

CONTEXTUALIZING THE GENOCIDE-ECOCIDE NEXUS IN INTERNATIONAL CRIMINAL LAW

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ABSTRACT

Since the 1970s, there has been an increasing effort aimed at recognizing ecocide as a crime and integrating it into international criminal law. Scholars, legal experts, and activists have actively debated a comprehensive definition of ecocide while acknowledging the complexities involved in its international criminalization. Within this broader discourse, there is a need to delve deeper into the connections between ecocide and genocide. This paper focuses on one such connection- the Genocide-Ecocide Nexus, building on the concept of cultural genocide. It will analyze the pivotal role played by capitalism and natural resource extraction in shaping this nexus, illustrated by case studies of ecocide from the Amazon rainforests and Nigeria. The paper also examines how the nexus has evolved in light of contemporary efforts to establish a Green Economy. By taking this approach, the paper seeks to evaluate and contextualize the nexus in connection to the discussions surrounding the criminalization of ecocide within the framework of international criminal law.

Keywords: Criminalization of ecocide, Genocide-Ecocide Nexus, cultural genocide, political economy, colonialism, capitalism, climate change, green governmentality.

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I. Introduction

THE EVOLUTION of the ecocide concept can be linked to the 1970s, arising in the wake of the Vietnam War, wherein the United States' use of Agent Orange had caused environmental atrocities. Professor Arthur W. Galston is credited with coining the term, defining it as "the willful and permanent destruction of environment in which people can live in a manner of their

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own choosing”¹. He considered it to be a “crime against humanity”², similar to genocide. Professor Richard A. Falk linked these two concepts by arguing that the way “counterinsurgency warfare” tends to lean towards genocide concerning the population, it also tends to lean towards ecocide concerning the environment³. He was amongst the first few to argue for a new law that captured the future dangers associated with “environmental warfare”⁴. Over the years, several scholars, jurists, and activists have attempted to suitably define ecocide. The latest attempt has been by the Stop Ecocide Foundation through its Independent Expert Panel for the Legal Definition of Ecocide in 2021, which came up with the following definition- “unlawful or 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”⁵. In this definition, the words ‘severe’ and ‘widespread’ embody the linkages that exist between genocide and ecocide⁶. The theorization of the Genocide-Ecocide Nexus helps our understanding of these linkages to a greater extent.

II. The Genocide-Ecocide Nexus

Martin Crook and Damien Short are credited with introducing the concept of “Genocide-Ecocide Nexus”⁷ in 2014. They integrated Raphael Lemkin’s ideas on cultural genocide⁸ with Karl Marx’s ecological analysis of capitalism, thereby generating what they call an “ecologically induced genocide”⁹. One can discern two key components from their analysis. Firstly, ecocide, which involves the extensive “destruction of natural ecosystems”, has the

¹ David Zierler, *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment* 19 (University of Georgia Press, Athens, 2011).

² *Ibid.*

³ Richard A. Falk, “Environmental Warfare and Ecocide- Facts, Appraisal, and Proposals” 4(1) *Bulletin of Peace Proposals* 80 (1973).

⁴ *Id.*, at 81.

⁵ Stop Ecocide International, available at: <https://www.stopecocide.earth/legal-definition> (last visited on April 2, 2022).

⁶ *Ibid.* The definition purposes the following meaning of these terms:

Severe- “Damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources”.

Widespread- “Damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings”.

⁷ Martin Crook and Damien Short, “Marx, Lemkin and the genocide–ecocide nexus” 18(3) *The International Journal of Human Rights* 298-319 (2014).

⁸ Lemkin believed that the core of genocide was fundamentally cultural, representing a systematic assault on a community and its cultural identity. See Leora Bilsky and Rachel Klagsbrun, “The Return of Cultural Genocide?” 29(2) *European Journal of International Law* 373-396 (2018).

⁹ *Supra* note 7 at 299.

potential to serve as a means of perpetrating both “cultural and physical genocide”¹⁰. Secondly, colonialism and capitalism have played a pivotal role in driving and legitimizing the displacement of indigenous populations from their ancestral territories, the exploitation of natural resources, and the resulting “genocidal and ecocidal”¹¹ impacts thereof. Let us deconstruct both of these components.

