

**FEASIBILITY AND RELEVANCE OF CRIMINALIZING ECOCIDE**

*Rupal Rupali\**

**ABSTRACT**

It has been more than fifty years since the term 'Ecocide' was first used in the 1970s, but it's only in the last decade or so that we see the steady emergence of an 'Ecocide movement'. In 2021, an independent expert panel convened by the Stop Ecocide Foundation formulated a legal definition of 'Ecocide', capable of being adopted as a workable crime in the ICC's mandate. This paper studies the different aspects of the criminalization of ecocide, beginning with the history of the various efforts that have went in the process of realizing this criminalization and analyses the utility, feasibility, and relevance of the said criminalization at the level of ICC. The objectives of this paper are two-fold. In the light of the definition proposed by the independent expert panel, this paper first highlights the challenges and benefits implicit in the inclusion of ecocide as the 'fifth crime' against peace in the Rome Statute. Secondly, it raises a few questions about the possible implications of this process of reforms for criminalization on the discourses on 'rights of non-humans' and 'environmental justice'.

*Keywords:* Ecocide, International Law, Rights of Nature, Environmental Justice, and Human Rights.

- I. Introduction**
- II. Ecocide as a Crime**
- III. Criminalization of Ecocide: What it means?**
- IV. Relevance**
- V. Challenges and Limitations**
- VI. Implications and Prospects**
- VII. Conclusion**

---

\* Student, Ph.D. (First year), International Politics, Center for International Politics, Organization, and Disarmament at School of International Studies, Jawaharlal Nehru University (New Delhi).

## I. Introduction

THE WORLD today is still reeling from the pandemic of the century – COVID19 which is allegedly a new zoonotic disease, often associated with interference in or destruction of wildlife.<sup>1</sup> It has not even been two years since the Australian Bushfires were still raging and killed around three billion animals.<sup>2</sup> Amazon rainforests have also faced unprecedented fires in recent years.<sup>3</sup> This is to say that, with increasing instances of fires, floods, droughts, hurricanes, poisoned water, degraded soil, contaminated air, species' extinction, rising temperature and the phenomenon of climate change, etc, being witnessed year after year, there has developed a consensus in the 21st century about the degrading ecosystem, and for the need to safeguard it.<sup>4</sup> What remains contested is the question of how to go about it. Criminalizing ecocide (among other things) is one such way. This begs the question of what exactly ecocide is.

When bioethicist Arthur Galston first coined the term in the 1970s, he referred it to mean “*an attempt to wipe out a specific environment*” or unprecedented or permanent destruction of an inhabited environment.<sup>5</sup> Ecocide as discussed today is many things. It could refer to an idea, a movement, a proposed crime, and even a mere description of facts.

The word ecocide derives from the combination of the Greek 'Oikos', meaning home or habitat, and Latin 'Caedere', meaning to kill or demolish. Together it roughly translates to “*killing one's home*”.<sup>6</sup> As an idea, it could mean looking at the ecosystem through the lens of ‘personhood’ that sees it as an entity capable of being killed and hurt and therefore as an entity needing protection in

---

<sup>1</sup> Najmul Haide, Peregrine Rothman-Ostrow, *et.al* “COVID-19—Zoonosis or Emerging Infectious Disease?” *Frontiers in Public Health* para. 2-3 (Nov. 6, 2020), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7725765/> (last visited on April 10, 2022)

<sup>2</sup> “Australia's fires 'killed or harmed three billion animals'.” *BBC News*, July 28, 2020, available at: <https://www.bbc.com/news/world-australia-53549936> (last visited on April 13, 2022).

<sup>3</sup> “Amazon fires increase by 84% in one year - space agency.” *BBC News- Latin America* (August 31, 2019), available at: <https://www.bbc.com/news/world-latin-america-49415973> (last visited On April 13, 2022).

<sup>4</sup> Jojo Mehta, “Ecocide law: protecting the future of life on Earth” *TedXStroud* (May 3, 2021), available at: [https://www.youtube.com/watch?v=BftYb3G52og&ab\\_channel=TEDxTalks](https://www.youtube.com/watch?v=BftYb3G52og&ab_channel=TEDxTalks) (last visited on April 10, 2022).

<sup>5</sup> Jürgen Zimmerer (ed.), *Climate Change and Genocide: Environmental Violence in the 21st Century* 45 (Routledge, 1<sup>st</sup> edn., 2017).

<sup>6</sup> Femke Wijdekop “Against Ecocide: Legal Protection for Earth” *Great Transition Initiative* para. 7 (Aug. 2016), available at: <https://www.greattransition.org/publication/against-ecocide> (last visited On March 15, 2022).

its own right and not in terms of how useful it can be to human life. Eco-centrism rather than anthropocentrism informs the concept of ecocide.

Ecocide as a movement encompasses all the efforts made to establish ecocide as a fact and crime especially those informed by eco-centrism. As a fact,<sup>7</sup> Ecocide iterates what has already been happening to the planet i.e. the mass damage and destruction of the natural world. So, incidents such as Deepwater Horizon oil spill in 2010<sup>8</sup> and Bhopal gas tragedy in 1984,<sup>9</sup> etc., could be considered as instances of ecocide.

