

WORKSHOP REPORT

**PROSECUTING ECOCIDE:
PROSPECTS FOR ENFORCEMENT NATIONALLY
AND INTERNATIONALLY**

Held on Wednesday 29 November 2023
Carlos III University, Getafe Campus Room “Buero Vallejo” (14.0.11)

Event organized by:



With partners:



ACADEMIC COORDINATORS:



Thomas Obel Hansen & Montserrat Abad Castelos

STOP ECOCIDE COORDINATORS:




Maite Mompó & Rodrigo Lledó



WORKSHOP RATIONALE

This Workshop, hosted jointly by Universidad Carlos III de Madrid and Stop Ecocide – with support from ICEL and IUCN World Commission on Environmental Law and the grants mentioned below – sought to understand options and challenges to achieve greater accountability for environmental crimes. It took the starting point in exploring the rationale, feasibility and possible consequences of recently made suggestions for expanding accountability for environmental crimes at International Criminal Court (‘ICC’) level.

The workshop paid particular attention to the Independent Expert Panel (IEP) ‘ecocide’ proposal, tabled in June 2021, its potential strengths, possible weaknesses and prospects for enforcement. The proposal has quickly achieved widespread support among policy-makers, activists, academics and many others. Should it ultimately be adopted by the ICC Assembly of States Parties this would undoubtedly be seen by many as an important advancement in both international criminal law and environmental protection.



However, observers have pointed to challenges associated with adopting the ecocide proposal in its current form and effectively enforcing it at ICC level, including important questions around the proposal's definition of ecocide, possible resistance by certain stakeholders, and issues surrounding the ICC's capacity to meaningfully enforce an ecocide crime. Importantly, environmental crimes often involve particularly powerful interests including large business enterprises, but is the ICC geared to prosecute the type of actors most responsible for ecocide and other serious environmental crimes?

At the same time, significant developments have recently taken place at the domestic and regional levels, including the presentation of a new EU environmental crime directive and the adoption of expanded environmental crimes legislation in numerous national jurisdictions around the world – in some cases seemingly drawing on the IEP ecocide proposal. But what are the opportunities and challenges for national legal systems to prosecute ecocide and more broadly advance accountability for environmental crimes? For example, how could extraterritorial jurisdiction principles be utilized to promote justice for environmental crimes that are committed outside the State wishing to exercise jurisdiction, including in conflict zones? Criminal law is not the only way to achieve greater accountability for environmental crimes, raising questions for example concerning the prospects of relying on other legal frameworks such as tort law. Further, since conflict and post-conflict societies are often particularly affected by environmental crimes, what could be the role of transitional justice measures addressing these crimes?

Exploring these and related themes through presentations and debate with academics from different disciplines, practitioners and activists, this workshop aimed to facilitate a critical and timely discussion of the different avenues for advancing justice for serious environmental crimes including ecocide – and to build bridges between disciplines, research agendas and academia-policy-practitioner relations. The workshop was in hybrid format, allowing presenters and participants to join online.

WELCOME REMARKS


Recordings of welcome remarks available at:
[https://media.uc3m.es/video/656d899f9b2ac020346cd5bc?
track_id=656d9f3d9b2ac020da2153b2](https://media.uc3m.es/video/656d899f9b2ac020346cd5bc?track_id=656d9f3d9b2ac020da2153b2)

Welcome remarks by: **Thomas Obel Hansen, Montserrat Abad Castelos, Laura Carballo Piñeiro, Rodrigo Lledó, Maite Mompó**



From left to right: Montserrat Abad Castelos, Thomas Obel Hansen, Rodrigo Lledó, Maite Mompó, Laura Carballo Piñeiro (on screen)

The organizing team welcomed participants and audience to the ‘Prosecuting Ecocide’ workshop, and expressed their gratitude to the broad range of experts joining in-person or online for this important conversation – including State representatives, former members of the IEP, environmental justice activists and representatives of key environmental law organizations, lawyers, including some working at EU level and others involved in drafting national legislation, leading scholars from different backgrounds working on environmental justice and representatives of business associations. The organizing team expressed hope that bringing together such a broad range of stakeholders and experts in environmental justice could add new perspectives – and provide new and productive thought – on key issues about



achieving greater, better, and more meaningful accountability for ecocide and other serious environmental crimes. Members of the organizing team outlined the agenda of the Stop Ecocide campaign; the Pax Natura grant in the context of which this event is organized; and thanked the various institutions, organizations and University bodies that provided support for the event.

OPENING PRESENTATION


Recordings of opening presentation available at:
[https://media.uc3m.es/video/656d899d9b2ac020346cd598?
track_id=656d8e0c9b2ac020ad6d5852](https://media.uc3m.es/video/656d899d9b2ac020346cd598?track_id=656d8e0c9b2ac020ad6d5852)

Christina Voigt - Professor of International Law, University of Oslo; president of WCEL; member of the International Expert Panel for the definition of ecocide




Christina Voigt joining online with her presentation

The presentation highlighted the need for strengthening environmental protection through enhanced legal protection and criminalization, in this regard noting a series of positive developments that are currently taking place including at the European Union level with the revised Environmental Crimes Directive. Having outlined previous work on ecocide, the presentation detailed core issues in the IEP definition of ecocide, framed around five



central considerations. First, concerning the importance of anchoring ecocide in a possible amendment of the Rome Statute, the IEP proposed an independent provision that would capture the most severe destruction of the environment as a self-standing crime, to respect existing Rome Statute crimes and further in acknowledgment of the fact that the serious environmental crimes regularly occur in peacetime. The definition further sought to capture harm to the environment as such, independently of any harm to humans. Second, the IEP had to strike a balance between novelty and being realistic in terms of States' expectations and relying on terms already known in the Rome Statute. Third, the architecture of the ecocide crime, as set out in the IEP definition, reflects that the Panel decided on a path involving a general and abstract definition, as opposed to setting out a catalogue of specific examples of ecocide, with a view to facilitating flexibility and to be able to capture an indefinite range of actions, even ones that cannot be foreseen at present. Fourth, the threshold for environmental damage reflects that most human actions are somehow harmful to the environment and a balance had to be achieved through the notions of 'severe environmental harm', and 'widespread' or 'long-term' damage, with the latter terms being disconnected to capture severe environmental harm that is not necessarily both. Finally, the IEP considered issues around the definition of 'the environment', and on that note, opted to define the environment to mean 'the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space'. Further, the IEP was aware that severe environmental harm is often caused by acts that are legal, thereby presenting an important difference from the other four Rome Statute crimes. The IEP sought to address this through the notion of 'wanton', whereby lawful activities would fall within the definition of ecocide to the extent they are clearly excessive in relation to the social and economic benefits anticipated. Concerning the subjective aspects of the definition, the IEP relied on a *dolus eventualis* approach, reflecting that most serious environmental destruction is based on reckless behaviour rather than 'intend' to harm the environment. Having outlined the complexity of a possible Rome Statute amendment process, it was noted that the IEP proposal is important regardless of whether it leads to an amendment of the Rome Statute, because it informs scholarly debate, legislative developments at national and regional levels, and more broadly



