

Ecocide: Towards International Recognition

Article by Marie Toussaint

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The fight to have ecocide recognised as a crime against humanity in both international and national law has spanned multiple decades. During this time, countless crimes against ecosystems and their inhabitants – human and animal – have been carried out with devastating effects. Now ecocide has finally made it onto the political agenda in Europe and around the world. But the battle to ensure that legislation means perpetrators will be brought to justice is far from won.

In June 2020, members of France's Citizens' Convention on Climate voted 99% in favour of holding a referendum on "adopting a law that punishes the crime of ecocide in the context of the nine planetary boundaries". A month later, in an open letter to leaders of the 27 EU member states, Greta Thunberg, 150 prominent scientists and almost 3,000 other signatories called on the EU to help make ecocide a crime under international law.

As implied by its etymology, which derives from the Greek *oikos*, "home", and the Latin *occidere*, "to kill", ecocide is literally the destruction of our home, our ecosystems. Although there continues to be legal debate around the concept's exact definition, it is vital that we move towards its recognition at every normative level. Semantics aside, the goal is clear, shared and urgent: to stop the ecocides that directly threaten our ecosystems and the people that depend on them. This emergency is plain to across the world, day in, day out.

The origins of ecocide: Vietnam and Agent Orange

Since 1966, the term "ecocide" has been used to describe what scientists consider the destruction of entire natural environments and the resulting impact on human health. The concept dates back to the Vietnam War; during the "the greatest chemical war of the 20th century", American aircraft sprayed tens of millions of litres of Agent Orange on Vietnam. This extremely toxic herbicide destroyed around 5 million hectares of forest. As well as an increase in diseases associated with a proliferation of mosquitoes, these herbicides also cause cancers and birth defects. In 1972, Swedish Prime Minister Olof Palme opened the United Nations Conference on the Human Environment by calling the Vietnam War an ecocide.

Five decades later, the legal ramifications of the damage to human health and the environment caused by the use of Agent Orange are still playing out. In 2014, Vietnamese activist Tran To Nga, who was directly impacted by the herbicide, sued 26 multinationals who produced Agent Orange, including Monsanto and Dow Chemical^[1], in the French courts. Four years later, the hearings in Tran To Nga's lawsuit were set to be held in Paris on 12 October 2020, promising a chance to hold the corporations involved to account at long last. But due to the pandemic, as well as repeated requests for postponement by the multinationals, the hearings were pushed back to 25 January 2021.

The proliferation of ecocides

Since the 1970s, new fronts have opened up in the battle against ecocide: it is no longer just being fought in courts,

but in legislatures too. The goal is to outlaw ecocide at a national, European and international level.

In 1984, in Bhopal, India, a chemical leak from a pesticide plant owned by Union Carbide – now part of Dow Chemicals – killed 20,000 people. Still today, over 100,000 other inhabitants continue to suffer from serious health problems caused by the city's water supply, which contains levels of heavy metals several million times higher than normal. In Ecuador, between 1965 and 1992, American oil company Chevron Texaco devastated indigenous territories in the Amazon and poisoned over 30,000 of its inhabitants, who now live in the area with the highest cancer rate in Latin America. The firm has so far managed to escape punishment. In April 2010, *Deepwater Horizon*, an oil rig operated by British oil company BP in the Gulf of Mexico, exploded. Over a couple of months, more than 800 million litres of crude oil spilled into the area, threatening around 400 species of animal and polluting over 2,100 km of coastline[2].

Monsanto manufactures the world's most widely used herbicide, the highly toxic Roundup. Not only has Monsanto played a major role in soil and water depletion, the extinction of certain species of wildlife and the decline in biodiversity, the company has also been ordered by a San Francisco federal court to pay damages to a man with cancer who had regularly used its products for over 30 years. In 2017, the judges sitting on the International Monsanto Tribunal called for ecocide to be made a crime under international law. There are, unfortunately, numerous other past and recent examples of ecocide all over the world, such as the harmful impacts of chlordécone in the French Caribbean islands of Guadeloupe and Martinique – an ecocide through pesticide use.

Environmental crime and justice in the Anthropocene

The greatest ecocide of all is, however, much less visible: diffuse pollution, especially greenhouse gas emissions by the “carbon majors”. These 25 fossil fuel multinationals were responsible for 51% of greenhouse gas emissions between 1988 and 2015. It is they who are responsible for the crime of ecocide, not ordinary citizens.