As a crime, late barrister and pioneer activist Polly Higgins<sup>10</sup> in 2010, defined it as "*the extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished*".<sup>11</sup> A decade later, the Stop Ecocide Foundation, founded by her, set up an independent expert panel<sup>12</sup> to draft a legal definition of 'Ecocide' that is capable of being adopted as a workable crime in the ICC's mandate. This Panel defined 'ecocide' as "*unlawful or*

---

<sup>7</sup> Stop Ecocide International, Driving the global conversation on Ecocide Law *Stop Ecocide International*, available at: <https://www.stopecocide.earth/> (last visited on April 12, 2022).

<sup>8</sup> In April, 2010, the Deepwater Horizon oil rig exploded in Gulf of Mexico leading to the largest Oil spill in the history such that environmental damage caused persists today. Jen Monnier, "What was the Deepwater Horizon disaster?" *Live Science*, para. 1 (April 19, 2021) available at:

<https://www.livescience.com/deepwater-horizon-oil-spill-disaster.html> (last visited on June 12, 2022).

<sup>9</sup> Bhopal Gas tragedy or Bhopal disaster was a chemical accident that happened on December 3, 1984, in Bhopal, India. It was caused by a toxic chemical leak at an insecticide plant owned by the Indian subsidiary of an American firm. It killed thousands of people, animals, had very harmful effect on the environment and was then called as the worst industrial disaster in the world. "Bhopal Disaster", available at: <https://www.britannica.com/event/Bhopal-disaster> (last visited on June 10, 2022).

<sup>10</sup> Polly Higgins was a barrister, environmental lobbyist, and pioneer activist who left her career as a lawyer to focus on environmental advocacy. She along with Jojo Mehta founded the Stop Ecocide Foundation to advocate for making ecocide a crime. (Stop Ecocide International), available at: <https://www.stopecocide.earth/polly-higgins> (last visited on April 12, 2022).

<sup>11</sup> Peter Doran, Rachel Killean, *et.al*, "Criminalising 'Ecocide' at the International Criminal Court" *Environmental Justice Network Ireland 2* (2021), available at: <https://ejni.net/wp-content/uploads/2021/04/Student-Working-Paper-1-QUB-Ecocide.pdf> (last visited on April 12, 2022).

<sup>12</sup> It comprised of twelve lawyers coming from different field expertise and geographical area. They worked with the assistance of other experts and consultants to develop a legal definition of 'Ecocide' and launched it on June, 2021. "Independent Expert Panel for the Legal Definition of Ecocide" *Stop Ecocide Foundation* para. 3 (June, 2021), available at: <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf> (last visited on April 2, 2022).

wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."<sup>13</sup>

It is in light of this definition that this paper explores different aspects of the criminalisation of Ecocide. It begins with a brief look at the efforts that have been made towards this process and analyses the utility of the said criminalization at the level of the International Criminal Court (ICC). It then explores various challenges and benefits associated with it to determine its feasibility. Finally, it addresses the implication of this development on the associated discourses of rights of 'non-humans' and environmental justice.

## II. Ecocide as a Crime

"The rules of our world are laws... laws can restrict or they can enable. What matters is what they serve."<sup>14</sup> This observation by Higgins draws attention to the importance of laws in the present socio-political landscape and also to the fact that existing laws are deeply anthropocentric i.e. the laws of the world are designed to serve humans whether directly or eventually. And so, Jojo Mehta, the co-founder of 'Stop Ecocide Foundation', remarks "*It's the Earth itself that needs a really good lawyer*".<sup>15</sup>

The first time a state representative called for a law of ecocide in an international forum was at the Stockholm conference in 1972 when the then Swedish Prime Minister Olof Palme evoked the idea of criminalizing ecocide.<sup>16</sup> The second and only other time this was done again was in 2019 at the ICC's annual assembly where John Licht, the ambassador from Vanuatu observed, "*An amendment*

---

<sup>13</sup> *Id.*, at para. 13.

<sup>14</sup> Polly Higgins "Ecocide, the 5th Crime Against Peace." *TedXExeter*, May 12, 2012, available at: <https://www.stopecocide.earth/> (last visited on April 30, 2022).

<sup>15</sup> Adam Weymouth, "Ecocide: Why the Earth is in need of a good lawyer" para. 2 (Mar. 17, 2021), available at: <https://lacuna.org.uk/environment/ecocide-why-the-earth-is-in-need-of-a-good-lawyer/> (last visited on April 12, 2022).

<sup>16</sup> Palme accused the US of committing ecocide in Vietnam War by using Agent Orange, a herbicide that had a long-term harmful effect on Vietnam's flora and fauna. In fact, Ecocide was also being discussed outside the official conference, in some parallel running unofficial events. However, the official outcome document of the Stockholm conference held no mention of ecocide. International, "Is it Time for 'Ecocide' to Become an International Crime?" *The Economist*, Feb 28, 2021, available at: <https://www.economist.com/international/2021/02/28/is-it-time-for-ecocide-to-become-an-international-crime> (last visited on April 22, 2022).