understandings of the impact of human activities on the environment. Finally, concerning the links between ecocide and climate change it was observed that the crime cannot be applied retroactively, but any future significant contributions, for example from massive greenhouse gas emissions or deforestation could be captured by the ecocide definition.

Panel 1: CONTEXT AND RATIONALE FOR CRIMINALIZING ECOCIDE

Recordings from panel 1 available at:
https://media.uc3m.es/video/656d899d9b2ac020346cd5a4?track_id=656d95879b2ac020b7355c12



Moderator: Thomas Obel Hansen - Maria Zambrano Distinguished Researcher, Universidad Carlos III de Madrid; Senior Lecturer in Law, Ulster University

Presentations:


“The need for an ecocide crime - Perspectives from Stop Ecocide campaign”, Jojo Mehta - Executive Director of Stop Ecocide International and Chair of Stop Ecocide Foundation

Despite a wide body of environmental laws around the world, we continue to witness destruction of habitats, loss of species, and exacerbation of global heating at a devastating rate. In large part, this is due to a long-standing cul-



JoJo Mehta with her pre-recorded presentation

tural issue, developed over centuries in Western thinking, the issue of separation of ourselves from the natural world that sustains us. We do not perceive the need for balance and reciprocity. We have come to treat nature as an infinite bank of resources, a stance that we know to be illogical on a finite planet. Criminal law is often thought of as a framework for punishment. Yes, that's how it works, but that's not what it's for. Criminal law is protective law. It's what defines the things we deem unacceptable and dangerous. And the damage which has been inflicted on the living world is extremely unacceptable and dangerous to nature, and to people. Ecocide law will strongly reinforce existing laws and helps to shift the cultural mindset and to draw new moral lines. It redefines what conduct is safe and acceptable to engage in. It creates a useful lens through which decision-makers can look to steer strategic change. Ecocide law presents a concrete route to planetary security and will help to steer a safe and just transition. The discussions at the event today will help drive this crucial global conversation, and I wish you a stimulating and successful workshop today.

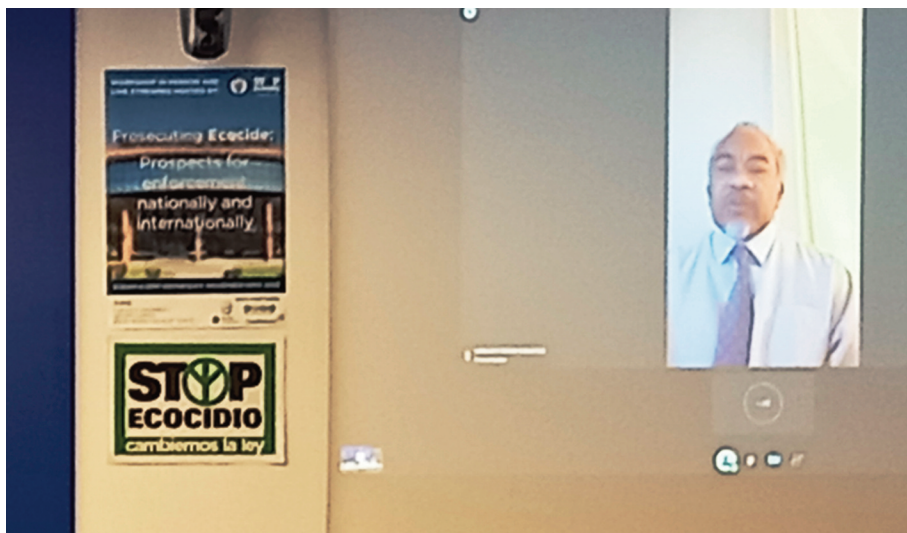


“ILC draft principles and ecocide”, Concepción Escobar - Professor of Public International Law, UNED; Director of the Center of Studies of IHL, Spanish Red Cross; Former Member and Special Rapporteur of the UN International Law Commission; Former Head of the International Law Department of the Spanish MFA

Over the past quinquena (2012-2022), the International Law Commission has attached great importance to the protection of the environment, which has led it to adopt two instruments of considerable interest: the Draft Articles on the Protection of the Atmosphere and the Draft Principles on the Protection of the Environment in Relation to Armed Conflict. In both cases, it has dealt with the issue of damage caused to the environment and the responsibility arising from such damage. This approach is particularly significant in the case of the Principles on the Protection of the Environment in Relation to Armed Conflict (PERAC), adopted in 2022. This instrument sets out a set of principles that are applicable to the protection of the environment before, during and after an armed conflict that places the environment at the heart of the system. The Draft Principles refers to the obligation to prevent and mitigate, as well as to the obligation to repair. Although the Principles follows a general and comprehensive approach, it contains provisions relating to responsibility for damage to the environment, including criminal liability. Thus, in addition to the identification of damage and attacks to the environment as a war crime, it defines the obligation of States to establish measures at national level for the respect of the environment by companies and to deduce the corresponding responsibility for the damage caused, which is understood independently of other forms of international criminal responsibility that individuals may incur for such acts. Therefore, the Principles on the Protection of the Environment in Relation with Armed Conflict must be duly considered in any reflection related to ecocide.


