

## The missing crime: an international context

By Polly Higgins



***“Man has consciously and unconsciously inflicted irreparable damage to the environment in times of war and peace”***

Draft Ecocide Convention 1973

### *Ecocide law summary:*

- *Imposes an international and trans-boundary duty of care on any person exercising a position of superior responsibility, without exemption, in either private or public capacity to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s);*
- *Imposes an international and trans-boundary duty of care on governmental agents, specifically Heads of State and Ministers with environment/energy/climate change portfolios;*
- *Prohibits any person exercising a position of superior responsibility from committing, aiding and abetting ecocide, through the imposition of criminal sanctions;*
- *Redirects investment away from dangerous industrial activity into a global green economy;*  
*and*
- *Restores the damage caused by manmade ecocide under restorative justice provisions.*

In the intervening 40 years since the Stockholm Conference, many States supported an internationally legally binding law that would create a mechanism to hold States accountable for their environmental crimes. The law that was being drafted was an international crime of Ecocide that was to apply in both peace and war-time. Many countries supported it but the final statute, now known as the Rome Statute of the International Criminal Court and which was adopted in 1998, had a missing crime. Ecocide was removed from the final text.

The Rome Statute as it currently stands codifies four Crimes Against Peace - genocide, war crimes, crimes against humanity, crimes of aggression. From the very outset of the United Nations, the International Law Commission (ILC) was assigned by the General Assembly in 1947 to “prepare a draft code of offences against the peace and security of mankind,” which was to include the “crimes of most serious concern to humanity”. It was between 1984 and 1996, a span of 11 years, that the most intense legal discourse was undertaken to establish a law of Ecocide.

When I drafted a law of Ecocide I had no knowledge of the history of such a law; in March 2010 I approached the ILC with a fully drafted amendment to the Rome Statute to include the crime of Ecocide. It was only later I was approached with a document that referred to a previous law. As a result, the Humans Rights Consortium at the School of Advanced Legal Study, University of London undertook on my behalf to search for the paper trail, which uncovered a history spanning over 4 decades of engagement. The summary paper of their findings, *Ecocide is the Missing 5<sup>th</sup> Crime Against Peace* can be downloaded at <http://www.sas.ac.uk/hrc/projects/ecocide-project>. One of the biggest problems we face is law that protects greed; it is the law for companies to put the interests of their shareholders first, which means that the current norm is for profit to drive all decisions. Even when this means that we destroy the Earth in the process.

But what of existing environmental laws? Nationally and internationally we have a whole raft of laws that have been put in place to minimise - but not stop - an activity. In so doing the problem continues, often in time worsening. History demonstrates that laws dealing directly or indirectly with the environment, for example such as pollution reduction measures, have comprehensively failed where reliance is placed on incremental mechanisms, limitations, efficiency measures and permit allocations. So what can be done? Climate negotiations have all but collapsed and international treaties that have no criminal enforcement have proven their inadequacy.

Enforcement is crucial. International criminal justice is not confined to the sole punishment of the individuals – it goes wider than that. Under the draft Ecocide Act (see <http://www.eradicatingecocide.com> for Act and Directive) restorative provisions have been included, ready to be implemented at a national level. For an international crime of Ecocide to work, it must be a powerful disincentive as well as a remedy for miscarriages of justice.

In the EU there is already a draft Ecocide Directive; all it needs to be tabled fast is for 1 million EU citizen votes to be collected by January 2014. Called a European Citizen's Initiative, our vote in Europe counts. What happens next lies in our hands. Here in the EU, citizens can now drive the agenda forward. This can be our legacy – to look to the future and put in place a law that will foster well-being for not only our businesses, but also for our people and our planet.

So, how to reconcile all these differing issues? The starting point is to embed the overarching principle then build the law from there. In this case, we already know that the duty of care required is one of 'first, do no harm'. Thereafter it's a matter of defining the crime and its reach.

In addition, scrapping inefficient fossil fuel subsidies is essential for renewables growth — thereby increasing global real income by 0.3 percent in 2050, says the *OECD Environmental Outlook to 2050: The Consequences of Inaction* report. (see <http://bit.ly/14sQWZC>). But to scrap fossil fuel subsidies needs the leverage of law that is international in remit; no one country will agree to remove such subsidies as they stand, without fearing it will place a threat on their economies.

An international law of Ecocide will assist the world in meeting its current international climate change obligations; it will ensure this is achieved at least cost to all of our domestic economies and will provide the legislative framework necessary to accommodate developments in the green sector.

There is a recognition that piecemeal law is no longer effective, that for any law to be upheld it needs at the very least regional if not global backing. In addition, law without accountability at the very top end of the decision-making leads to unintended consequences. And this is why a law of Ecocide is so powerful: it addresses both the scale of the problem and the secondary consequences that flow from decision-making that has failed to apply a 'first, do no harm' principle. Furthermore, a law of Ecocide turns the key and creates the enabling conditions to stimulate rapid growth of an economy based on net positive solutions, technologies that are decentralized and community based.

You can read more and support a law of Ecocide at <http://www.endecocide.eu> <http://www.eradicatingecocide.com>

#### About the author:

Polly Higgins proposed to the United Nations in 2010 the law of Ecocide. Since then she has been hailed as one of the Top 10 Visionaries by the Ecologist and is the world expert on Earth Law. In 2012 Polly advised 54 governments, produced a Concept Paper and published her second book, *Earth is our Business*. [www.eradicatingecocide.com](http://www.eradicatingecocide.com).

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