*of the Rome Statute could criminalize acts that amount to ecocide. We believe this radical idea merits serious discussion.*"<sup>17 18</sup>

While the idea may indeed look radical to some, for many, it addresses the very question of survival, especially for the island nations and coastal cities, most of which face challenges of submergence if global warming rose to two more degrees Celsius.<sup>19</sup> Hence, small island nations like Vanuatu and Maldives have been supporting of laws on ecocide.<sup>20</sup>

Even so, much of the political support for the issue is recent; discussions of it had begun in the 1970s only. Richard Falk drafted an 'International convention on the crime of Ecocide' in 1973, suggesting that criminalizing only genocide is not enough.<sup>21</sup>

The concept also kept featuring in the discussions of UN institutions throughout the late twentieth century. The precursor to ICC's Rome Statute initially included an environmental crime in article 26 which stated, "*An individual who willfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced.*" But like all the earlier discussions, none of it made it to the final reports and legislation. By the time the statute draft was voted upon in 1996, article 26 had disappeared.<sup>22</sup>

While criminalization of ecocide at international level remains a slightly distant dream, at domestic level, it has already become a reality in some states that have enacted legislations that designate

---

<sup>17</sup> Gloria Dickie, "Politicians and CEOs Could Face Criminal Charges for Environmental Destruction" *Huffpost*, Dec. 4, 2019, available at: [https://www.huffingtonpost.co.uk/entry/ecocide-crime-environmental-destruction-amazon-deforestation\\_n\\_5de637dee4b0913e6f84f5b4](https://www.huffingtonpost.co.uk/entry/ecocide-crime-environmental-destruction-amazon-deforestation_n_5de637dee4b0913e6f84f5b4) (last visited on April 14, 2022).

<sup>18</sup> Marianne Booker, "Hague must recognise ecocide" *The Ecologist*, Dec. 4, 2019, available at: <https://theecologist.org/2019/dec/04/hague-must-recognise-ecocide> (last visited on April 14, 2022).

<sup>19</sup> Alan Buis, "A Degree of Concern: Why Global Temperatures Matte" *NASA's Global Climate Change*, Jun. 19, 2019, available at: <https://climate.nasa.gov/news/2865/a-degree-of-concern-why-global-temperatures-matter/> (last visited on May 10, 2022).

<sup>20</sup> Isabella Kaminski, "Vulnerable Nations Call for Ecocide to Be Recognized as an International Crime" *The Climate Docket*, Dec. 6, 2019, available at: <https://www.climatedocket.com/2019/12/06/ecocide-international-criminal-court-vanuatu/> (last visited on May 10, 2022).

<sup>21</sup> *Supra* note 16 at 3.

<sup>22</sup> *Supra* note 11 at 3.

ecological damage as a crime punishable by law. These states are Russia, Ukraine, Tajikistan, Belarus, Kyrgyz Republic, Georgia, Moldova and Armenia, etc.<sup>23</sup>

### **Why amend the Rome Statute?**

ICC is the only global mechanism currently that directly assesses the existing criminal justice systems of all its member states<sup>24</sup> so making something a crime at the ICC also encourages member states to criminalize it at the domestic level.<sup>25</sup> Hence, with its symbolism and foundational credit, it is one of the best means for establishing the ideas within international mechanisms.

Presently, there is only one provision in the Rome statute that explicitly targets damage to the environment. This is under the article on 'war crimes' where article 8(2)(b)(iv) prohibits: "*Intentionally launching an attack in the knowledge that such attack will cause... widespread, long-term and severe damage to the non-human environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated*".<sup>26</sup>

This is not only very ill-defined but it takes note of environmental damage only at the time of an armed conflict. Besides, the element of '*mens rea*'<sup>27</sup> required for the offence *i.e.* the offence has to be intentional, makes the chances of prosecution difficult. The part that intones that the said damage should be excessive in relation to the anticipated military advantage is also deeply offensive. Not only is this condition very subjective but it also treats military advantage as an acceptable justification for environmental damage. So it is no big surprise that not a single prosecution has taken place under this provision.<sup>28</sup>

---

<sup>23</sup> In Russia, the law recognizes any mass or massive destruction of the flora or fauna, contamination of the atmosphere or water resources, and commissions capable of causing an ecological catastrophe as ecocide and deems it punishable by deprivation of liberty for a term of 12 to 20 years. The law in other countries also read along similar lines. *available at: <https://ecocidelaw.com/existing-ecocide-laws/>* (last visited on June 10, 2022).

<sup>24</sup> Rome Statute of the International Criminal Court, 1998, Preamble.

<sup>25</sup> *Id.*, art. 86.

<sup>26</sup> *Id.*, art. 8(2)(b)(iv).

<sup>27</sup> *Supra* note 24, art. 30.

<sup>28</sup> *Supra* note 11 at 3.