Raphael Lemkin had theorized eight different techniques of genocide- “political, social, cultural, economic, biological, physical, religious, and moral techniques”¹². Crook and Short argue that due to the fundamental ecological interconnectedness of all human existence, any danger that arises for the “ecology and the biosphere” can lead to the “ninth ecological technique” of genocide¹³. One can understand this link better by recognizing the connection and indivisibility between Indigenous people and their land¹⁴. Alexander Dunlap argues that these people are relying both “materially and spiritually” on “endangered environments”¹⁵. Any “ecologically-destructive intervention”, such as destruction of crops or forests, erodes the livelihoods, survival, and resistance of indigenous communities, serving as a clear illustration of standard counterinsurgency methods involving starvation tactics that may be integrated into a broader plan for extermination¹⁶. Unlike the conventional meaning attached to the term ‘genocide’, this nexus includes situations where a genocide is continued without mass murder. Anja Gauger cites the example of the Aboriginal tribe in Australia, who have been subjected to simultaneous occurrences of ‘cultural genocide’ and ecocide which she refers collectively to be “cultural ecocide”¹⁷. Huseman and Short similarly highlight a gradual, industrial-driven genocide taking place in Northern Alberta (Canada), where the Athabasca Tar Sands project has resulted in significant erosion of the well-being and health, both socially and culturally, of the indigenous communities in the area¹⁸.

¹⁰ Bryan P. Galligan SJ, “Re-theorising the genocide–ecocide nexus: Raphael Lemkin and ecocide in the Amazon” *The International Journal of Human Rights* 1006-1007 (2021).

¹¹ *Ibid.*

¹² Martin Crook and Damien Short, “Developmentalism and the Genocide-Ecocide Nexus” 23 (2) *Journal of Genocide Research* 165 (2021).

¹³ *Ibid.*

¹⁴ Alexander Dunlap, “The ‘solution’ is now the ‘problem’: Wind energy, colonisation and the ‘genocide–ecocide nexus’ in the Isthmus of Tehuantepec, Oaxaca” 22(4) *The International Journal of Human Rights* 557 (2018).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Anja Gauger, *The Continuation of Genocide Without Mass Murder: The Case of ‘Cultural Genocide’ and ‘Ecocide’ in Australia* (2012) 23 (Master’s thesis, University of London).

¹⁸ Jennifer Huseman and Damien Short, “A slow industrial genocide: tar sands and the indigenous peoples of northern Alberta” 16(1) *The International Journal of Human Rights* 216 (2012).

The second component of this nexus is associated with the prevalent political economy. Tim Lindgren argues that ecocide is a phenomenon deeply rooted in the structural foundations of the economic principles that underpin modern industrial societies¹⁹. This issue is at risk of becoming even more pronounced as these societies persist in expanding beyond their ecological constraints. The logic lies in the eternal need for natural resource extraction. Dunlap believes that this extractivism is pivotal in perpetuating and incrementally advancing the connection between genocide and ecocide, reinforcing “The Genocide Machine” concept described by Robert Davis and Mark Zannis²⁰. It becomes imperative therefore, to analyze the role of colonialism and capitalism that drive this nexus.

Crook and Short seem to suggest a historical association between the spread of “capitalism, ecocide and genocide”, which can be traced back to the sixteenth century colonial expansion of capitalism into South America²¹. The “capitalist treadmill”, as they quote Marx, had “eco-destructive properties” that violated the conditions of production that were determined by natural factors²². Crook and Short elaborate on two key structures in the political economy of eco-genocide²³. The first structure is “any extra-economic, coercive” method of blatant theft or pillage that forcibly separates “a social group from their lands” through enclosure processes, most effectively encapsulated by the phenomenon of colonialism²⁴. The second structure, they further argue, pertains to concept of the “law of value” within “the capitalist Mode of Production” underlying the environmentally detrimental forces released by its “extractive” sectors²⁵. Consequently, “material shortages and the natural limits of production”²⁶ have exacerbated conditions of competitive accumulation of value. John Bellamy Foster has worked extensively in illustrating the link between capitalism and ecological destruction. He argued that capitalism’s expansion necessarily “requires the destruction of nature”²⁷. Put simply, to manufacture and increase the output of goods, the mechanisms of capitalism necessitate not

¹⁹ Tim Lindgren, “Ecocide, genocide and the disregard of alternative life-systems” 22(4) *The International Journal of Human Rights* 527 (2018).

