

LSE Sustainability in Practice lecture



Eradicating Ecocide: laws and governance to prevent the destruction of our planet

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Suggested hashtag for this event for Twitter users: #lseecocide



ECOCIDE

The 5th CRIME AGAINST PEACE

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www.thisisecocide.com

CRIMES AGAINST PEACE

Well being of human life

- principles of universal validity which apply to civilization as a whole
- underpin the prohibition of certain behaviour eg apartheid, genocide
- universally outlawed
- morality based on the sacredness of life

CRIMES AGAINST PEACE

Well being of life

1. Genocide
2. Crimes Against Humanity
3. War Crimes
4. Crimes of Aggression

CRIMES AGAINST PEACE

Well being of life
-all life

1. Genocide
2. Crimes Against Humanity
3. War Crimes
4. Crimes of Aggression
5. Ecocide

International Criminal Court

- prosecution of 'the most serious crimes of concern to the international community as a whole'
- Rome Statute, ratified 2002
- ICC sits in the Hague
- 1st case commenced 2006

Pre-existing hardware

- The UN
- Crimes Against Peace
- The ICC
- The Human Right to Life

Why?

Each day:

- 100 living species become extinct
- 1,000 acres of peat bogs are excavated
- 150,000 acres of tropical rainforest are destroyed
- 2 million tons of toxic waste is dumped
- 22 million tons of oil are extracted
- 100 million tons of GHG's are released

TEEB report:

2008: \$2.2 trillion

2009: \$4 trillion

Sir David King

- “The 21st Century will be remembered as a century of resource wars”
- Darfur, Iraq
- the era of **Ecocide**



Ecocide

5th Crime Against Peace

- 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.

human-made

other causes

mining

tsunamis

fossil fuel extraction

rising sea levels

toxic waste

floods

deforestation

earthquake

BP Gulf oil spill

ecosystem collapse



peaceful enjoyment

Tort of Nuisance:

= a civil wrong = a legal responsibility that has been breached

(the act of damaging, destroying etc)

= The holder of title or lien over land or possessions, has a responsibility to those who reside there

= the inhabitants of the territory have a legal right to peaceful enjoyment.

Ecocide

the extensive destruction, damage to or loss of ecosystem(s)

‘destruction’ +/- ‘loss’ = evidentially straightforward

What constitutes ‘damage’ in terms of size, duration and impact?

War Crime

‘widespread long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall **MILITARY** advantage anticipated’

Article 8(2)(b)(iv) Rome Statute

Crime

‘widespread long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall **CORPORATE** advantage anticipated’

Crime

‘widespread long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall **COMMUNITY** advantage anticipated’

Environmental Modification Convention (ENMOD) 1977

‘widespread’= encompassing an area on the scale of several hundred kilometers

‘long-lasting’= lasting for a period of 3 months, or approximately a season

‘severe’= involving serious or significant disruption or harm to human life, natural or economic resources or other assets

Responsibility Principle

‘Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced’

International Tribunal, Nuremberg

Superior Responsibility

Prosecution of 'constitutionally responsible rulers, public officials or private individuals'

Article 5, Convention on the Prevention and Punishment of the Crime of Genocide

= Command and Control: the superior rank, the higher the burden of responsibility



300 companies

Industry said:

- economic collapse
- public demand
- it is a necessity

Industry proposed:

- self-regulation
- limit numbers (cap)
- leave it to market forces (trade)
- tradeable permits
- use less/use efficiently
- improve conditions
- pay fines if exceed



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Strict Liability: Lord Bingham

‘Parliament creates an offence of **strict liability** because it regards the doing ...of a particular thing as itself so undesirable as to merit the imposition of a criminal punishment**irrespective of that party's knowledge**....because of the **importance** which is attached to achieving the result which Parliament seeks to achieve.’

Strict Liability v intent: comparator

Death by Dangerous Driving	3 - 4 years
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(objective test)

Manslaughter	8 - 12 years
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(reckless knowledge)

Murder	life
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(intent)

Strict Liability v intent: comparator

Death by Dangerous Driving 3 - 4 years

Ecocide by Damage or Destruction...

(objective test)

Manslaughter

8 - 12 years

Ecoslaughter

(reckless knowledge)

Murder

life

Ecocide/Genocide

(intent)

Ecocide = Strict Liability

- crime of consequence
- imposes a pre-emptive obligation
- absolute prohibition of a moral wrong
- in line with pre-existing strict liability pollution and regulatory offences
- most serious crime
- lower sentencing threshold reflects lack of intent
- effective deterrent: strict liability ensures highest standards (as opposed to neglect) + prohibition

Ecocide = International Crime

- flows to all: global imposition
- crime of ecocide is sanctionable at national level as well as international level
- moral wrong becomes criminal wrong
- crime against the natural person not the fictional
- removes option of costing in as externality
- incarceration is powerful disincentive
- legal obligation of 'superior responsibility'
- shift in consciousness & rapid mobilization

United Nations

‘The UN shall establish ... an international trusteeship system for the administration and supervision of ... trust territories’

Articles 75, Charter of the UN

Trusteeship Council primary role is to assist territories in need

Trusteeship Council

- Imposes legal duty on all nations to provide for those adversely affected and in need of assistance
- provide for those who have been subjected or are at risk of ecocide, both ascertainable and non-ascertainable

Sacred Trust of Civilization

‘Members of the UN... recognise that the interests of the inhabitants are paramount, and accept as a **sacred trust** the obligation to promote to the utmost... the **well-being of the inhabitants** of these territories...’

Article 73, Charter of the UN

Right to Life:

State legal duty to prevent loss of life

- States have a **positive legal duty to prevent foreseeable loss of life** where they have
- **knowledge** of the existence of a real and immediate risk to the life of individuals from from acts of a third party

Right to Life:
put in new laws & close down dangerous
industrial activity

- States **must put into place legal and administrative mechanisms** to deter the commission of offences against the person (eg crime of ecocide), and
- this applies specifically to dangerous industrial activity (eg unconventional oil extraction/power stations)
that is known to put lives at risk.

2 divergent approaches

	PROPERTY LAW	TRUSTEESHIP LAW
STATUS:	ownership	guardianship
RIGHTS:	silent rights - eg right to pollute	rights for all – right to life
DUTIES:	limited	Duty of Care, legal obligations
ENFORCE:	fine	criminal sanctions
BENEFIT:	the few	the wider community

2 divergent approaches

Inert Thing
=
Imposed Value \$\$\$
=
Commodity

PROPERTY LAW



Living Being
=
Intrinsic Value
=
Responsibility

TRUSTEESHIP LAW

ECOCIDE

The 5th CRIME AGAINST PEACE

2010:

International Year of Biodiversity

2000 – 2010:

International Decade
for the Culture of Peace

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