“State perspectives on the need for an ecocide crime”, Mr. Ambassador Georges Maniuri - Vanuatu’s Ambassador to Europe

IDS, or Small Island Developing States, have a unique perspective on the need to address ecocide as a crime, emphasizing the importance of the rule



Amb. Georges Maniuri joining online with his presentation

of law. The vulnerable nations and communities including indigenous communities, located in various regions around the world, face the immediate and devastating consequences of environmental degradation and climate change due mainly to human activities. For them, the protection of the environment is not just an abstract concept; it is a matter of survival. The recognition of ecocide as a crime is crucial for SIDS because it would establish a legal framework to hold individuals and entities accountable for acts that cause severe harm to the environment. The rule of law ensures that no one is above the law, and by applying it to ecocide, we can deter destructive practices and promote sustainable development and target investment to more environmental friendly sources of energy. For this to happen, international cooperation and collaboration are crucial in introducing the relevant legislation and strengthening the enforcement of international environmental law. To address the root causes of ecocide and promote sustainable practices, SIDS can also work towards strengthening the implementation of existing international agreements, such as the Paris Agreement, and advocate for stricter regulations on industries that pose significant threats to the environment. Introducing the concept of ecocide into national legislation is a crucial step and strengthening international law and relevant institutions,



such as the Rome Statute and the International Criminal Court (ICC), is essential to address ecocide effectively. It is timely the Rome Statute is amended to explicitly include ecocide as a punishable crime, providing a clear legal basis for prosecution. Additionally, the ICC could be given broader jurisdiction to investigate and prosecute individuals and corporations responsible for ecocide acts, even if they are not directly linked to armed conflicts and ensuring that perpetrators are held accountable for their actions. SIDS recognize the urgent need to criminalize ecocide and emphasize the importance of the rule of law in protecting the environment. Strengthening international law, amending the Rome Statute, empowering the ICC, and promoting international cooperation are practical way forward to reinforce the legal framework and institutions necessary for combating ecocide effectively. By doing so, we can foster a more sustainable and equitable future for all. Ecocide acts can have devastating consequences for these nations, exacerbating issues such as rising sea levels, loss of biodiversity, and increased vulnerability to natural disasters even rendering islands uninhabitable.

“Frontiers in green finance disclosure”, Chidi Oti Obihara - Senior fellow for climate finance with Drawdown Labs; Senior Advisor at SBTi (online)

The presentation emphasized that adopting the crime of ecocide is something that can help business by creating and formulating a new strategic framework for business to work with nature. The business context presents an additional perspective to often highly legalistic conversations about ecocide. Disclosure of company activities is crucial, and the greenhouse gas protocol has been significant in that regard. Supply chain-based emissions must be considered. Thinking about the future, it is vital that companies report ‘avoided emissions’, meaning activities that companies undertake to reduce their carbon footprint by avoiding potentially strategic decisions that would be high carbon. Further, going forward business should increasingly focus on ‘marketing spent’, involving companies’ spending on messages that have a net impact on society concerning carbon intensity of activities, and ‘lobbying campaign spending’, involving the carbon impact of action in policy-making areas. Finally, there are sectoral biases concerning perceptions of the impact of businesses on the environment, for example with regard to




Chidi Oti Obihara joining online with his presentation

the sectors of agricultural and agroforestry businesses. We move to a future where nature is a partner and ecocide law is a significant part of that.

“Towards a holistic consideration of crimes against nature committed in times of armed conflict”, Montserrat Abad Castelos - Professor of Public International Law at Universidad Carlos III de Madrid; Co-director of the ICEL’s International Secretariat; Co-Principal investigator of the Project Making Peace with Nature and Making Nature a Key for Peace [PaxNatura, Part I])

The three points of departure for this paper are as follows: 1) When criminalizing ecocide at any level, whether international or national, it is worth foreseeing conducts committed in the specific context of armed conflicts; 2) The normative framework to protect the environment in relation to armed conflicts is still incomplete and fragmented; and 3) Since there are several branches of IL somehow involved here (mainly IHL, IEL, HRL, ICL, Transitional Justice, Ius Post Bellum and Environmental Peacebuilding), this rich intersection field shows great complexity and



challenges, but also new possibilities. Despite scorched earth tactics have existed since ancient times, the progress of the values of humanity and the protection of nature, together with the evolution of law and technology should serve to face violations against nature according to new perspectives. Given that, perhaps, the aftermath of any armed conflict is when more can be done to build sustainable peace, this paper explores three needs deeply intertwined. First, to better understand the potentialities of the relationship between nature and transitional justice and draw further implications from it, underlining here truth and the right to know, which are crucial to pursue accountability, to get reparation for victims, and to get sustainable peace. Second, to advocate for the establishment of a specific and official monitoring mechanism with powers to conduct post-conflict assessments in a systematic and universal way. And third (since the previous need-proposal may not be realistic in the short term), to show that fact-finding commissions and other official investigative bodies (e.g. UNITAD) could and even should take evidence in relation to crimes against nature. Recent developments such as the adoption of the R2HE at the universal level, could be a new pressing factor. The main conclusion is that there is room to explore possibilities for investigation by official bodies in the realm of crimes against nature committed in armed conflict, which could be useful in paving the way to enforce prosecution of ecocide and improve transitional justice mechanisms.

Panel 2: ECOCIDE & ENVIRONMENTAL CRIMES PROSECUTION AT THE ICC


Recordings of panel 2 available at:
https://media.uc3m.es/video/656d899d9b2ac020346cd59e?track_id=656da04e9b2ac020cc359892



From left to right: Rodrigo Lledó, Matthew Gillett, Thomas Obel Hansen



Kevin Heller joining online as moderator



Moderator: Kevin Heller - Professor of International Law and Security, University of Copenhagen, Denmark (online)