Furthermore, the provision of 'genocide'<sup>29</sup> is inherently anthropocentric. Even though works have been done showing the intimate interrelation between ecocide and genocide as they are often affected together,<sup>30</sup> to prosecute environmental crime under the provision of genocide, it has to be looked at through the lens of how the damage affects humans. The same holds for 'crimes against humanity'. It is also theoretically possible to prosecute ecocide under 'crimes of aggression' but its application is limited to acts by one state against another state.<sup>31</sup>

Hence, it becomes obvious that existing provisions of the Rome statute are not adequate to address the crime of ecocide. This presents the need for making ecocide the 'fifth crime' against peace. As for the question of legality, the definition<sup>32</sup> drafted by the independent expert panel along the lines of existing provision deftly deals with the challenges about how the new amendment can be incorporated into the existing statute. It provides a clear roadmap for the same and most importantly establishes that it is legally and technically triable.

### III. Criminalization of Ecocide: What it Means?

#### Potential benefits

##### *Ensuring accountability*

The first and obvious advantage would be that it will address the gaps in accountability concerning environmental crime in the existing framework of the Rome statute. And while the immediate jurisdiction of ICC remains limited to its member states<sup>33</sup>, the norms of 'universal jurisdiction'<sup>34</sup> allow for prosecution regardless of where the individual perpetrator is from and where the crime was committed which is especially important given the trans-boundary nature of environmental harms. This potentially extends the scope for accountability further.

---

<sup>29</sup> *Supra* note 24, art. 6.

<sup>30</sup> Martin Crook, Damien Short and Nigel South "Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and global ecosystems environments" 22(3) *Theoretical Criminology* 298-317 (2018).

<sup>31</sup> *Supra* note 24, art. 7(2)(a).

<sup>32</sup> *Supra* note 13.

<sup>33</sup> *Supra* note 24, art. 15bis (5).

<sup>34</sup> "Universal jurisdiction: Questions and answers concerning universal jurisdiction", *Amnesty International*, Dec 1, 2001, available at: <https://www.amnesty.org/en/documents/ior53/020/2001/en/> (last visited on May 14, 2022).

*Facilitating deterrence*

Another important advantage is facilitating deterrence. "*There are thousands of environmental regulations around the world already in place,*" says Mehta while speaking on the subject "*but corporations tend to treat them as complications to be worked around*" as despite expenditures in court cases, they remain more profitable.<sup>35</sup> The ICC mandate of individual criminal responsibility put deterrence to it as no CEO wants to be seen or prosecuted as a criminal, it brings down their share prices and corporations distance themselves from such individuals for their own profit concerns. The criminal activity also cannot be financed by banks, underwritten by insurers, or seen as being supported by politicians.

*Symbolism*

This is where the symbolism comes into play. ICC being the only one of its type holds a lot of symbolic value so it criminalizing ecocide can influence a lot of the populace, corporations, and states to take these crimes more seriously. It can put in place a set of standards that deems ecocide inherently immoral and harmful. For instance, killing people is considered immoral, there are laws against it and it still happens but no one can think of putting a proposal anywhere for killing some humans for some profit or other purposes. This inherent value that is placed on human life needs to be extended to other forms of life and nature too.

*Prevention*

Tonry and Farrington's<sup>36</sup> typology identifies 'Legislation and law-enforcement' as one of the four major approaches to crime prevention.<sup>37</sup> With its symbolic value and obligatory imperatives, criminalization of ecocide could play an important role in prevention of ecocide, which could be one of the most important outcomes of this process. Many legislations have shown this already, for instance, according to a recent study at Yale University, amendments made to 'Clean Air Act' under US Environmental Protection Agency in 1990, accounted for the most of the reduction in

---

<sup>35</sup> *Supra* note 4.

<sup>36</sup> Michael Tonry and David P. Farrington "Strategic Approaches to Crime Prevention" 19 *Crime & Justice* 1-2 (1995) available at: [https://scholarship.law.umn.edu/faculty\\_articles/483](https://scholarship.law.umn.edu/faculty_articles/483). (last visited on June 11, 2022).

<sup>37</sup> "Crime Prevention and Criminal Justice" (UNDOC), available at: <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-2/key-issues/2--key-crime-prevention-typologies.html> (last visited on June 10, 2022).

emission in the following two decades in US.<sup>38</sup> Hence, strengthening the legislations on ecological crimes or ecocide can further aid in preventing more instances of the same. At the same time, it will also complement the existing non-criminal environmental law framework.

