

**An Assessment of the Law of Ecocide and How it
Could Affect Projects Such as the Brazilian Belo Monte
Dam.**

By

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Dedication

This dissertation is dedicated to everyone who helped and encouraged me with this dissertation and academic year, including my family, friends, dissertation supervisor, and especially my parents.

This dissertation contains no plagiarism, has not been submitted in whole or in part for the award of another degree, and is solely the work of Jesse Clare Dyer.

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Abstract

Human actions are continuing to damage ecosystems and cause environmental devastation. Current approaches to the environment are failing to prevent environmentally destructive projects from taking place. The proposed law of Ecocide is addressing environmental problems by prohibiting projects that cause long-lasting and extensive damage to the environment. Unlike other approaches which have addressed the problem of environmental destruction through compromise approaches, such as putting limits on the amount of pollution that can be released, or by creating a marketplace for greenhouse gas emissions, the law of Ecocide prohibits environmentally destructive actions.

Under the law of Ecocide, CEO's of corporations that undertake ecologically damaging projects, and investors in these types of projects, can be held criminally liable for their actions. The law of Ecocide is intended to be an international law, under the jurisdiction of the International Criminal Court. This dissertation assesses the need for the law of Ecocide, the potential effects of the law and difficulties that the law may face. The Brazilian Belo Monte dam is used as a case study through which to explore the law.

Three core reasons for the need for the international law of Ecocide are considered: The first argument is that an international law is necessary for effective protection of the global environment. This argument is analysed through the national environmental laws of Brazil. The second argument is that limitations of other

international approaches to the environment mean that a new approach is needed. The final argument for the law of Ecocide is that there are economic arguments for the implementation of the law. Through exploring these arguments, the conclusion is drawn that the law of Ecocide would be a positive addition to the field of international environmental laws and policies and will help to prevent long-lasting damage being inflicted on the environment through projects such as the Belo Monte dam.

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Introduction

The Earth is facing severe environmental problems. There has long been an awareness of the consequences of continuing to over-exploit the Earth's resources and ecosystems. Meadows, Meadows, Randers and Behrens (1972) came to the conclusion in the *'Limits to Growth'*, that as a result of lack of global action, before long, human use of resources and emission rates would exceed the capacity of the Earth to be used in this way. Despite this awareness, there has been a failure to adequately address this problem. Even though climatologists have stated that is vital to avoid the world's average temperature increasing by more than 2°C (Trainer, 2008: 54-55), the use of fossil fuels and rates of carbon dioxide emissions are continuing to rise. Natural resources are still being depleted and consumed in unsustainable ways and huge numbers of plants and animals are being made extinct. Unless new laws are enacted, it is projected that each of these problems will worsen by 2050. It is necessary to act now to avoid these problems; as scientific evidence shows that it is not possible to keep damaging and putting pressure on ecosystems and the environment and expect them to be able to recover (OECD, 2012: 26). For example, if over 20-30% of the Amazon is deforested, then it is likely that the Amazon may move into a cycle of frequent fires and droughts, resulting in the Amazon rainforest transforming into a savannah grassland ecosystem. As currently there is over 17% deforestation in the Brazilian Amazon, the risk of permanently altering the ecosystems of the Amazon is increasing (Secretariat of the Convention

on Biological Diversity, 2010: 10). It is clear that there is a desperate need to increase protection of the natural environment.

Ecocide is the “extensive damage to, destruction of 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” (Higgins, 2012: 3). This is further defined by the UN as an incident that affects an area of several hundred km², lasts for several months or the period of a season and creates severe damage or seriously interferes with human life and/or ecological and economic resources (UNODA, 1978). Examples of ecocide are currently taking place in ecosystems around the world, for example, the Alberta Tar Sands in Canada (Eradicating Ecocide, 2013). It is already illegal to commit acts of ecocide in wartime (Gray, 1996: 224). However, presently there are no globally effective controls to prevent peace-time practices that cause extensive damage to ecosystems. The law of Ecocide seeks to change this.

The law of Ecocide will prohibit people from committing severe and long-lasting damage against the environment. Under the law of Ecocide, individuals who are in a position of superior responsibility who allow ecocide to take place can be held criminally liable for the damage to the environment that occurs. For example, the CEO of a corporation whose company undertakes ecocide-causing projects or the head of a bank who has invested in ecocide-causing projects, could be held criminally liable for the said ecocide as they hold the foremost responsibility for the ecocide

taking place (Eradicating Ecocide, 2013). Additionally, ecocide is intended to be a crime of strict liability. This means that people may be held liable for causing ecocide whether they intended environmental damage or not. This is to ensure that corporations and financiers focus on identifying any potential environmental harms and preventing damage from occurring (Higgins, 2010: 68-69). This will also send a message that we have a responsibility to ensure that environmental damage does not occur (Higgins, 2012: 10). States will have a duty of care to assist other states that are at risk of being affected by ecocide (Eradicating Ecocide, 2013). The ultimate goal of the law of Ecocide is the prevention of environmental destruction, not to prosecute multiple corporations and investors (Higgins, 2010: 68-69). Preventing ecocide is easier and less expensive than restoring a territory to its original state before the ecocide. Changes that would occur as a result of the law being implemented include corporations having to use production techniques that are not environmentally detrimental.