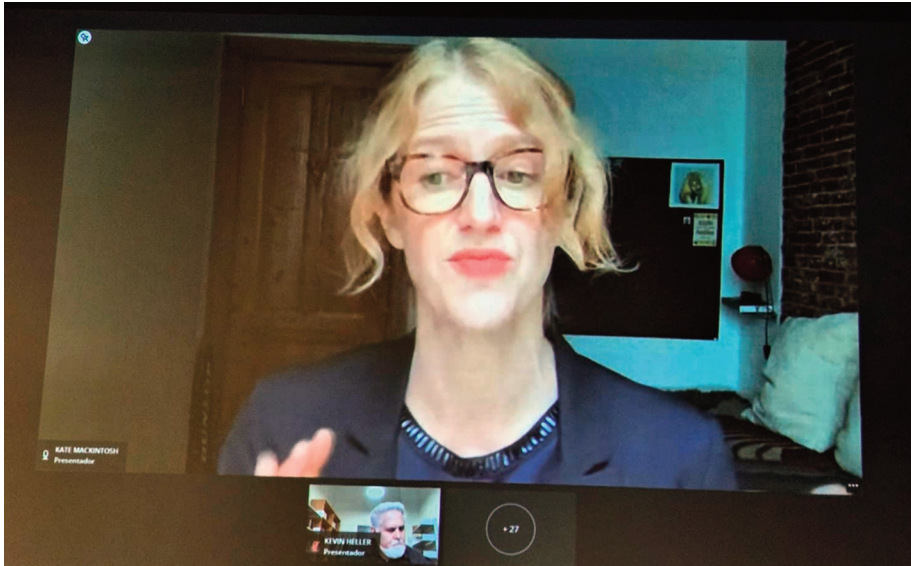
Presentations:

“Enforcing ecocide: how to prosecute environmental harm under international criminal law”, Matthew Gillett- Senior Lecturer, Essex Law School, UK; former Prosecution Lawyer, International Criminal Court

Prosecuting international crimes is rarely straight forward. Novel legal questions often arise, and access to witnesses and evidence is frequently precarious. Nonetheless, the Prosecution must prove the elements of the crimes beyond reasonable doubt in order to secure convictions. Cases focusing on environmental harm are likely to be particularly complex, partly because of the limited precedent and partly because of technical nature of proving this offending. This presentation will run through a prospective chronology of an environmental crimes prosecution before the International Criminal Court (ICC). It will highlight contentious issues likely to arise including in relation to: the selection of charges; elements of the crimes, including the mental element and causation; key types of evidence; expert witnesses; and potential defences. By referencing previous ICC cases and those of other international criminal tribunals, the analysis will identify potential obstacles to enforcement, along with means of surmounting those issues, while adhering to human rights protections as required under the Rome Statute.


“Ecocide, background, definition and international proposal”, Kate Mackintosh - Deputy chair of the International Expert Panel for the definition of ecocide; Executive Director of the Promise Institute for Human Rights at the UCLA School of Law

Based on the presenter’s work with the Independent Expert Panel (IEP), this presentation focused on explaining the ecocide definition in light of the broader context and history seeking to criminalize ecocide, and explained in which ways the panel drew upon existing law and legal principles. Current conversations about ecocide, it was argued, need to be viewed in a historical context, going back to the ecocide definition coined in 1970 by US biologist



Kate Mackintosh joining online with her presentation


Professor Arthur Galston and the 1973 proposal by Professor Richard Falk concerning an international convention on the crime of ecocide. The presentation further explored the relevance of the work of the ILC to ecocide as well as the Rome Statute, including an assessment of article 8(2)(b)(iv) concerning the war crime of causing widespread, long term and severe damage to the natural environment. On this basis, the presentation engaged details in the IEP definition, noting among other issues that it has two threshold tests, one which attaches to the acts – ‘unlawful or wanton’ – and one which attaches to the damage – ‘severe and either widespread or long-term’. Concerning the first threshold, it was observed that the panel sought to reflect the proportionality test in relevant provisions in the Rome Statute as well as reflecting the language of the existing war crime of pillage, which consists in unlawful and wanton destruction of enemy property. Concerning the second threshold, it was explained that the IEP sought a compromise solution, as the process was a balance between capturing harm that should be prohibited and proposing a crime that has a chance of being accepted by States. Further, the inclusion of the word ‘culture’ in the IEP definition was explained with reference to the need to encapsulate the cultural value of the



natural environment to certain groups, especially indigenous peoples, in this regard noting that this draws from the definition of severe under the ENMOD Convention.

“Reflections from inside the IEP about the ecocide crime”, Rodrigo Lledó - Member of the International Expert Panel for the definition of ecocide; Director of Stop Ecocidio Americas, vice president of Derechos Humanos Sin Fronteras (DHSF) and professor at the International University of La Rioja (UNIR)

This presentation discussed the origin of the crime of ecocide, its historical evolution, and the creation in 2020 of an Independent Panel of Experts to define this crime in legal terms. As a former member of this panel, the speaker offered a first-person testimony about its composition and operation, as well as the consensus achieved around the legal definition, and the following proposal to incorporate the crime of ecocide as the fifth crime under the jurisdiction of the International Criminal Court. The presentation addresses some key technical aspects of the definition, with special emphasis on its two thresholds regarding the action and the damage to the environment. Respecting the action, it must be unlawful (according to national or international law) or wanton (reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated). Regarding the damage to the environment, it must be severe and either widespread or long-term. Respecting the subjective link between the perpetrator and the criminal act (*mens rea*), the definition of ecocide proposes adding an additional element to those that already exist by default in the Rome Statute, what is *dolus eventualis*, due to the way in which damage to the environment occurs in practices in peacetime. Finally, the last key point is the characteristic of the ecocide as an endangerment crime (which constitutes a novelty for international criminal law), due to the desire to incorporate the precautionary principle and prevent damage to the environment.



“Prosecuting ecocide: The norms-adoption/ enforcement paradox in ICL”. Thomas Obel Hansen- Maria Zambrano Distinguished Researcher, Universidad Carlos III de Madrid; Senior Lecturer in Law, Ulster University, UK

Taking the starting point in examining current debates about expanding accountability for environmental crimes, this presentation took a critical look at the prospects of norms adoption and enforcement within the ICC system, focusing in particular on the IEP ecocide proposal. Even if some commentators question the ICC’s capacity to meaningfully enforce a potential adoption of the IEP ecocide proposal, most commentaries still take for granted that expanding the ICC’s jurisdiction over environmental crimes is ultimately the best, or at least a very central, answer to the problem. This presentation questioned that assumption for two main reasons: 1) predominantly directing attention towards pushing for the ICC’s adoption of the IEP ecocide proposal could be disproportionate, perhaps even misplaced, because of the substantial challenges and risks associated with trying to adopt the proposal at ICC level, and – even if that ultimately does happen – the expected difficulties delivering meaningful accountability outcomes for ecocide and other serious environmental crimes at ICC level; 2) national legal systems are already quite responsive to – or perhaps rather, form part of – the ecocide ‘momentum’. The presentation emphasized how opposition among key players in the so-called ‘rules-based international order’ to possible ICC scrutiny of crimes committed by actors subscribing to that system is a main challenge to meaningful accountability for environmental crimes at ICC level. The presentation concluded by outlining alternative options for environmental crimes accountability in domestic and regional legal frameworks.