#### *Widening scope for reparations and rebuilding*

Another major benefit is that it widens the scopes for reparations and rebuilding in both types of ecocides— Human-induced and naturally occurring. When ecocide will be treated as a crime, there would develop a responsibility on the international community to make reparations and compensations. However, Killean argues there is a need to transform the system of reparations which as of now is very human-centric.<sup>39</sup>

#### *Addressing new challenges*

The criminalization of Ecocide would also enable addressing technology-based challenges or what has also come to be termed as 'Digital ecocide'. New inventions have historically been associated to come with an environmental cost. The prime example is 'industrialization'. However, with the current climate consciousness, technologies have been emerging as a major tool to cut environmental costs with green techs posited as the solution. So, environmental harm is often associated with the old industries like automobiles or mining, etc. However, technology industries are emerging as significant polluters in themselves.<sup>40</sup>

#### *A brief case study of the Block-chain technology*

A major example of 'new polluters' is the very famous development of 'block-chain technology'. Developed in 2008, it's a digital ledger technology that has reached nowhere its potential but has already taken the market by storm. Its most famous application is in the development of cryptocurrencies especially, Bitcoins, and in the development of non-fungible tokens. The biggest attraction of this tech is that although encrypted unlike traditional bank ledgers, all the transactions

---

<sup>38</sup> Bryan C. Williamson, "Do Environmental Regulations Really Work?" *The Regulatory Review* para. 2, Nov. 24, 2016, available at: <https://www.theregreview.org/2016/11/24/williamson-do-environmental-regulations-really-work/> (last visited on June 10, 2022).

<sup>39</sup> Rachel Killean, "From ecocide to eco-sensitivity: 'greening' reparations at the International Criminal Court" 25 *The International Journal of Human Rights* 323-347 (2020).

<sup>40</sup> Lubna Rashid, "The case of nature: Digital Ecocide by Tech Companies" (Sep. 27, 2021), available at: <https://www.hiig.de/en/how-do-digital-tech-companies-get-away-with-unsustainable-behavior/> (last visited on April 10, 2022).

here are decentralized and transparent such that everyone can see them. This completely eliminates the role of middlemen and hence almost any scope for corruption and manipulation. Arguably so, it is imagined to transform the present economy and environment.<sup>41</sup> This is ironic since the yearly energy consumption of bitcoins is already exceeding that of the Netherlands, Argentina, and United Arab Emirates.<sup>42</sup> Similarly, Ethereum, the second-largest cryptocurrency network, is estimated to use more power than is required by the Philippines or Belgium.<sup>43</sup> Together, Bitcoins and Ethereum consumes more energy than countries like Mexico and Saudi Arabia, etc.<sup>44</sup> While there have been many arguments by its supporters such as, 'blockchain technology not necessarily needs that energy but only some applications of it' and that 'new sustainable ways of using this tech can be developed', but as of now the energy consumption numbers remains what they are.<sup>45</sup>

#### IV. Relevance

Studies show that more than one third of the earth's land is degraded owing to desertification, deforestation and pollution.<sup>46</sup> There has been on an average 68% decline in population sizes of mammals, amphibians, birds, fish and reptiles between 1970 and 2016.<sup>47</sup> More than three fourth of the world's forest and one-fourth of world's coral reefs have already been lost and humans are using more resource than the earth can provide. Many human-induced disasters like waste, pollution and global warming, etc. are also consistently on rise and the actors involved in this, generally corporations and states, escape without any punishment.<sup>48</sup>

---

<sup>41</sup> "Blockchain for climate action" *European Commission* (Feb. 22, 2022), available at: <https://digital-strategy.ec.europa.eu/en/policies/blockchain-climate-> (last visited on May 10, 2022).

<sup>42</sup> Cambridge bitcoins electricity consumption index, available at: <https://ccaf.io/cbeci/index/comparisons> (last visited on May 10, 2022).

<sup>43</sup> "Ethereum energy consumption index", *Digicomonist* (2022), available at: <https://digicomonist.net/ethereum-energy-consumption/> (last visited on May 10, 2022).

<sup>44</sup> *Ibid.*

<sup>45</sup> *Supra* note 40.

<sup>46</sup> Stephen Leahy "75% of Earth's Land Areas Are Degraded" *National Geographic*, Mar. 27, 2022, available at: <https://www.nationalgeographic.com/science/article/ipbes-land-degradation-environmental-damage-report-spd> (last visited on June 10, 2022).

<sup>47</sup> This data is based on a global WWF report. "68% Decline in Species Population Sizes Since 1970- WWF" *Earth.Org*, Sep. 11, 2020, available at: <https://earth.org/68-decline-in-species-population-sizes/> (last visited on June 12, 2022).

<sup>48</sup> "Are we destroying our environment?", available at: <https://www.theworldcounts.com/stories/environmental-degradation-facts> (last visited on June 12, 2022).

For instance, in the Bhopal gas tragedy case,<sup>49</sup> ‘Dow chemical’ the US based company allegedly responsible for the accident never actually appeared before court despite many summons and it has been almost forty years.<sup>50</sup> Similarly, in the case for Chevron toxic waste disaster in Ecuador,<sup>51</sup> Chevron-Texaco never properly cleaned out the waste and also refused to apologize and pay the damage when in 2011, it was sentenced to pay \$9.6 billion with a public apology by an Ecuadorian court. However, this judgment was later opposed due to a corruption-scandal involving the lawyer in this case, and the law-suit is still going on presently.<sup>52</sup>

The aforementioned case of the blockchain technology also showed that even though it has tremendous environmental costs, especially with regard to global warming, given its potential and implication for the market, there are no concrete moves whatsoever to regulate its ecological cost. Notably, these techs are but just one small example of all the new and irreparable harm that is being done to the ecosystem every day and every year.