States will be the primary governing bodies to take action against the crime of ecocide. Where states do not act against acts of ecocide, the International Criminal Court (ICC) is intended to be used to take action against perpetrators of ecocide (Higgins, 2012: 191-192). The ICC has jurisdiction over crimes of genocide, war crimes, crimes of aggression and crimes against humanity (ICC, 1998: 9). It aims to ensure that serious crimes that threaten global peace, well-being and security do not go unpunished (ICC, 1998: 1). Ecocide is considered to be a crime that threatens peace as it destroys ecosystems, alters peoples' ways of life and prevents people

from using natural resources. There is a clear link between natural resources and conflict, for example, conflict over water supplies in the Nile basin (Giordano, Giordano and Wolf, 2005: 47-48). Through damaging and polluting ecosystems, there will be increased resource scarcities which increase the risk of violent conflict. There is a clear imperative to prohibit actions that can lead to these consequences.

In order to include the law of Ecocide as a fifth crime of the ICC it is necessary to amend the Rome Statute of the ICC. In order for this to take place, 81 out of the 121 State Parties that are signatories to the Rome Statute need to agree to the law. The ecocide movement aims to have the law of Ecocide in place by 2020. In order to raise awareness and increase support for the law, the Eradicating Ecocide team is currently campaigning for the law in countries around the world (Eradicating Ecocide, 2013). A European Citizens Initiative has also been launched so that the proposal of the law of Ecocide can be discussed by the European Commission and potentially become a new law of the European Parliament (End Ecocide, 2013). A European Citizens Initiative is a democratic way for new laws to be proposed. Once 1 million votes for a new law or law amendment have been obtained from seven European countries, the new law will be considered (European Commission, 2013). An interviewee involved in the Eradicating Ecocide campaign has informed me that members from the Eradicating Ecocide team have currently had meetings regarding the law of Ecocide with government officials from over 50 countries. There is a great deal of support and drive behind the idea that the law of Ecocide is needed and 10 countries already have a law prohibiting ecocide in place (Eradicating Ecocide, 2013).

This is a positive indicator for the successful worldwide implementation of the law. Once the law has been put into place as a crime of the ICC there will be a five year transition period whereby corporations will be given assistance in changing their operations to no longer engaging in ecocide-causing projects (Eradicating Ecocide, 2013).

A mock trial of the law of Ecocide was held in the Supreme Court in London on the 30th September 2011 to test how the law would hold up in a court of law. The jurors considered whether or not damage done to the Athabasca Tar Sands constituted ecocide, and concluded that ecocide had occurred (Higgins, 2012: 111-112). This is a positive indication for the viability of the law in its present proposed state.

The purpose of this dissertation is to assess the law and discover why there is a need for the proposed international law of Ecocide and to look at how effective it could be in preventing severe environmental harm. The aim is to achieve a measured analysis of why the law of Ecocide ought to be an international environmental law so that projects such as the Belo Monte dam could be prevented, whilst taking a balanced view and acknowledging potential difficulties with the law. However, as this is a relatively short study, it is not possible to consider all possible implications and aspects of the law. The law is worth investigating as it is an exciting new development in the field of environmental law which has the potential to create positive international changes. The lack of academic research conducted upon the

new law and implications associated with it makes it an important new area of study in order to investigate the effects that the law could have.

In order to research and develop the dissertation I will use primary qualitative data which will be collected through interviews with people involved with the Ecocide movement and I will also use secondary data. This will be collected through academic journals, books, websites, newspapers and magazine articles. The books by Polly Higgins, the leading expert on the law of Ecocide have been particularly useful for developing knowledge about and reasoning for the law. As the law was only proposed in 2010 there is a lack of academic work conducted upon the law of Ecocide. Therefore, in order to investigate the law I have used the limited resources available and then compared and contrasted the law with academic analyses of other laws and environmental initiatives. These have included Drummond and Barros-Platiau's work on Brazilian laws and Verschuuren's and Palmers work on international approaches to the environment. Costing analyses of the environment, such as the TEEB study have also been used to gain quantitative data of the potential economic impact of the law of Ecocide. I will use the Brazilian Belo Monte dam project throughout this dissertation as a qualitative case study with which to assess the law of Ecocide and how it could affect projects like this one.

In order to explore this topic, the dissertation will be structured into three chapters, each considering a core topic concerning the implementation of the law of ecocide as a new international law. The first chapter is concerned with examining

why an international law is needed in Brazil in order to effectively protect the environment. The second chapter will consider how the law of Ecocide compares to other international approaches to the environment and why a new international environmental law is needed. The third chapter will examine the economic case for the law of Ecocide. If there is an economic case and business case for the law of Ecocide as well as an environmental case then this will greatly encourage governments to support and implement the law (The Saltus Forum, 2013).

Case Study: The Belo Monte Dam.

The Belo Monte dam is a proposed dam complex in Brazil. The dam will be the third largest hydroelectric dam complex in the world (Cabral de Sousa Júnior and Reid, 2010: 249). This will be situated on the Xingu River, which is one of the major rivers of the Amazon. The dam will divert the majority of the flow of the Xingu River, flooding over 1500 km² of Amazon rainforest and displacing up to 40,000 people. The Belo Monte dam will prevent the flow of the Xingu River from reaching the communities which depend upon it, resulting in loss of access to food and water and abilities to travel. Water quality will worsen and agricultural production for the local people will decrease. The displaced people will be forced to migrate into local cities, where competition for jobs is already fierce.

There has been opposition to the Belo Monte dam for more than 20 years from indigenous people, Brazilian nationals and the international community. Through authorising the Belo Monte dam, the Brazilian government has violated the legal rights of indigenous people by ignoring their right to prior and informed consent of projects that significantly affect their territories in accordance with the Brazilian Constitution and the Convention 169 of ILO. This and other illegalities have led to over 32 lawsuits relating to the demands of the affected populations. Economically and ecologically beneficial alternatives to the dam have been proposed. However, despite these problems associated with the dam and the high

amounts of opposition against the dam, the Brazilian government is still allowing the dam to go ahead (Amazon Watch, 2013).