The examples above show that, by choice or by conscious negligence, these companies have perpetrated ecocides, whether diffuse in nature or arising from a single act or accident, that have irreparably damaged entire ecosystems and forever devastated the lives of the people who depend on them. In this sense, the fight against ecocide has much in common with the historic struggle for social justice in our societies. The enemy is the same: a small number of industrial giants and, more broadly, the productivist system that they help to maintain. The struggle of the exploited against the exploiters has now become the struggle of the polluted against the polluters, because while the human impact of ecosystem destruction potentially affects everyone, it is the poor who will be hit first – and hardest.

The pandemic that is currently raging across virtually every society clearly shows us the common thread between different struggles. Covid-19 is a zoonosis, a virus passed to humans by an animal; this animal was very likely a pangolin, an endangered species, but scientists have yet to determine the precise cause. Indeed, the destruction of ecosystems encourages contact between humans and wild animals that carry infectious diseases, such as malaria or Ebola. The most deprived people are the first victims of disease outbreaks. It is estimated that almost half a billion people worldwide could be pushed into poverty over the course of what may be the greatest social crisis in history. The “winners” of the pandemic are, however, the same companies who, through their pursuit of short-term shareholder value, promote activities that destroy the environment and undermine the very structure of the economy. The latest Oxfam report underlines how, while 400 million workers were losing their jobs over the past few months, the world's 500 most valuable companies saw their profits increase by 156%.

The public clearly knows who these companies are, as the conclusions of Citizens' Convention on Climate (CCC) show. The moral yardstick adopted by the CCC in defining the crime of ecocide is major polluters' knowledge of the consequences of their activities, and not intent to harm, which would allow most of them to escape any

prosecution. This approach may require more work before it can be translated into legal terms, but it is a legitimate request. Indeed, these multinationals are driven by greed, and cannot deny their knowledge of the terrifying trajectory the climate is on, nor the sixth mass extinction event that we are causing.

The CCC's conclusions also mark an important step towards redefining the role of human beings in their environment, as the emphasis placed on "planetary boundaries" clearly shows. Planetary boundaries are the thresholds that have been scientifically calculated since 2009 by the Stockholm Resilience Centre: if we cross these boundaries, we risk entering a planetary state that directly threatens human survival. So, it's about challenging the current economic consensus that is founded on the exploitation and degradation of natural resources, which are perceived as limitless. The CCC defines the crime of ecocide as: "any action that has caused serious ecological damage by contributing to a clear and significant breach of planetary boundaries, taken with undeniable awareness of the consequences that would result." While these boundaries do not yet have sufficiently precise and scientifically agreed definitions that can be used as guiding principles for public policy, work continues in this direction, notably in the European Parliament.

Building a basis for action in international law

Since the 1970s, the fight against ecocide has moved from courts to legislatures, with the goal being to outlaw ecocide at a national, European and international level. For legal and operational reasons as much as philosophical ones, and simply the scale of damage inflicted on the planet, the battle has been fought at an international level. While the prospect of an international convention on ecocide, sponsored by the United Nations for example, seems too far off to prevent the catastrophe currently unfolding, adding the crime of ecocide – alongside crimes against humanity – to the Rome Statute that underpins the International Criminal Court (ICC) is now on the table.

The idea isn't new: as early as 1985, the Whitaker report, submitted to the United Nations Commission on Human Rights, recommended making ecocide a separate international crime, alongside genocide, ethnocide and cultural genocide. Between 1991 and 1996, under the impetus of the International Law Commission, the UN's law codification body, real consideration was given to making causing serious damage to the environment an international crime in its own right. However, plans to make ecocide a crime in peacetime were eventually abandoned.

In 2016, the ICC's Chief Prosecutor, Fatou Bensouda, announced her intention to prioritise "prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land." In so doing, the institution was for the first time drawing a connection between crimes against humanity and crimes against the environment. Following the CCC, Emmanuel Macron also committed himself to "enshrining this crime [of ecocide] in international law". But these words have yet to be matched with actions: the Chief Prosecutor of the ICC can do nothing more without the support of member states. A dozen of them have already made ecocide a crime under their national law: Vietnam, Russia, Kazakhstan, Kirghizstan, Tajikistan, Georgia, Belarus, Ukraine, Moldova and Armenia.

In Brazil, following the Brumadinho dam disaster of January 2019, the country's Chamber of Deputies adopted a series of bills (still pending approval), one of which criminalises ecocide, which it defines as causing – intentionally or not – an environmental disaster resulting in significant destruction of flora or deaths of animals. Similar developments are underway in Argentina and certain Mexican states.