This is to emphasise that while the traditional threats to environmental health persist, new avenues for the same is being also created and so the harm to environment continues to grow. There is indeed a realization in the larger society about harms of environmental damage and there exist numerous laws and regulations to control the same, but environmental damage continues to be committed with impunity. A study has shown that the reason for persistence of environmental crimes despite increase in regulations lies in the failures of implementation and law-enforcement so stronger and more enforceable laws are required.<sup>53</sup>

---

<sup>49</sup> *Supra* note 9.

<sup>50</sup> “No representative from Dow Chemical appeared before court till date despite several summons: Centre” *The Hindu*, Dec. 17, 2021, available at: <https://www.thehindu.com/news/national/no-representative-from-dow-chemical-appeared-before-court-till-date-despite-several-summons-centre/article37977293.ece> (last visited on June 10, 2022).

<sup>51</sup> Chevron owned giant oil company Texaco dumped over 18.5 billion gallons of toxic, contaminating two million acres of the Ecuadorian Amazon at the heights of it operation in 2001. “Chevron-Texaco and the environmental disaster in the Amazon” *European Green*, available at: <https://europeangreens.eu/brussels2013/content/chevron-texaco-and-environmental-disaster-amazon#:~:text=Chevron%20has%20admitted%20that%20Texaco,acres%20of%20the%20Ecuadorian%20Amazon.> (last visited on 12 June, 2022)

<sup>52</sup> Larry Neumeister, “Chevron wins in court, avoiding \$9 billion rainforest fine” *CS Monitor*, Mar. 4, 2014, available at: <https://www.csmonitor.com/Environment/Latest-News-Wires/2014/0304/Chevron-wins-in-court-avoiding-9-billion-rainforest-fine> (last visited on June 12, 2022).

<sup>53</sup> “Dramatic growth in laws to protect environment, but widespread failure to enforce, finds report” *UN Environment Programme* para. 2 and 4, Jan. 24, 2019, available at: <https://www.unep.org/news-and-stories/press-release/dramatic-growth-laws-protect-environment-widespread-failure-enforce> (last visited on June 10, 2022).

This emphasizes not only the relevance of criminalization of Ecocide at an international level but also points toward a necessity for the same. For instance, if ICC makes ecocide a crime, then corporations won't be financing environmentally harmful projects or technologies and so the project leaders or developers shall have no choice but to take care of the environment in their process. This is not about stifling innovation but rather ensuring that innovation does not overrides environmental concerns.

Moreover, Earth could not get back to what it was 100 years ago but it can also not completely get back to what it was a year ago. Technologies already dispersed, revolutions already happened and disasters already occurred could not be undone or taken back. What could be done though is ensuring that further damage to the environment is stopped and remedies are initiated. Criminalizing ecocide could be an important step towards that and so its relevance in the present world cannot be denied.

## V. Challenges and Limitations

### *Limited scope*

The first and most obvious challenge remains the passing of the proposed amendment and limitation remains in the limited scope of ICC. The proposal needs a majority to be tabled for discussion and then support from at least two-thirds of the member states.<sup>54</sup> Even after its adoption to the statute, states can choose not to ratify it. Besides, it has only 123 member states.<sup>55</sup> Apart from limited jurisdiction ICC also might not have enough resources to actually implement the laws everywhere.

### *Inefficiency*

Then there's a critique of the proposal<sup>56</sup> itself arguing that there's a lot of subjectivity in the language as it still contains the '*mens rea*' and '*actus reus*' element and chances of prosecutions

---

<sup>54</sup> *Supra* note 24, art. 121.

<sup>55</sup> The States Parties to the Rome Statute (ICC), *available at*: <https://asp.icc-cpi.int/states-parties> (last visited on May 15, 2022).

<sup>56</sup> *Supra* note 12.

would remain dim even after its implementation.<sup>57</sup> Notably, in its two decades of existence, ICC has only closed around 30 cases with a conviction rate of only 33%, so speed and efficiency is definitely not its strong suit. In this actual feasibility and effective utility of ICC is also questioned. While there's a benefit of deterrence, there is also the issue of what if this criminalization of ecocide becomes just another co-option i.e. all symbolism and talk but no real work. It might lure people into a false sense of accomplishment with barely affecting the reality of ecocide.<sup>58</sup>

### *Biased operationality*

Biased operationality remains a concern. Even so unlike the UN, all member states have equal voting rights at ICC, most of the great power states are not its signatory member. To date, most prosecution has only been seen in the cases of African countries.<sup>59</sup> So what if this law becomes just another tool of one state's imperial ambitions. Added to it are the existing global south and global conflict over rights and responsibilities.<sup>60</sup>

For instance, when the Amazon rainforest was burning in 2019, a lot of European countries supporting criminalization of ecocide such as France, proposed strong sanctions against Brazil and Brazilian president Bolsonaro, as the latter's policies were seen as a major cause of the fire but many voices rose about historical justice and also about shared responsibilities, for policies of Bolsonaro did not exist in isolation, they were supported by international trade market, nations and corporations.<sup>61</sup>

### *Anthropocentric framework*

The incompatibility of ecocide law with the existing reparation system of ICC is also critiqued for the present reparation provision under article 75 in Rome statute is completely anthropocentric in

---

<sup>57</sup> *Supra* note 11 at 4.