The building of the dam also threatens the biodiversity of the Amazon. Ten species of fish endemic to the Xingu River will be made extinct as a result of the dam. Many other species will also be negatively impacted, for example, the endangered white-cheeked spider monkey (Hance, 2011). River and land plants and trees will also be severely affected.

Furthermore, the dam is likely to increase greenhouse gas emissions as dams in tropical countries create large amounts of greenhouse gas emissions (Fearnside and Pueyo, 2012: 382). It is estimated that 10 million tons of carbon dioxide were produced in 1990 from four dams in the Brazilian Amazon (Fearnside, 2004: 5). In 1991, an equal amount of carbon dioxide and methane was released into the atmosphere from the Brazilian Tucuruí Dam as the amount of carbon released that year from the huge city of São Paulo (Fearnside, 2004: 3). It is predicted that if built, the combined greenhouse gas emissions of the Belo Monte dam and another proposed dam, the Babaquara dam would be four times higher than that of a fossil-fuel plant (Bank Track, 2013). It is likely that the Belo Monte dam complex and other mega-dams planned by the Brazilian government will contribute to global warming.

For these reasons, the Belo Monte dam complex can be considered to be an example of ecocide. It will have severe and long-lasting environmental effects and

will have devastating impacts upon the lives of the local people. This dissertation will look at how the Belo Monte dam project would be affected by the law of Ecocide.

Chapter One: The Need for an International Environmental Law in Brazil.

The law of Ecocide is intended to be an international environmental law.

Birnie, Boyle and Redgwell (2009: 333) argue that ecocide ought to be understood to be an international crime as it affects the interests of all states, and because states will be better able to enforce against ecocide if it is a universal crime. This chapter is concerned with discovering why a state's natural environment and the global environment could benefit from the law of ecocide being an international law. This question is considered in relation to the Brazilian Amazon and Brazil's environmental laws. Issues considered include, the world impact of damage to resources such as the Amazon, positive aspects and limitations of Brazil's national environmental policies, ways in which the international law of Ecocide can be a beneficial addition to Brazilian environmental legislation, obstacles that the law of Ecocide may face, such as potential Brazilian resistance to the law, the law of Ecocide as the 5th International Crime of Peace and difficulties associated with the International Criminal Court.

The Brazilian Amazon is an incredibly valuable resource to the world. It is probably the most bio-diverse region on the planet (Finkmoore, 2013: 25) and it is known as the 'lungs' of the world (Simpson, 2010: 40-41) as 20% of the earth's oxygen is generated by the trees of the Amazon (Herzog, 2013: 11). Furthermore, there is a clear relationship between the balance of the global atmosphere and the Amazon (Bromley and Cochrane, 1994: 3). The Amazon is of great importance in reducing carbon in the atmosphere, it is estimated that each acre of rainforest

extracts 1,600 pounds of carbon from the atmosphere each year (Amazon Fund, 2013). It is clear that the Amazon needs to be protected due to how valuable its ecosystems are to the planet and the role that it has in helping to decrease the rate of climate change (Herzog, 2013: 13). However, the Amazon has greatly suffered from the effects of human economic development, and looks set to suffer further in the future (Herzog, 2013: 11).

In order to discover why the law of Ecocide would be a useful international law in Brazil, it is necessary to look at Brazil's environmental laws and policies and their successes and limitations. Prior to the 1980's economic growth and development was prioritised in Brazil above and to the expense of all other concerns (Drummond and Barros-Platiau, 2005: 84). However, since the 1980's there has been a fast expansion of Brazilian environmental laws (Drummond and Barros-Platiau, 2005: 98), and there is increased environmental regulation (Gonçalves et al, 2012). However, despite increasing numbers of environmental laws and improvements to the environmental legal framework, there is continued environmental destruction in Brazil. It is necessary to look at the reasons for continued environmental destruction in Brazil despite increasing numbers of environmental laws. Three core limitations are discussed here.

Firstly, lack of funds is a serious issue for the Brazilian Ministry of the Environment. For many years it has had the smallest budget and had the largest budget cuts of all the ministries (Drummond and Barros-Platiau, 2005: 100-101). In

2009, environmental programmes only received a 0.29% share of the federal Executive budget, and the amount allocated to each programme is frequently insufficient to achieve environmental goals (Silva, Juras and Souza, 2012: 2-6). If it is an international requirement to ensure that acts of ecocide do not take place, then in order to meet this requirement, the Brazilian government will have to allocate more money to the Ministry of the Environment. Silva, Juras and Souza (2012: 9-10) hypothesise that fund distribution in Brazil depends upon political factors. The influence that political factors have in fund distribution means that if the law of Ecocide becomes an international law, the government will be likely to allocate more funds to the environment for political as well as environmental reasons so that the Brazilian government does not lose respect in the eyes of the international community. It is vital that this happens and more funds are allocated for environmental protection purposes as unless this occurs, companies may still be able to get away with acts of ecocide. This is a potential threat to the success of the law of Ecocide. However, as pointed out by an interviewee involved in the Eradicating Ecocide campaign, as most companies that commit ecocide are based in developed countries, a lack of funds available for environmental regulation in developing countries will be less of an issue.