Panel 3: ECOCIDE & ENVIRONMENTAL JUSTICE IN NATIONAL AND REGIONAL LEGAL FRAMEWORKS

Recordings of panel 3 available at:

https://media.uc3m.es/video/656d899e9b2ac020346cd5b6?track_id=656d9d0e9b2ac020c74c3832



From left to right: Maite Mompó, Patricia Willocq, Jaime Doreste

Moderator: Maite Mompó - Director of Stop Ecocide in Spanish language; degree in Law and specialized in ecological ethics, sustainability and environmental education; activist in human rights, peace and environment

Presentations:

“An ‘Ecocide Wave’ of National Legislation: Feasible, Fast, Effective”, Darryl Robinson - Professor of Law, Queens University, Canada

By what process should a crime of ecocide be established? A lot of attention is currently focused on amending the ICC Statute. But there are challenges with that approach: the difficulty of amending the Statute, the limited capac-



Darryl Robinson joining online with his presentation

ity of the Court, and the fact that a crime in the ICC Statute would likely need a particularly narrow definition to warrant inclusion. Another alternative would be an ecocide treaty. But even a treaty can take at least a decade of more to enter into force. A more organic option is a “bottom up” wave of national legislation. This option is not just an aspiration: a wave of national legislation appears very much to be already underway. However, a challenge for legislators is that ecocide is difficult to define; there many unusual issues to define it in a workable and effective way. Each possible solution is vulnerable to plausible serious criticisms. One way to facilitate national efforts would be a declaration or Model Law, that would not require formal adoption like a treaty. It could build on the IEP definition, taking into account later criticisms and innovations. Many would consider a mere declaration to be less impressive than a treaty, because it is not directly binding, but it would resolve a coordination problem, and would be fast, effective and feasible. Another benefit is that it could also encourage national actions on other wrongdoing falling short of ecocide, and related offences like carbon fraud.

“Perspectives from national legislation in Brazil”, Paulo Busse - Lead lawyer at Climate Counsel; expert at Ecocide Advice Centre; Co-Head of the Environmental and Climate Crisis Practice Group at Global Diligence Alliance



Paulo Busse joining online with his presentation

This presentation tells the story of the development of the Brazilian Ecocide Law from the drafting of the bill based on the Independent Expert Panel’s definition of ecocide as an international crime adjusted to the classic form adopted by Brazilian Criminal Law, the concomitant formation of a coalition of civil society exponents and organizations, indigenous leaders, academics, opinion makers, politicians and political parties around the initiative until the ongoing political strategy being pursued for approval of the bill at the National Congress.


“Belgium and the criminalisation of ecocide: a pioneering country for global environmental justice”, Patricia Willocq - Founder and Director at Stop Ecocide Belgium and coordinator of Stop Ecocide in French language; award winning photographer exhibited by OHCHR, UNESCO and UNICEF

The journey towards recognising ecocide as a crime in Belgium has been both challenging and triumphant. The complex institutional mechanisms and divisions within the country added layers of difficulty to the process, but through persistent efforts, Belgium is on the verge to include an international crime of ecocide into its domestic legislation while playing an active role on diplomatic level to amend the Rome Statute of the International Criminal Court. The inclusion of ecocide in the revised penal code, if validated by the Parliament, will mark a significant step forward in aligning national legislation with the urgent global need for environmental protection and the scope of the law will be broadened by the translation of the European crime directive into regional level. As Belgium stands on the verge of institutionalising the recognition of an international crime of ecocide, it serves as a beacon of hope and an example for other nations to follow. The collaboration between government bodies, international organisations, and civil society demonstrates that a collective and coordinated effort is essential to address the pressing environmental challenges facing our world.

“The EU’s Environmental Crime Directive”, Roxane Chaplain - Lawyer specialised in environmental law working at the European Parliament as part of MEP Marie Toussant team



Roxane Chaplain joining online with her presentation



This presentation examined questions around why we need a crime of ecocide at EU level, how the concept of ecocide become part of the political debate in the EU Parliament, to the point of becoming one of the central issues in the revision of the Environmental Crimes Directive. It explored how that deal was reached – and what are the next steps. The presentation concluded that recognizing ecocide at EU level is not just an improvement of existing law, it's a complete revolution. The text adopted could usher in a new age of environmental litigation in Europe, because a fundamental victory has been achieved that should extend beyond our borders. In the current anti-environmental political context in Europe, this legal text is a point of support for all those who defend the environment in court and fight the impunity of criminal firms that all too often flout the law and are currently working to unravel environmental democracy in Europe. The text adopted is also a call for coherence: it should no longer be possible to adopt legislation allowing GMOs or re-authorising glyphosate when we collectively decide to condemn attacks on living things. These are the new tools that we need to invent, legal tools that acknowledge the interdependence of human beings and nature, that stop defining nature as a good that we can regulate, but as a common that we need to protect.

Panel 4: ENVIRONMENTAL CRIMES, HUMAN RIGHTS & TRANSITIONAL JUSTICE

Recordings of panel 4 available at:
https://media.uc3m.es/video/656d899e9b2ac020346cd5b0?track_id=656d95239b2ac020bf2536b2



From left to right: Rodrigo Lledó, Maite Mompó, Marina Lostal

Moderator: Rodrigo Lledó - Member of the International Expert Panel for the definition of ecocide; Director of Stop Ecocidio Americas, vice president of Derechos Humanos Sin Fronteras (DHSF) and professor at the International University of La Rioja (UNIR)


Presentations:

“Prosecuting environmental crimes at the Special Jurisdiction for Peace: The experience of Macrocase 02” - Ana Elena Abello Jiménez - Former legal officer at the Chamber for Recognition of Truth, Responsibility and Determination of Facts and Conducts of the Special Jurisdiction for Peace, Colombia