<sup>58</sup> Michael G. Karnavas, "Ecocide: the environmental crime of crimes or ill-conceived concept?" (July 28, 2021), available at: <http://michaelgkarnavas.net/blog/2021/07/28/ecocide/> (last visited on May 15, 2022).

<sup>59</sup> Cases, International Criminal Court, available at: <https://www.icc-cpi.int/cases> (last visited on April 14, 2022).

<sup>60</sup> Carmen Gonzalez, "Bridging the North-South Divide: International Environmental Law in the Anthropocene" 32 *Pace Environmental Law Review* 408-410 (2015).

<sup>61</sup> "World must share responsibility for Amazon fires" *Down to Earth*, Aug. 27, 2019, available at: <https://www.downtoearth.org.in/news/climate-change/-world-must-share-responsibility-for-amazon-fires--66357> (last visited on April 10, 2022).

nature i.e. mainly based around monetary compensations and supports.<sup>62 63</sup> Besides, ICC also does not have jurisdictions over one of the biggest contributors to ecological damage i.e. multinational corporations because they are not “natural persons”.<sup>64</sup> So, to ensure criminal liability under the proposed amendment of ecocide, many more changes in the statute would be required.

#### *Limited scope and applicability*

There also remains a concern about how effective can the criminalization be in addressing real environmental harm. A new crime would not have retroactive applicability. So, identifying 'real' perpetrators and enforcing accountability again becomes a difficult task, especially in the context that the ICC has previously faced accusations of political inclinations and racial selectivity.<sup>65</sup> Besides, ICC has 'post-facto' applicability i.e. prosecution takes place after the crime has already been committed. This adds skepticism to its relevance as it casts doubt on its capacity to prevent and reduce real time harm to environment.

Historically, ICC is also not known for taking note of structural violence and slow violence as it is tasked with dealing with the most severe of crimes, it mostly handles extreme cases, but many cases of ecocide could be slow and subtle at outset.<sup>66</sup> Hence, this also limits ICC's capability to deal with crimes of ecocides.

## **VI. Implications and Prospects**

The above analysis shows that most of the challenges to criminalization of 'Ecocide' actually present avenues to revamp the systems rooted in violence and human-centrism with a more egalitarian and eco-centric approach. This way, criminalization of ecocide can usher in a paradigm

---

<sup>62</sup> *Supra* note 24, art. 75.

<sup>63</sup> Fin-Jasper Langmack, “Repairing Ecocide: A Worthwhile Challenge to the ICC Reparation System” (July 8, 2021), available at: <https://voelkerrechtsblog.org/repairing-ecocide/> (last visited on April 10, 2022).

<sup>64</sup> *Supra* note 24, art. 25.

<sup>65</sup> Rachel Killean, “The Benefits, Challenges, and Limitations of Criminalizing Ecocide” *The global observatory* para. 23, Mar. 30, 2022, available at: <https://theglobalobservatory.org/2022/03/the-benefits-challenges-and-limitations-of-criminalizing-ecocide/> (last visited on April 14, 2022).

<sup>66</sup> *Id.*, para. 19.

shift in the existing law and jurisprudence which already has to some level started with the post-humanist turn in the academia.<sup>67</sup>

The idea of anthropocentrism is deeply embedded in European modernity and it has a tradition of binaries and dualism such that it sees things in contrast, conflict, and opposition with each other. For instance, human and nature, subject and object, mind and body and civilized and barbarians, etc. With Ecocide rejecting the centrality of humans, and post-humanism questioning what makes something 'human', these binaries get demolished easily paving the way for a broader understanding of nature and living beings.

The law of ecocide can also help in furthering the 'rights of nature' that started gaining support when Christopher Stone published his book 'Should Trees Have Standing – Toward legal rights for natural objects,' in the 1970s.<sup>68</sup> It would also be a landmark in the discourse of 'rights of non-humans' which is still struggling to apply concepts of 'rights' and 'personhood' to anything that does not carry some vested interests or profit opportunities for humans involved.<sup>69</sup>

Furthermore, it would help in realizing environmental justice<sup>70</sup> and would contribute to broadening the idea of justice that rejects 'human exceptionalism'<sup>71</sup> and that does not center on humans and human relations. This is similar to what the proponents of 'multi-species justice' propound; justice is not just a normative framework but also a guide for institutions, laws, and policies.<sup>72</sup>

---

<sup>67</sup> *Supra* note 11 at 7.