Secondly, historically there has been low enforcement of environmental laws and compliance with the laws (de Aragão and Bunker, 2000: 479). This has been a core reason for continued environmental destruction in Brazil. Enforcement and compliance with laws has now been improved through the successful work of the

Ministério Público (the Brazilian public prosecution service). (McAllister, 2005: 225-226). As a result of their work, in 2001, over half of all civil lawsuits concerned environmental crimes (McAllister, 2008: 5). It has also been found by environmental agency officials that their actions deter further environmental crimes from taking place (McAllister, 2005: 225-226). However, although the introduction of the Ministério Público has had a positive effect, it cannot solve the issue of extremely environmentally damaging projects such as dams and reactors being sanctioned by the state (Fernandes, 1992: 50-51). The Belo Monte dam is an example of these projects. The Belo Monte dam is being allowed to take place even though the approval of Belo Monte by the National Congress is a legal violation of the right of indigenous people to have free, prior and informed consent of projects that will affect their way of life. This violates Article 231 of the Federal Constitution (Amazon Watch, 2013). This demonstrates the difficulties faced in preventing a project from continuing in Brazil once permission has been granted by certain governing bodies. This indicates that the overarching authority of an international law is needed as the Brazilian Constitution and Brazilian environmental laws are insufficient to prevent ecocide-causing projects such as the Belo Monte dam once they have been allowed to take place by the ruling party. The power of the President means that without an international law that prohibits the building of the Belo Monte dam as an act of ecocide, it will be able to be completed and be operational despite the social and environmental devastation it will cause.

Thirdly, the Brazilian government has been known to make controversial law changes which have a detrimental effect on the environment. For example, the amendment to the Forest Code reduced the percentage of Amazon land that must be kept in its natural state from 80% to 50% (Börner, 2012). This case demonstrates the power that the Brazilian agricultural lobby has in influencing environmental laws (WWF, 2013). This further demonstrates the need for an international environmental law as whilst Brazilian officials, environmentalists and the Brazilian public wish to protect the Amazon, powerful interest groups are able to override environmental laws in order to protect their own interests. As an international environmental law, the law of Ecocide will not be able to be overridden to suit the needs of certain groups or the political interests of the governing party currently in power and unlike the current situation in Brazil where acts of ecocide are sanctioned, acts of ecocide will not be able to take place.

Despite these problems, Brazil does have good policies in place to help protect the environment which demonstrate that Brazil is concerned with the conservation of its natural resources and ecosystems. This can be seen with the implementation of a new environmental law in 1998 which involved punishments of prison sentences and fines of up to \$50 million for environmental crimes such as illegal deforestation (Schomberg, 1998). Under this law it was made possible for companies and organizations to be penalised for environmental crimes, rather than just individuals as had been the case before (Drummond and Barros-Plataiu, 2005: 100). Making corporations responsible for their environmental crimes is a major step forward in

the way in which corporate environmental responsibility is understood in Brazil. Furthermore, already having a conception of corporate environmental responsibility will make it easier for the law of Ecocide to be accepted. Increased efforts to protect the environment are a positive indication of Brazilian acceptance of the law of Ecocide.

In addition, Brazil is one of the only civil law countries which have enabled group litigation (McAllister, 2007: 693). The 1985 Law of Public Civil Actions made it possible for civil organizations, citizens, public agencies and judges to initiate civil suits to prosecute violators of environmental laws. This is a substantial achievement and means that individuals and organisations can protect environmental resources and ecosystems which are not being adequately looked after and preserved by public officials. (Drummond and Barros-Platiau, 2005: 94-95). Significant environmental lawsuits that have been brought to court with the Public Civil Action Law include a lawsuit against the petrochemical and steel companies of the large industrial district Cubatão, which prosecuted for \$800 million worth of damage to the environment, including soil contamination, pollution of rivers and deforestation (McAllister, 2007: 727). Whilst the court case has still not received a judicial ruling, it has made other companies more concerned about the environment and the impact that their actions are having (McAllister, 2005: 225-226). As with the Cubatão case, it often occurs that court cases against corporations have a 'knock-on effect' on the actions of other corporations. Corporations who are acting in a similar way to the corporation that is being prosecuted are likely to alter their actions in order to avoid having litigation

also taken against them. As an international law which carries the possibility of imprisonment for CEOs and directors, this 'knock-on effect' is likely to be amplified with the law of Ecocide. Although there has been success with public civil action cases preventing the continuation of environmentally destructive behaviour, the inability to achieve resolution on the public action cases and lawsuits relating to the Belo Monte dam demonstrates the difficulties in trying to achieve legal justice for government-sanctioned projects and the need for an international law preventing activities that cause ecocide.

Although there is increasing Brazilian commitment to the preservation of the environment, the limitations that still exist in the implementation of environmental laws, the state approval of projects which are extremely environmentally destructive – even when this involves violations of the Federal Constitution as with the Belo Monte dam, the ability of powerful interest groups to change laws to the detriment of the environment and the difficulty in trying to prevent state-condoned projects means that in order to prevent projects that will cause severe and long-lasting damage to the environment, an international law prohibiting acts of ecocide is needed. However, it is of vital importance to ensure that Brazil accepts the law of Ecocide.