Ana Elena Abello Jiménez joining online with her presentation

The presentation addressed the specifics of Macrocase 02 before the Jurisdicción Especial para la Paz (JEP), which is a ‘territorial situation’ relating to the cities of Tumaco, Ricaurte and Barbacoas where most of the habitants are ethnic people: indigenous or afrocolombian, with collective territory. A territorial and ethnic approach was used to investigate, to understand the multiple macrocriminal dynamics displayed by the different armed actors who made presence on those territories. In a decision published on July 5th, 2023, the Chamber found several patterns of macrocriminality, including damages to nature and territory. In this case, ‘territory’ was recognized as a victim itself, because it is an essential part of ethnic people. Being part of the ethnic people, it is alive and an independent subject of rights. The pattern of macrocriminality included the contamination produced by the oil spill for the attack against the trans-Andean oil pipeline and the contamination by criminal mining. Given the sources of law of JEP, members of the former FARC were charged with war crimes such as the destruction of natural environment, destruction of cultural places, and crimes against human-




ity that included these conducts such as extermination of ethnic people and ethnic persecution. The presentation explained the experience of the chamber prosecuting environmental crimes with an ethnic perspective.

“The need to implement restorative mechanisms in the face of ‘legalised’ environmental harms from the perspective of ecological justice”, Esteban Morelle Hungria - Lecturer in Criminology and Criminal Law at the Jaume I University, Spain

This presentation explored the imperative of implementing restorative mechanisms in the face of "legalized" environmental harms, emphasizing the perspective of ecological justice. The term "legalized" implies that certain environmental degradations are sanctioned by existing laws or regulatory frameworks. The presentation dug into the complexities of such legal issues, questioning their alignment with principles of ecological justice. Ecological justice serves as a guiding framework throughout the discussion, emphasizing the need for fair and equitable treatment of all entities within ecosystems. The presentation argued that relying solely on legal structures may not adequately address the broader ethical and ecological considerations inherent in environmental issues. By adopting a restorative approach, the focus shifts from mere compliance with laws to actively repairing and mitigating the damage caused by human activities. Drawing on examples of environmental degradation that may be deemed legal within existing frameworks, the presentation illustrates how ecological justice can be sidelined in favour of economic interests. The argument underscores the necessity of integrating restorative mechanisms into legal systems to rectify the ecological imbalances caused by human actions, suggesting that incorporating restorative measures can lead to a more comprehensive and sustainable approach to addressing environmental harms, aligning with the principles of ecological justice. This perspective encourages a shift from punitive measures to collaborative efforts aimed at restoring ecosystems and ensuring their resilience. In conclusion, the presentation advocates for a paradigm shift in addressing environmental harms by embracing restorative mechanisms within legal frameworks.

“The one-dimensionality of human rights approaches to the protection of the environment”, Marina Lostal - Senior Lecturer, Essex Law School, UK

The presentation addressed two distinct human rights trends that have emerged in recent years to address the challenges posed by climate change. One is the greening of human rights which is happening through the recognition of a human right to a healthy, clean and sustainable environment and through climate change litigation. The second trend refers to the (nominal) recognition of nature as a holder of legal interests by the Inter-American Court of Human Rights in the Lhaka Honhat case. The presentation offered a meta-reflection on the parameters of these human rights trends to expose the limits of their reach. To this end, this presentation makes use, respectively, of the concept of uni-dimensionality developed by the philosopher Herbert Marcuse, and the theory of systems proposed by the sociologist Niklas Luhmann. Both theories refer to the safeguards of the status quo: Marcuse alludes to the first-order safeguard, that is, the widespread inability of individuals to think outside the system, and Luhmann focuses on the outer layer of the system which repels any ideas that transcend it. The presentation observes that, notwithstanding the recognition of a human right to a clean, healthy and sustainable environment and eventual victories in the courtroom, these developments are not capable of altering the underlying context that has enabled climate change. To illustrate the points, the presentation discusses how embedding the concept of ‘sustainability’ in the right acts as a Trojan horse by ensuring that economic growth considerations are always considered in matters of environmental protection. The presentation also alluded to the jurisprudence of the IACtHR, including claims that there exists an autonomous right [...] [that] protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves”. However, a key institutional rule for the IACtHR to have jurisdiction over a case, requires the alleged violation to have been committed against a human person. As a result, the purported right of nature is very far from being autonomous as it cannot operate in the absence of a human victim. In system’s theory language, the institutional make-up of this human rights court rectifies the judges’ attempt to transcend current conceptual boundaries. In other words, the IACtHR “give(s) the appearance of referring to the environment outside while only ever being able



to refer to the system itself” (Buitendag, p. 569). In conclusion, the presentation sheds light on the limits of the impact of current human rights movements to combat the effects of climate change. It shows that the greening of human rights maintains an exploitative stance towards the environment, and the recognition of the rights of nature has been, so far, symbolic

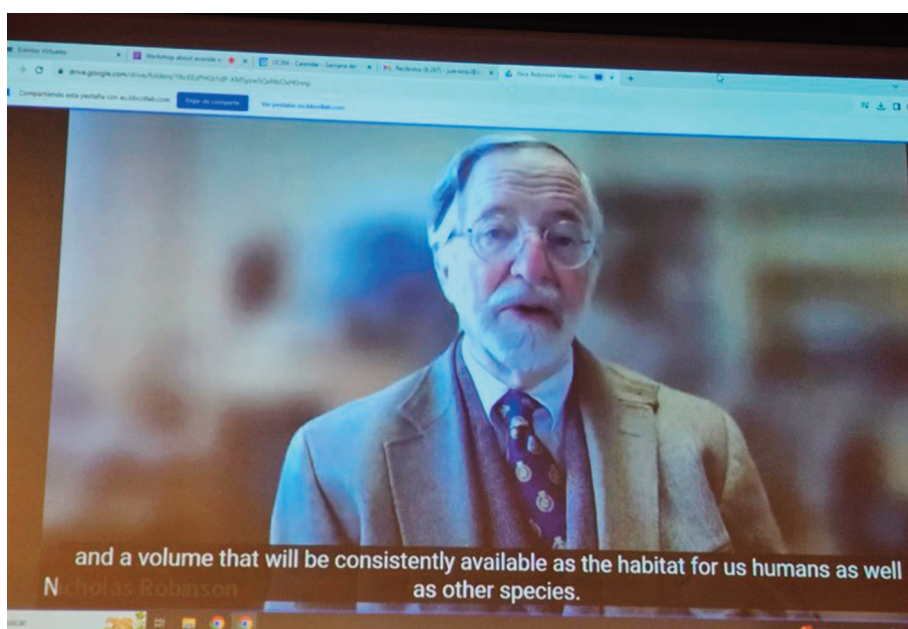
“Relation between rights of nature and ecocide: El Mar Menor case”, Maite Mompó - Director of Stop Ecocide in Spanish language; degree in Law and specialized in ecological ethics, sustainability and environmental education; activist in human rights, peace and environment