<sup>68</sup> In some countries in Latin America like Bolivia and Ecuador, 'rights of nature' are already recognized legally and constitutionally, respectively. Seventh chapter of Ecuador's new constitution is titled 'rights of nature'. This for the first time in history established 'pachamama' (nature) as a legal entity in 2008. María Valeria Berros, "The Constitution of the Republic of Ecuador: Pachamama Has Rights" *Environment and Society Portal*, 2015, available at: <https://www.environmentandsociety.org/arcadia/constitution-republic-ecuador-pachamama-has-rights#:~:text=In%20the%20case%20of%20Ecuador,regeneration%20of%20its%20life%20cycles%2C> (last visited on June 12, 2022); "Bolivia – national rights of nature legislation" *Australian earth law alliance*, available at: <https://www.earthlaws.org.au/aclc/rights-of-nature/bolivia/#:~:text=The%20laws%20recognised%20that%20nature,have%20cellular%20structure%20modified%20or> (last visited on June 12, 2022).

<sup>69</sup> *Supra* note 35.

<sup>70</sup> Acknowledging and focusing on the intimate relations between humans, cultures and environment and between ecocide and genocide. Martin Crook, Damien Short, Nigel South, *Supra* note 30.

<sup>71</sup> "Human exceptionalism implies that humans are physically separate or separable from other species and nature, and this is because they possess certain consciousness and agency and that this makes their minds more important than other species." Danielle Celermajer, David Schlosberg, *et.al.* (2019) "Multispecies justice: theories, challenges, and a research agenda for environmental politics" 30 *Environmental Politics* 120 (2019).

<sup>72</sup> *Id.*, at 135.

It's also to be noted that the ideas of environmental justice and rights, animal rights, and all the associated discourses although steadily developing, still remain at the periphery of mainstream international politics as it is still dominated by politics of profits, interest, and power. This is mainly because, the facts of ecocide, harms of anthropocentrism, ideals of multi-species, etc. are indeed accepted but they are often looked at as the determinants of a future politics or as something ahead of its time, but as we saw in the previous section, that is not the case. It is very much relevant to present times. The actualizing of ecocide as a crime at the level of ICC would mark a real policy implication and hence, can crystallize in popularizing and mainstreaming of these discourses.

## VII. Conclusion

Different aspects of the criminalization of ecocide show that as far as the question of feasibility stands, this is a difficult but not impossible task. A simple look at major historical legislations shows that many laws that seem very obvious today once seemed too radical to consider.

For instance, 200 years ago when slavery was to be abolished through the British parliament, it met with a flurry of objections. Companies involved in slavery came up with different ideas of regulation like voluntary mechanisms, cap and trade systems, internal laws, etc. The parliament however as we know said no to all the proposals and passed the laws abolishing it. Now, slavery did not end overnight with that legislation but neither did those companies go to ruins. Rather we see that the economy shifted around it creating new avenues.<sup>73</sup> The same could be expected of the criminalization of ecocide. This is about the ecosystem and not big corporations or anyone else, so a firm moral stand needs to be taken for the ecosystem. And if done now, the results could be seen for decades and centuries to come.

On the question of utility and relevance, the arguments that ICC may face institutional biases and implementation limitations are not something unique to the case of Ecocide or even ICC. These issues are common to most international institutions today. The ramifications of making ecocide a crime in fact bring forth both lacunas and scope for improvement in the present justice system

---

<sup>73</sup>*Supra* note 14.

especially in the context where simple human rights approach might not suffice anymore. So, the argument that criminalizing ecocide presents more new concerns than solutions, as discussed earlier, is not in itself a reason enough to negate its utility.

Plato said, "Necessity is the mother of all invention". Criminalizing ecocide would form a step toward making 'care for the environment' a necessity. Every day that passes, new harms and new avenues for harm to the environment are created. It is a fact that 'prevention is better than cure', especially where a full-fledged cure is not really possible. While much of the concerns about criminalizing ecocide revolve around the prosecution and reparation, much of its benefit might lie in its symbolic and preventative capabilities which are the need of the hour. Its' probable implications on the discourses of justice and rights is one such benefit.

It is also to be considered that the ecocide movement is more about not harming the ecosystem than it is about saving it or as Cohen and Duckert explain,<sup>74</sup> "To think that the world is ours to ruin or to save are two expressions of the same hubris" i.e. anthropocentrism. Stopping and preventing harm to the environment is as relevant today as it could be. Hence, it can be said that the best day to criminalize ecocide was 'yesterday' and the second-best day is and will be 'today'.

Therefore, it can be safely concluded that not only the criminalization of Ecocide is feasible but at this point also a necessity and of great relevance. This definitely is in no way a 'one stop' solution to all that causes ecocide, but it would be an important first step. Its implications for the discourses of rights of 'non-humans' and 'environmental justice' also demonstrate that it is not a completely isolated incidence, but would rather actualize policy implications of discourses that have already been steadily advancing.

---

<sup>74</sup> Jasmine B. Ulmer, "Posthumanism as research methodology: inquiry in the Anthropocene" *International Journal of Qualitative Studies in Education* 4 (2017).