Brazil has been anxious to ensure that the Brazilian Amazon remains under its national jurisdiction and that national sovereignty is not taken away by the international community (Simpson, 2010: 42). The Brazilian government has also

argued that scientists from developed states have no right to impose their will on the Brazilian government, particularly if this will impact on Brazil's economic development (Herzog, 2013: 17). These views mean that it is necessary to ensure that the Brazilian government and other governments have a full understanding of what the law of Ecocide is trying to achieve and to make sure that it is not perceived as developed countries imposing their beliefs upon other states. It will be necessary to provide full and detailed information and evidence to both the government and to citizens about the law of Ecocide, the negative long-term impacts of ecocide and the national and global benefits of prohibiting acts of ecocide. Without the law of Ecocide being accepted, actions from the international community to combat acts of ecocide will be viewed with resentment. It is likely that it would be compared to the 1989 efforts of NGOs working to prevent Brazil from receiving international finance in order to try and slow down deforestation rates, these efforts were viewed with disapproval from Brazil and were not conducive to a good relationship between Brazil and the international community (Simpson, 2010: 44). It has been suggested that the Brazilian government is now less concerned that Brazilian sovereignty will be taken away by the international community (Simpson, 2010: 58). This is a positive indication for the acceptance of the law of Ecocide as if Brazil is less mistrustful of the actions of the international community then the Brazilian government will be more likely to welcome the law of Ecocide as a new law which will have positive effects for the country. In order for the law to be accepted, it is necessary to ensure that it is understood by the Brazilian government and Brazilian society that the law of

Ecocide is not seeking to prevent Brazil from developing economically, but is attempting to stop devastating attacks upon the environment that will prevent resources from being used by future generations.

The thought of losing potential income generated through ecocide-causing projects may discourage the Brazilian government from agreeing to support the law of Ecocide. However, if Brazil is able to financially gain from protecting the Amazon, then it is likely to be more receptive to the law of Ecocide. In 2008, President Luiz Inácio Lula Da Silva started the international Amazon Fund (Exman and Da Costa, 2008). Large sums of money have already been promised and received through the Amazon Fund to be used for the preservation of the Amazon. As of April 2013, the government of Norway, the Federal Republic of Germany, and Brazilian oil giant Petrobras have given \$128,907,272.03 to the Amazon Fund, and have promised a further \$642,177,983.33. It will soon be possible for NGOs, multilateral institutions and individuals to also be able to donate to the fund (Amazon Fund, 2013). The launch of the Amazon Fund is the first time that Brazil has publically acknowledged the role that preserving the rainforest has to play in global warming (BBC News, 2008). This acceptance indicates that Brazil is aware of the global impacts of environmental damage and the need to protect the rainforest. There are also other initiatives that provide finance to Brazil in exchange for the conservation of the Amazon, including the Forest Investment Program of the World Bank (Forstater, Watson and Nakhooda, 2013: 5). Continued financial support from the international community for the preservation of the Amazon is likely to have a positive impact on

Brazilian support for the law of Ecocide. Although it is likely that money from the Amazon Fund and other initiatives will not be enough to offset all of the money that is generated from deforestation and environmental degradation activities that occur in Brazil, the presence of this money may act as a successful incentive for the Brazilian government to enforce the prohibition of the extremely environmentally harmful activities prohibited under the law of Ecocide. Brazil is open to the international community being involved in the preservation of the Amazon as long as the action taken is done by Brazil and is not being forced upon Brazil by the international community. This was made apparent by the 1992 G7 Pilot Program which involved G7 states providing money to Brazil for environmental purposes, largely the preservation of indigenous territories. This resulted in a number of indigenous territories in the Amazon being made into protected areas. This is a positive indication of the receptiveness of Brazil towards the law of Ecocide as it shows that Brazil is not resistant to all international involvement in the Brazilian Amazon, as long as the international involvement does not diminish Brazilian sovereignty over the Brazilian Amazon.

The law of Ecocide is intended to be the 5th Crime of Peace through the Rome Statute being amended (Eradicating Ecocide, 2013). This will make the crime of ecocide under the jurisdiction of the International Criminal Court (ICC). The purpose of the ICC is to achieve justice for the most serious crimes. It is designed to be used when states are not able to prosecute or choose not to do so. The aim of the law of Ecocide is for states to take the primary responsibility in prosecuting those who

commit acts of ecocide, however, the ICC will be able to be used to try crimes of ecocide if states do not choose to prosecute. Gauger et al (2012, 2-4) argue that ecocide should already have been included into the Rome Statute as a law against ecocide has been called for by states since the 1970s, and in 1993 ecocide was included as a peace crime in the draft of the 1998 Rome Statute. 19 states put forward their support for keeping ecocide as one of the international crimes against peace, whilst only three states went on record to dissent. However, although there were large amounts of support for a law against ecocide, the crime of ecocide was removed from the Rome Statute. There is no record stating why ecocide was excluded. The crime of Ecocide was actually excluded from being part of the Rome Statute by just one person (Gauger et al, 2012: 10). The fact that states have called for a law against ecocide for a long time, and that a law against ecocide was only removed by one person is a positive indication for the successful amendment of the Rome Statute.

Crimes of ecocide are primarily intended to be tried by states. However, in the case of the Belo Monte dam, as President Dilma Rousseff has given the dam her full support, whilst President Dilma Rousseff is in power the ICC may have to be used to prevent the ecocide of the Belo Monte dam. However, there are a number of issues with the ICC which may make it problematic to use the ICC to prosecute against crimes of ecocide such as the Belo Monte dam. Firstly, since 2002, there has only been one verdict made by the court. (BBC News, 2013). The lack of verdicts in the ten years that the ICC has been operating indicates that the ICC will be very slow to

achieve justice for crimes of ecocide. This is problematic as this means that until the ICC has prosecuted against a case of ecocide, citizens may not feel that there is a strong enough possibility of being prosecuted by the ICC for it to be a deterrent against embarking upon ecocide-causing projects. Because of this, it is very important that the ICC is fully understood to be a court of last resort and that the majority of ecocide crimes will be dealt with by states. If this is not the case then there will be a huge backlog of cases of ecocide crimes at the ICC and crimes of ecocide will go unpunished for a very long time. This means that it is vital to have strong support for the law of Ecocide from all State Parties of the Rome Statute, not just from the 81 State Parties that need to agree to the law of Ecocide for the Rome Statute to be amended.