This presentation observed that rights of nature and Ecocide Law are the two sides of the same coin. Both are two emerging and innovative legal pathways that aim for a systemic reframing of western legal systems using an ecocentric ethic: reorienting environmental ethics away from an anthropocentric worldview (i.e. humans are perceived as central, separate and dominant over Nature) and catalyzing a transformation in how humanity relates to, values, and uses Nature (i.e. humankind as one of many interdependent species in the entire natural ecosystem). Rights of Nature is broadly understood as an emerging legal framework that recognizes Nature as a subject of Rights with intrinsic value worthy of protection in itself, rather than a resource for human benefit. Criminal law is first meant to be a protective law using a framework for punishment in order to avoid harm, in this case, to Nature. The legal recognition of “Ecocide” as a crime at the international level could go a long way to shifting attitudes and guiding behaviour with regard to (severe) threats to the Earth’s ecosystems. The Mar Menor is the first ecosystem in Europe being granted with legal status and it is an extraordinary case of citizenship in action to protect a loved and precious ecosystem. Just few months later of having Law 19/2022, September 30th, that recognizes rights to the Mar Menor, there are already three examining courts that have summoned it as a legal entity.

CLOSING REMARKS

Recordings of closing remarks available at:
[https://media.uc3m.es/video/656d899e9b2ac020346cd5aa?
track_id=656d8f819b2ac020bb089b22](https://media.uc3m.es/video/656d899e9b2ac020346cd5aa?track_id=656d8f819b2ac020bb089b22)

“Perspectives from ICEL leadership”, Nicholas Robinson- Executive President of ICEL; Chair Emeritus of the WCEL; Emeritus Professor at the University of Pace, NY, USA:

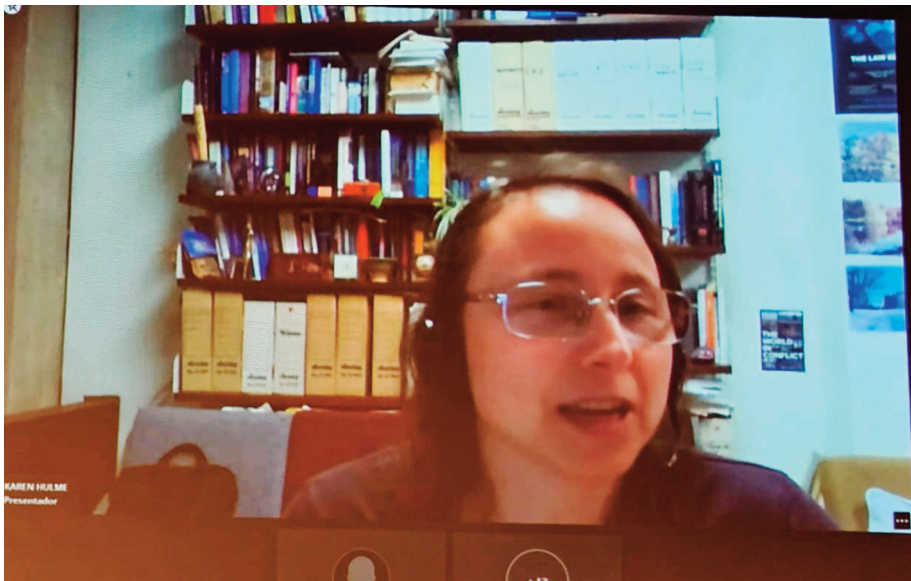


Nicholas Robinson joining online with his closing remarks


The remarks emphasized the need to secure a safer environment, including clean air, safe water, and a sustainable food sources. These are birth rights, not just privileges, to be observed for everyone. The rights of the environment, substantially promoted with UNGA resolution 76/300 of 28 July 2022 and other recent initiatives, need to be further elaborated, to understand the application of these fundamental principles. The work of the ‘green rights coalition’ has proven significant in this regard. The principle of re-

silience, which is needed to respond to climate change and other environmental harm, needs to be further promoted. A current tool facilitating resilience involves environmental impact assessment (EIA). EIAs are now used as a standard tool in national legislation as well as international law. In the face of the current ‘war on nature’, various rights need to be further integrated – and that in an intersectoral way, such as through EIA, that moves beyond the boundaries in current understandings of rights. Clarifying the application of ecocide will make clear the urgency of respecting environmental rights. Existing ecosystems need to be stabilized, as we are entering a new phase of humanity’s consciousness and humanity’s ability to use law to advance the well-being of all of life. A daunting task, but one that can be achieved, to protect future generations and the planet itself.

“An invitation to collaborate in the work of the Specialist Group on Environmental Security and Conflict Law”, Karen Hulme- Professor of Law, University of Essex, UK and IUCN WCEL Chair of SG on Environmental Security and Conflict Law:



Karen Hulme joining online with her closing remarks



The remarks explained the work of the IUCN WCEL Environmental Security and Conflict Law Specialist Group, which co-sponsored the present event. The Specialist Group is focusing on – and will continue to do so in the years ahead – issues relating to ecocide, other environmental crimes, environmental justice, armed conflict as well as the ILC draft principles on protection of the environment in relation to armed conflict. As part of that work, the Specialist Group is working to prepare additional guidance and assistance for States on the relevant topics. Prof Hulme encouraged experts on the relevant topics to join the IUCN WCEL Environmental Security and Conflict Law Specialist Group.