Europe: Following not leading

In the EU, Italy is the first country to have made damaging ecosystems a separate crime. Since 2015, its criminal code has made it an imprisonable offence to cause "environmental disasters", which are defined as "irreversible

changes inflicted on the balance of an ecosystem, or a change to the balance of an ecosystem, the rectification of which has particularly serious consequences for a community”.

In France, in 2019, the Senate rejected a proposal to make ecocide a crime under French law by punishing “particularly serious environmental crimes”; a new proposal was also then rejected by the National Assembly. Fortunately, in light of the CCC’s conclusions, Macron has promised to “examine” the possibility of recognising ecocide under French law. Nevertheless, we will need to remain vigilant to ensure that ambitious reflection on the concept of ecocide is not replaced by minimalist reform of current legislation. At the Europe Écologie-Les Verts 2020 summer conference, France’s Minister of Justice announced he would be including an “offence of harm to soil, water and air” in the draft bill on the European Public Prosecutor’s Office, although this EU directive should have been transposed into French law since 2010.

There are encouraging signs at the European level too. The issue of ecocide was raised as far back as 2012, with a European Citizen’s Initiative (ECI) proposing to recognise the crime of ecocide. This mechanism, which is a sort of pan-European petition, can require the Commission to submit a proposal for legislation, so long as it can gather at least one million signatures from citizens residing in at least a quarter of EU member states. Unfortunately, the ECI was unsuccessful.

In 2008, the European Parliament won a key legal battle with the adoption of the Environmental Crime Directive, which harmonised criminal law on environmental protection. It requires member states to implement effective criminal sanctions for certain harmful actions, such as illegally releasing substances into the air, water or soil, illegally trading in wildlife or illegally transporting waste. However, the directive suffers from major shortcomings: criminal offences do not account for harm caused to nature in its own right and are still not properly enforced by domestic public authorities. Greens in the European Parliament are fighting for an ambitious revision of this legislation. However, this will likely meet fierce resistance from the Right, who will point to the serious legal consequences of this paradigm shift for multinationals, companies (such as Shell, ExxonMobil, Chevron, Total and BP) who, between 2010 and 2018, spent no less than €251 million on lobbying in Brussels.

Fighting to turn words into action

Since the Vietnam War, there have been countless ecocides across the planet, from the most spectacular point-source examples to the most egregious diffuse instances. However, they all have characteristics in common: the perpetrators – not just multinationals extracting and/or dependent on fossil fuels, but sometimes states or heads of state too; and the victims – often the very poorest, precarious workers, the indigenous inhabitants of the ecosystems devastated. And, of course, nature itself.

Today, the fight for the recognition and punishment of ecocide has reached a pivotal moment. Never before have citizen climate movements been so strong; never before has the planet been plunged into such a deep environmental and socio-economic crisis; and never before have so many windows of opportunity for change been open.

In the short term, major breakthroughs seem possible in many countries, including EU member states. The Belgian Federal Parliament is currently considering whether to add the crime of ecocide to the country’s criminal code and to propose a similar amendment to the Rome Statute. In Sweden, several mainstream political parties have supported a parliamentary motion sponsored by Green MP Rebecka Le Moine calling for the criminalisation of ecocide. In France, the government has embarked on a spin campaign by proposing a new offence of causing widespread pollution, which it has craftily called the “offence of ecocide”; but ecocide campaigners aren’t fooled, and will fight to ensure the term is not rendered meaningless. There is progress at European level too, with the EU Parliament’s Committee on Development adopting an amendment calling for ecocide to be recognised

internationally, and encouraging developments in the revision of environmental criminal law. Last October, I also brought together nine fellow parliamentarians from around the world to launch the International Parliamentary Alliance for the Recognition of Ecocide: ecocidealliance.org.

This fight is vital and urgent: the struggle against ecocide, the struggle of the polluted many against the polluting few, is a priority for environmental justice, one that is intrinsically linked to historic struggles for social justice in our societies. It is this battle that we must now fight together.

Footnotes

[1] The list of companies involved includes Monsanto, Dow Chemical, Thompson-Hayward, Diamond Shamrock, Hercules, Uniroyal, Thompson Chemicals, US Rubber, Agrisect and Hoffman-Taft Inc.

[2] Jonny Beye, Hilde C.Trannum, Torgeir Bakke, Peter V. Hodson, Tracy K. Collier, "Environmental effects of the Deepwater Horizon oil spill: A review", 2016, Marine Pollution Bulletin 110(1), p. 28-51.



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