Secondly, the ICC does not have its own police force, and therefore national police forces have to find and arrest those that the ICC wishes to prosecute. This means that if states are not cooperative, it is difficult for the ICC to be able to prosecute individuals (BBC News, 2013). This issue of the lack of an ICC police force is likely to be problematic unless states are fully committed to eradicating crimes of ecocide. This further highlights the need to raise awareness of the severe consequences of ecocide and to achieve widespread support for preventing cases of ecocide. Obtaining support for the law of Ecocide is a core issue in preventing crimes of ecocide from taking place. States need to fully believe in the importance of the law for the good of their country, their citizens and future citizens and for the planet as a whole.

Thirdly, the annual budget of the ICC is over £90 million, since it was created it is estimated that it has spent about £600 million. As only one trial has come to completion since the inception of the ICC, the ICC has been widely criticised for the amount of money it has spent in relation to the results it has achieved. Because of this, states have argued that the ICC budget should be reduced. However, Silverman (2012) argues that it should not be reduced as the global and complex nature of the ICC makes it a very expensive operation to run. The possibility of the ICC budget being reduced is a potential difficulty that the developers of the law of Ecocide need to be aware of. If there is less money available for the ICC, then fewer numbers of Ecocide cases will be able to come to trial. Therefore, if in the future the budget of the ICC is greatly reduced; other international methods of prosecuting crimes of ecocide may have to be considered.

The final difficulty is that not all states are party to the Rome Statute. Countries that have not signed the treaty include the US, China, India and Indonesia (BBC News, 2013). This is problematic for two reasons. Firstly, the ICC will have no jurisdiction over acts of ecocide committed in these countries. However, many of these states engage in activities that cause severe environmental damage. For example three of the biggest polluters in the world are China, the United States and India (Lee, 2013). Lack of jurisdiction for these countries may mean that the law of Ecocide is less globally effective. Secondly, the issue of transboundary environmental harm means that countries that have prohibited projects that cause ecocide as a result of the inclusion of ecocide into the ICC may still suffer from the acts of ecocide

committed by other countries. Types of transboundary environmental harms include pollution of transboundary waterways, waste dumping and air pollution. Currently there is a lack of consensus over laws of transboundary environmental harm which makes it difficult to uphold cases of transboundary environmental harm (Schwabach, 2002) and to resolve and to develop solutions for transnational environmental problems. A greater amount of international cooperation over environmental laws is needed in order to address this problem (Gaines, 1990: 782). Furthermore, it is likely that states that have eradicated ecocide within their own country will feel resentful towards countries that are continuing to cause severe and long-lasting environmental harm, both because of the transnational harm that can occur and because of the way in which through other countries banning all acts of ecocide, these countries will receive environmental benefits such as cleaner air, whilst being able to act how they wish. Because of the occurrence of transnational environmental harms and the difficulty in prosecuting them, it will be necessary to try and achieve support for the prohibiting of projects that cause ecocide in *all states*, not just those who are party to the Rome Statute. However, it must be acknowledged that achieving support for the prohibition of ecocide-causing projects in all countries is very ambitious and will be a long and difficult process.

Although the ICC is intended to be a court of last resort, only used when states are unwilling to prosecute, in the promotional literature for the law of Ecocide it is clearly regarded to be a core way in which crimes of Ecocide can be prosecuted against. Because of the limitations of the ICC, it is vital to further emphasise that the

ICC is a court of last resort, and to achieve full support for the law of Ecocide from states so that states perceive acts of ecocide as serious crimes that must be prioritised and prosecuted as soon as possible. This is very important in order to minimise the amount of cases that need to be prosecuted by the ICC.

This examination of Brazilian environmental laws indicates that the Brazilian environment would be better protected through implementing the international law of Ecocide. As the Brazilian Amazon is an incredibly valuable resource to the world, it is of vital importance to the international community that it is protected. Through the law of Ecocide, the Brazilian Amazon will remain under Brazilian control; however it will place a duty of care on all nations to ensure that acts of ecocide against the Brazilian Amazon, along with all other ecosystems, do not take place. Whilst Brazil already has environmental laws and institutions that demonstrate Brazilian commitment to protecting the environment, a clearly defined, universal law is needed. This will give greater weight to existing environmental approaches and will help to address some of the issues that currently exist in Brazilian approaches to the environment. A core issue is that currently, environmental laws can be overridden by the president, as with the building of the Belo Monte dam. As the international law of Ecocide prohibits acts of ecocide, these types of projects would no longer be able to be sanctioned by the president as they would be prohibited under international law. However, for this law to be successful it is vital that it is not viewed as an international tool that limits the sovereignty of Brazil, but as a mechanism that is beneficial to Brazil in helping with long-term sustainable development and

preservation of the Brazilian Amazon. Obtaining Brazilian support for the law of Ecocide is crucial as otherwise Brazil may feel that the law has been imposed upon it. Full support for the law of Ecocide is also necessary as examination of the ICC has revealed that its limitations mean that achieving justice for crimes of ecocide through using the ICC will be a very slow process and not all violations of the law would be able to be tried by the ICC. Therefore it is vital that the law is fully supported so that cases of ecocide will be tried by Brazilian courts. Although this analysis has found that the law of Ecocide would be highly beneficial to the Brazilian environment, it should be acknowledged that without examining the environmental laws of other states it cannot be determined whether the law of Ecocide would have the same effect in other states as it would in Brazil.

Chapter Two: How the Law of Ecocide Compares to Other International Laws and Why a New International Law is Needed.

