

Will Environmental Destruction be Punished as a Crime of Ecocide Soon?

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On 9th September 2024, Vanuatu, Fiji, and Samoa submitted a formal proposal to include ecocide as the fifth international crime under the Rome Statute of the International Criminal Court (ICC). The proposal defines ecocide as ‘unlawful or wanton acts that cause severe and either widespread or long-term environmental damage’. The Democratic Republic of the Congo later joined the three Pacific island nations. If this proposal is accepted by the State Parties to the Rome Statute, the ICC can prosecute and punish mass environmental destruction, considering it to be as grave as genocide, war crimes, the crime of aggression, and crimes against humanity. In parallel with this development, ecocide has been outlawed in various parts of the world, including Vietnam and post-Soviet countries in the early 2000s¹, as well as Belgium, France, the European Union, Chile, and many others in recent years. Why is there growing support for an ecocide law?

The term ‘ecocide’ was first coined by Arthur Galston, who strongly denounced Washington’s chemical warfare during the Vietnam War. Agent Orange, one of the toxic chemicals sprayed over the rainforests in Indochina, has destructive and long-lasting effects on human health and the environment. However, neither the chemical producers nor the American military have been held accountable for the development, use, and legacy of these toxins. For those who believe this was unjust—like Richard Falk who proposed an International Convention on the Crime of Ecocide in 1973—a separate law to prevent and punish ecocide was deemed necessary.

To date, there are 3,700 international environmental agreements to regulate different policy areas, including conservation, pollution, oceans, air quality, transboundary waters, and even outer space. While existing environmental laws prohibit polluting activities beyond the permitted level and require polluters to pay for clean-up costs (the “polluter pays principle”), as Polly Higgins noted, they have proven neither sufficient nor effective in preventing and reducing environmental destruction at its source. Because the modern environmental law has become part of the problem, we need a path-breaking approach to environmental protection.

This is why the criminalisation of ecocide has been increasingly advocated for at global, regional, and national levels. Campaign groups like *Stop Ecocide International* argues that the global criminalisation of ‘ecocide’ would provide an enforceable framework to deter environmentally destructive activities, thereby giving nature due respect in the scales of justice. They have expanded the scope of punishable environmental destruction from war-related activities to corporate actions, emphasising that transnational businesses often trespass the boundaries of national jurisdictions and evade responsibility for environmental pollution.

¹ All of the post-Soviet countries, except for the Baltic states (Lithuania, Estonia, and Latvia), have introduced the crime of ecocide in their penal codes. However, no concrete evidence has been found that this article has actually been enforced in the forerunners of criminalising ecocide, with the exception of Ukraine’s investigation into the Russian military’s destruction of the environment in its territory. Furthermore, the domestic criminalisation of ecocide does not guarantee support for the global criminalisation of ecocide, as illustrated by the case of Russia.

The making of law is a complex process. It is required to balance different, sometimes colliding aspirations, while at the same time encountering dilemmas, challenges, and sceptical and pessimistic views. The criminalisation of ecocide has also met criticism and dilemmas. For example, sceptics are concerned that the jurisdiction of the ICC, which only covers crimes committed after 2002 and within the territories of its member states, is so limited that large corporations based in non-party and non-signatory countries² cannot be effectively held accountable. It is still too early to ascertain the future direction of ecocide law. However, what is undeniably evident is that a new tide in the history of environmental law and justice has arrived.

² Currently, 122 countries are under the jurisdiction of the ICC. Non-party countries refer to signatories that have not ratified the Rome Statute, while non-signatory countries have never signed the treaty. Major countries in the former category include the US, Russia, Israel, and Iran, while the latter category includes China, Turkey, Saudi Arabia, and Vietnam.