²⁰ Alexander Dunlap, “The Politics of Ecocide, Genocide and Megaprojects: Interrogating Natural Resource Extraction, Identity and the Normalization of Erasure” 23(2) *Journal of Genocide Research* 215 (2021).

²¹ Michael J. Lynch, Averi Fegadel and Michael A. Long, “Green Criminology and State-Corporate Crime: The Ecocide-Genocide Nexus with Examples from Nigeria” 23(2) *Journal of Genocide Research* 239 (2021).

²² Martin Cook, Damien Short, Nigel South, “Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems environments” 22(3) *Theoretical Criminology* 306 (2018).

²³ *Supra* note 12 at 174.

²⁴ *Ibid.*

²⁵ *Id.*, at 176.

²⁶ *Supra* note 7 at 304.

²⁷ *Supra* note 21 at 241-242.

just the contribution of exploited human labor but also the exploited labor of the available natural resources²⁸. Foster noted the “ecologically unequal exchanges (EUEs)” that have accelerated the “metabolic rift”²⁹. This refers to the transfer of “metabolic materials from developing countries to developed nations”, enabling “increased production and consumption” in the developed world by extracting and utilizing ecological resources from developing nations, all the while causing the destruction of ecosystems in the latter³⁰. Lynch, Fegadel and Long argue that “the ecocide-genocide nexus” illustrates how “green and state-corporate crimes intersect” when the capitalist cycle of production continues to grow³¹. Let us understand the same through some case studies.

III. Case Studies - The Amazon rainforests and the Niger Delta

Bryan P. Galligan SJ has used the concept of genocide-ecocide nexus to bring to light several facets of the prevailing ecocide in Amazon rainforests³². He notes characteristics of genocide in the Amazon crisis which indicate towards a potential “multiple genocide” affecting “indigenous and other subsistence societies”, which, if it has not already started, may be set in motion “when the tipping point is reached”³³. Both local and global forces are driving this crisis. The Bolsonaro regime in Brazil has enabled organized criminal syndicates to function with impunity, in carrying out illegal deforestation through intimidation tactics and physical violence. The global impetus is provided by the need to utilize the abundant natural resources, such as timber, medicinal plants, fish, etc. which pose immense harm to the indigenous communities in several ways. Galligan argues that deregulating the Amazon basin could worsen the “severity and frequency” of floods as well as droughts, constituting a possible “physical genocide” of the local “Ribeirinhos” community whose livelihood is intricately connected around the Amazon’s water levels³⁴. Biodiversity loss tends to perpetuate the cultural genocide by destroying the “social fabric” of these local communities³⁵. Galligan cites the work of Garry Leech in documenting the intergenerational chasm within these communities on account of this ecocide³⁶. A multinational oil company had polluted the Ecuadorian Amazon,

²⁸ *Ibid.*

²⁹ *Id.*, at 243.

³⁰ *Ibid.*

³¹ *Id.*, at 238.

³² *Supra* note 10.

³³ *Id.*, at 1015-1016.

³⁴ *Id.*, at 1017.

³⁵ *Ibid.*

³⁶ *Id.*, at 1018-1019.

creating challenges for local communities to maintain their traditional ways of life. This weakened the younger generation's glue to the indigenous culture as they left the village and sought employment opportunities in the cities of Ecuador³⁷.

One sees this nexus at play in the oil-rich Niger Delta as well. Lynch, Fegadel and Long analyze the case of Nigeria, arguing that its cycle of oil-related production and the historical pattern of governance enabled "eco-genocide"³⁸. Peter Donatus argues that while systematic environmental destruction of African regions and their livelihoods for West's prosperity was nothing new, the ecocide in Nigeria has generated drastic trends of flight and migration of affected communities³⁹. One notes the centrality of this nexus in the region of Oganiland within Nigeria, which faced problems due to heavy oil extraction by the Royal Dutch Shell. Saro-Wiwa was a spirited activist whose book, *Genocide in Nigeria: The Ogoni Tragedy*, linked the devastation of Ogoni lands resulting "from oil extraction to the genocide of the Ogoni people", all influenced by the dynamics of the global economy⁴⁰.