This chapter is concerned with exploring how the law of Ecocide compares to other international laws, and whether it is able to overcome problems that have arisen with other international laws. The rise of globalisation and issues which are hard to manage with national laws mean that national environmental laws are not suitable for all environmental concerns (Verschuuren, 2010: 2). The usefulness of national environmental laws in developing countries is also often limited as they frequently do not have the institutional frameworks, financial capabilities and scientific resources necessary to develop and implement successful national environmental laws (Ecovitality, 2013). This is evidenced by the difficulties discussed above of Brazilian environmental laws. Because of these issues there is a widespread belief amongst the international community that in order to successfully preserve the environment, international input is needed as well as national laws and policies. International input is important in order to have global cooperation over environmental issues and to make environmental initiatives more effective (Falkner, 2013). Since the 1972 Stockholm Conference, the field of international environmental law has grown exponentially. There is now increasing amounts of international environmental law and policy-making and many environmental international institutions. However, despite this, there are still huge numbers of environmental problems, including decreased amounts of fresh water, continued loss of tropical rainforests, global warming and large numbers of pollution-related

deaths (Falkner, 2013). It is apparent that new laws and approaches are needed. The first section of this chapter will explore general problems associated with international environmental laws and investigate how these issues are dealt with by the law of Ecocide. The second section of this chapter will look at problems of specific international approaches to the environment. These are the 1992 Rio Earth Summit and REDD+. These specific approaches to the environment have been chosen as whilst they are both well-known and significant recent approaches, they represent different types of approaches and provide examples of an approach that has already happened and a proposed scheme. I will look at criticisms and limitations with these and whether the law of Ecocide can overcome these issues.

Three core problems associated with international environmental laws are, ambiguity in concepts and policies, conflict between the approaches of developed and developing countries towards the environment, and the problem of states not wishing to agree to environmental obligations. Lack of clarity of core concepts is an often cited problem of international environmental law. Some environmental laws are very general and non-specific, for example, the 1989 International Convention on Transboundary Movement of Hazardous Waste forbids hazardous wastes from being exported to countries that lack 'adequate means to dispose of them'. This is a very broad instruction which leaves states to interpret their own understanding of the convention and put suitable laws into place (Rosencrazn, Kibel and Yurchak, 1999: 4). Non-specific environmental laws are problematic as it means that states will have different conceptions of the law as interpretations will depend upon the value

judgements of different states. Because of this there will be wide variation in the type of policies implemented and in how restrictive they are. However, the law of Ecocide does not suffer from these ambiguities as it sets out clear guidelines of what constitutes unacceptable environmental harm, which are the same for all states. Through having clear guidelines over the requirements of the law, it will be more possible for the law of Ecocide to achieve consistent results between states.

There is often disagreement between developed countries and developing countries over the environmental obligations of developing countries. Developed countries often have more restrictive environmental laws than developing countries, and take the view that developing countries should adopt similarly restrictive laws. However, developing countries tend to perceive this as unfair as developed countries became wealthy through being able to develop without restrictions and use resources freely to facilitate this development. Furthermore, developing countries have also viewed that environmental laws are an imperialistic tactic for developed countries to keep developing countries at a disadvantage, in order to keep developing countries from being able to compete with developed countries (Rosencrazn, Kibel and Yurchak, 1999: 9). This is an important issue as consensus between states is a vital part of international law making. As acknowledged by an interviewee from the Eradicating Ecocide campaign, this is a potential challenge for the implementation of the law of Ecocide. The fact that the law of Ecocide is the same for all states may initially seem unfair to developing countries as developed countries were able to engage in acts of ecocide whilst they were developing.

However, it will transpire that the majority of people affected by the law of Ecocide will be citizens of developed countries. This is because whilst acts of ecocide often take place in developing countries, these are frequently attributable to the projects of large companies from developed countries. It is well known that corporations from developed countries often obtain profit through exploiting the resources of developing countries. For example, European companies such as the German corporation Voith Hydro and the Austrian corporation Andritz are supporting the Belo Monte dam and providing supplies for its construction (Rainforest Rescue, 2012). The law of Ecocide will prevent this from happening. It is vital to ensure that developing countries are made aware that the primary targets of the law of Ecocide are the large, wealthy corporations that engage in ecocide-causing projects, and that the vast majority of these corporations are from developed countries. A limitation of the literature on the law of Ecocide is that this issue is not mentioned. This is problematic as this is a hugely important issue, if the law of Ecocide is perceived as unfairly targeting the actions of developing countries, it will not be accepted by developing countries. The proposal for the law of Ecocide and the literature on the law of Ecocide ought to show awareness of this potential problem and detail how it can be avoided. It will be necessary to clarify that the law of Ecocide is aimed at protecting the environment for the use of current and future generations from the actions of large corporations. It is not preventing economic development from taking place, and the majority of the corporations affected will be wealthy companies from developed nations.

