts. *NYUL Rev.*, 69, p.916.
- ^{xxxii} Gillett, M., 2021. *Environmental Damage and International Criminal Law*.

^{xxxiii}Killean, R., 2020. From ecocide to eco-sensitivity: 'greening' reparations at the International Criminal Court. *The International Journal of Human Rights*, pp.1-25.

^{xxxiv}Health, S., 2021. *Ecocide: the fifth crime against peace? - World leading higher education information and services*. [online] World leading higher education information and services. Available at: <<https://world.edu/ecocide-crime-peace/>> [Accessed 14 June 2021].

^{xxxv}The Hindu. 2021. *France approves 'ecocide' offence to punish environmental damage*. [online] Available at: <<https://www.thehindu.com/news/international/france-approves-ecocide-offence-to-punish-environmental-damage/article34346869.ece>> [Accessed 14 June 2021].

^{xxxvi}*Trail Smelter Case (U.S. v. Can.)* 3 R.I.A.A. 1938, 1965 (1941).

^{xxxvii}Rau, Kristen. *Jurisprudential Innovation of Accountability Avoidance? The international Criminal Court and Proposed Expansion of the African Court of Justice and Human Rights*. *Minnesota Law Review*, Jan 1, 2012, Vol. 97, Issue 2, p675.