CONCLUDING OBSERVATIONS BY ORGANIZERS

Recordings of concluding observations by organizers available at:


<https://media.uc3m.es/video/656d899c9b2ac020346cd592?>

[track_id=656d8c9b9b2ac020a2324042](https://media.uc3m.es/video/656d899c9b2ac020346cd592?track_id=656d8c9b9b2ac020a2324042)



From left to right: Montserrat Abad Castelos, Maite Mompó, Thomas Obel Hansen, Rodrigo Lledó

The organizing team thanked all supporters of the event, and the presenters and participants for joining the event – and for facilitating an enriching debate about accountability for serious environmental crimes and the crime of ecocide in particular. Progress on several levels is currently being achieved to support greater accountability for these crimes – and that at a pace unseen in several other areas of accountability for serious crimes. Many challenges remain ahead, but it is important to also focus on the progress being made and how it comes about. Environmental activists, including the Stop Ecocide campaign, have clearly played a crucial role promoting legal change at various levels, including nationally and regionally. Avoiding impunity for serious environmental crimes, including ecocide, must be a key objective going forward, not only for the sake of the environment itself but also with a view towards promoting human rights and securing sustainable peace. Debate and academic discussion is vital, but at the same time differences in detail



must be overcome because what we have in hand is the future of our planet. Understanding different perspectives on these matters is important, but it is also important to keep in mind that time is of essence if that goal is to be achieved. All parts of society must be involved to advance environmental protection and justice – to protect our common house, the planet.


ANNEX

SUPPORTING ENTITIES

The event is organised in the framework of "Making Peace with Nature and Making Nature a Key for Peace" (PaxNatura), funded by the Spanish Ministry of Science and Innovation (Ref.: PID2022-1424842022/ PID2022-142484NB-C21). The event is supported by Universidad Carlos III de Madrid (DECANATO FACULTAD CC. SOCIALES Y JURIDICAS, Convocatoria 2023 de ayudas para la organización de congresos, conferencias, reuniones científicas y seminarios organizados por los departamentos, grupos de investigación y profesores e investigadores de la Facultad de Ciencias Sociales y Jurídicas de la Universidad Carlos III de Madrid (Modalidad C) para la actividad titulada Justice options for environmental crimes in armed conflict; as well as Convocatoria 2023 de ayudas para la organización de congresos y reuniones científicas y workshops por la UC3M (Modalidad A: congresos internacionales) mediante la resolución de 7 de noviembre de 2023 (grant number: UXXI con el código 2023/00447/001). The event further benefits from funding provided by the Spanish government and the EU Commission's 'Next-Generation-EU' framework for the Maria Zambrano Distinguished Research Fellowship (recualificación) undertaken by Thomas Obel Hansen (2023-24) with Universidad Carlos III de Madrid ("Ministerio de Ciencia, Innovación y Universidades" y a la "Convocatoria de la Universidad Carlos III de Madrid de Ayudas para la recualificación del sistema universitario español para 2021-2023, de 31 de mayo de 2022 en base al Real Decreto 289/2021, de 20 de abril de 2021 por el que se regula la concesión directa de subvenciones a universidades públicas para la recualificación del sistema universitario español"). The event is also receiving funding from ICEL and IUCN World Commission on Environmental Law.

LIST OF PARTICIPANTS (in alphabetical order)

Abad Castelos, Montserrat (Professor of Public International Law at Universidad Carlos III de Madrid; Co-director of the ICEL's International Secretariat; Co-Principal investigator of the Project Making Peace with Nature and Making Nature a Key for Peace [PaxNatura, Part I])



Busse, Paulo (Lead lawyer at Climate Counsel; expert at Ecocide Advice Centre; Co-Head of the Environmental and Climate Crisis Practice Group at Global Diligence Alliance)

Chaplain, Roxane (Lawyer specialised in environmental law working at the European Parliament as part of MEP Marie Toussant team)

Carballo Piñeiro, Laura (Catedrática de Derecho Internacional Privado de la Universidad de Vigo)

Doreste, Jaime (Associate professor of environmental law at the UAM; environmental lawyer for Ecologistas en Acción, Greenpeace, SEO/BirdLife, and neighbourhood associations, among others)

Elena Abello Jiménez, Ana (Former legal officer at the Chamber for Recognition of Truth, Responsibility and Determination of Facts and Conducts of the Special Jurisdiction for Peace, Colombia)

Escobar, Concepción (Professor of Public International Law, UNED; Director of the Center of Studies of IHL, Spanish Red Cross; Former Member and Special Rapporteur of the UN International Law Commission; Former Head of the International Law Department of the Spanish MFA)

Gillett, Matthew (Senior Lecturer, Essex Law School, UK; former Prosecution Lawyer, International Criminal Court)

Hansen, Thomas Obel (Maria Zambrano Distinguished Researcher, Universidad Carlos III de Madrid; Senior Lecturer in Law, Ulster University, UK)

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Hulme, Karen (Professor of Law, University of Essex, UK and IUCN WCEL Chair of SG on Environmental Security and Conflict Law)

Lledó, Rodrigo (Member of the International Expert Panel for the definition of ecocide; Director of Stop Ecocidio Americas, vice president of Derechos Humanos Sin Fronteras (DHSF) and professor at the International University of La Rioja (UNIR))

Lostal, Marina (Senior Lecturer, Essex Law School, UK)

Mackintosh, Kate (Deputy chair of the International Expert Panel for the definition of ecocide; Executive Director of the Promise Institute for Human Rights at the UCLA School of Law)

Maniuri, Georges (Vanuatu's Ambassador to Europe)

Mehta, Jojo (Executive Director of Stop Ecocide International and Chair of Stop Ecocide Foundation)

Mompó, Maite (Director of Stop Ecocide in Spanish language; degree in Law and specialized in ecological ethics, sustainability and environmental education; activist in human rights, peace and environment)

Morelle Hungria, Esteban (Lecturer in Criminology and Criminal Law at the Jaume I University, Spain)

Obihara, Chidi Oti (Senior fellow for climate finance with Drawdown Labs; Senior Advisor at SBTi)

Robinson, Darryl (Professor of Law, Queens University, Canada)

Robinson, Nicholas (Executive President of ICEL; Chair Emeritus of the WCEL; Emeritus Professor at the University of Pace, NY, USA)

Voigt, Christina (Professor of International Law, University of Oslo; president of WCEL; member of the International Expert Panel for the definition of ecocide)

Willocq, Patricia (Founder and Director at Stop Ecocide Belgium and coordinator of Stop Ecocide in French language; award winning photographer exhibited by OHCHR, UNESCO and UNICEF)

FINAL REPORT: This Report has been compiled and coordinated by Dr. Thomas Obel Hansen.