IV. Contemporizing the Genocide - Ecocide Nexus

In recent years, the worldwide reaction to an escalating climate change crisis has seen a greater push for a "green economy", or "green growth" brought about by "market environmentalism". Martin Crook and Damien Short note a transformation of the Genocide-Ecocide Nexus in light of these contemporary developments⁴¹. They argue that projects meant for mitigation of climate change are not just failing in their purpose, but instead, accelerating climate change. Within the context of this nexus, it is evident that such projects have the capacity to, and indeed are, contributing to the "genocidal destruction of entire social groups"⁴². Such projects have exacerbated "green grabbing", which refers to land appropriation for environmental purposes, characterized by the disregard of human rights standards and the essential rights of indigenous communities⁴³. These have produced "ecocidal externalities", adversely polluting and degrading the environment with genocidal consequences⁴⁴. Crook and Short cite an instance

³⁷ *Ibid.*

³⁸ *Supra* note 21 at 236.

³⁹ *Id.*, at 247.

⁴⁰ *Id.*, at 250.

⁴¹ *Supra* note 12 at 168.

⁴² *Ibid.*

⁴³ *Id.*, at 163.

⁴⁴ *Ibid.*

from Kenya where in 2018, a local community member was killed by the government's Forestry Service in an attempt to clear the forests of apparently illegal squatters to facilitate the establishment of Euro Water Towers Protection and Climate Change Mitigation and Adaptation (WaTER) project, led by the European Union. The green grabbing process is usually followed by an attempt to secure control over indigenous land, both "de facto and de jure", by implementing the required "legal and institutional" framework, through "private and state property" systems⁴⁵. They tend to affirm the "legal and political authority" of the respective "settler-colonial or postcolonial state" at the expense of indigenous communities⁴⁶. Complexity of this nexus has deepened further with the "discursive practices" that accompany this phase, which some call as "green governmentality"⁴⁷. The conventional instances of the nexus, as seen from the earlier case studies in the Amazon and Nigeria, tend to rely on "overtly racist exterminatory ideologies", but the contemporary nexus adopts developmental rhetoric, frequently with an environmentally friendly tint⁴⁸.

V. Conclusion

A holistic overview of the Genocide-Ecocide Nexus reveals that it "is a long-term, continuous and coercive process operating by various means and methods"⁴⁹. This poses certain difficulties in integrating it with international criminal law. The fact that the nexus is entrenched within the political economy, enabled by the complicity of both state and non-state entities, leads to an unfavorable scenario with respect to its criminalization. States are more likely to push for a narrower definition of ecocide as a crime, if the corporate stranglehold is stronger on its political apparatus. Moreover, the International Criminal Court's jurisdiction is constrained as it does not cover corporations, nor does it have power over some of the prominent powerful states such as the United States, China, India etc. Even if everything were to fall in place with ecocide being criminalized, the ICC has been accused of disproportionate focus on cases from Africa, while struggling to engage with individuals from the global north⁵⁰. Christine Schwöbel has similarly pointed out the issue of increased opaqueness between "contractors and sub-contractors", which can implicate the global south further while allowing major structural

⁴⁵ *Id.*, at 187.

⁴⁶ *Ibid.*

⁴⁷ *Id.*, at 185-186.

⁴⁸ *Id.*, at 187.

⁴⁹ *Supra* note 14 at 558.

⁵⁰ *Supra* note 19 at 540.

actors, or the “big fish”, to get away⁵¹. Such limitations notwithstanding, Tim Lindgren is of the view that while a radical definition of international crime of ecocide may not inevitably serve as a cure-all solution, it plays a key role in the breakdown of “hegemonic” power structures that legitimize “acts of ecocide”⁵². In contrast to green governmentality mentioned earlier, criminalization opens up “new spaces of resistance” for individuals and groups who represent “subaltern and/or counterhegemonic narratives” and hold positions of influence both “within and outside of international law”⁵³. To conclude, it becomes imperative to dwell deeper into the intersectionality underlying the Genocide-Ecocide Nexus. With ample case studies, we see the reinforcement of the theoretical components of this nexus. Recognizing its integral role in contemporary times helps us contextualize it in the framework of international criminal law.

⁵¹ *Ibid.*

⁵² *Id.*, at 542.

⁵³ *Ibid.*