A further core difficulty is that it is becoming increasingly difficult to achieve consensus between the international community over legally binding environmental laws (Verschuuren, 2010: 4), with some major states not wishing to agree to new environmental obligations (Falkner, 2013). This pattern may be problematic for the law of Ecocide, as it requires the agreement of 81 states for the Rome Statute to be amended. There are currently 10 states that have already made ecocide a national crime (Eradicating Ecocide, 2013). This is a positive sign as it demonstrates that there are already states that view that it is desirable to have a law against ecocide. As evidenced by online petitions, strategic partnerships and endorsements from a wide range of sources (Eradicating Ecocide, 2013), there is a large amount of international support for implementing the international law of Ecocide. However, achieving the support needed from 81 states in order for an international law that prohibits ecocide to be implemented by 2020 is the core challenge for the Eradicating Ecocide movement. The importance of this cannot be understated as if this support is not obtained, then the law of Ecocide will not be implemented and it will remain legal to commit acts of ecocide. In order to be successful, continued international campaigning and education about ecocide is vital in order to encourage states to agree to the amendment of the Rome Statute and to adopt the law of Ecocide as national legislation

This paper will now look at the 1992 Rio Earth Summit and the REDD+ scheme as two specific examples of international approaches to the environment. Through exploring other international attempts at addressing environmental issues, it will be

possible to analyse why problems have occurred and assess whether the law of Ecocide will be able to avoid some of these difficulties.

The 1992 Rio Earth Summit was intended to develop ways to prevent the continued depletion of natural resources and to decrease pollution (United Nations, 1992: 18). Achievements of Rio include increased awareness of the need for sustainable development and the increased use of UN resources for environmental purposes (Cicin-Sain, 1996). However, Rio has been criticised for its lack of long-term impact and failure to achieve the high level of results that had been expected from it (Palmer, 1992: 1008). Reasons for this include, the prioritisation of business interests at the Rio Summit, the lack of binding international laws produced and proposed laws being weakened through the negotiation process. At Rio, it was clearly acknowledged by NGOs that large corporations are the core actors to blame for environmental problems such as resource depletion, unsustainable business practices and pollution (Khor, 2001: 10). Despite this, some of the world's most powerful and largest corporations were given participatory status at the summit. The majority of these corporations were members of the Global Climate Coalition, a lobby group that was designed to lobby against climate change policies that might be detrimental to the oil industry. These corporations had a significant influence and were able to assert their authority in the meetings, over that of state leaders. In the final version of Agenda 21, a core document produced at Rio, rather than regulating the actions of corporations, it just stated that 'transnational corporations should recognise environmental management as among the highest corporate priorities'.

This terminology implies that whilst corporations *should* be environmentally responsible, they have no obligation to do so (Higgins, 2010: 96). This is extremely problematic as if there is no legal requirement to be environmentally responsible, many businesses will not choose to do so. Furthermore, through not including actions to make large corporations more accountable and environmentally friendly, the actions developed in the Rio Summit were far less effective and more difficult to implement than they could have been (Khor, 1997). The law of Ecocide is directly targeting the actions of corporations. This is vital as without targeting this main cause of environmental degradation, problems cannot be solved and sustainable development cannot be achieved. Under the law of Ecocide, the CEO of a corporation that has committed ecocide can be imprisoned for their actions, restoration of damage can be ordered by law, and the people who have been affected by the ecocide can sue the corporation for compensation (Higgins, 2012: 51).

The Rio Summit did not develop a sufficient amount of binding international environmental laws (Palmer, 1992: 1008). This is problematic as declarations without legal obligations are usually ineffective. For example, the Declaration of Forests which arose from the Rio Conference put no legal commitments in place to protect forests from excessive deforestation (Palmer, 1992: 1020). This was found to be unsuccessful in achieving its aims of reducing deforestation. This is shown by the FAO findings that throughout the 1990's there continued to be an annual loss of around 16 million hectares of forest (Flynn, 2010). This indicates that policies and

declarations that do not involve legal obligations are frequently inadequate measures for substantial change to take place. The law of Ecocide puts legal obligations on corporations, states and individuals and prohibits activities which cause widespread, long-lasting and severe damage to the environment. Prohibitive laws are vital in order to stop environmental devastation from continuing. Through prohibiting acts of ecocide, the law of Ecocide can prevent acts of ecocide such as the Belo Monte dam from taking place.

A further difficulty with the Rio process is that states were able to renegotiate the law in order to preserve their own business and economic interests. The problems with this can be seen with Agenda 21. Agenda 21 was intended to provide an array of different actions that states should be taking in order to help protect the environment. However, it is not legally binding and has large gaps in it where consensus between states was not reached, and policies were changed during the negotiation process (Palmer, 1992: 1019-20). These issues mean that Agenda 21 fails to be an effective mechanism for generating environmental change. This demonstrates the difficulties with developing policies for environmental change through consensus. As the terms of the law of Ecocide have already been set, the law will not be weakened through state negotiations where states are trying to ensure that their own interests are met. States that are home to powerful and large corporations that currently engage in acts of ecocide may have been tempted to renegotiate the law of Ecocide if this had been possible. A renegotiation of the law of Ecocide would certainly result in lessening its ability to effectively protect the

environment. However, having to accept the terms of the law as they are without any opportunity for renegotiation may make the law of Ecocide appear less attractive to some states, particularly powerful states who are used to playing a core role in the development of international laws. This should be acknowledged as a potential dissuading factor for states to call for the amendment to the Rome Statute. In order to combat this potential difficulty, the need to maintain the law of Ecocide in its current form in order to prevent long-term and severe environmental destruction must be emphasised when promoting the law.

REDD+ is a scheme that will involve states, NGOs and corporations using market mechanisms to reward developing countries from reducing their greenhouse gas emissions through reducing deforestation (Phelps, Webb and Agrawal, 2010: 312). REDD+ has been proclaimed to be a strategy to help solve the problem of climate change. However, aspects of it have been strongly criticised, including by Evo Morales, the president of Bolivia who condemned REDD+ as being 'governmental ecocide' (Higgins, 2012: 21). REDD+ is an example of a carbon trading scheme with tradable pollution permits. Tradable pollution permits create a market for pollution emissions whereby states and corporations are allocated pollution limits permits, if they emit less than their pollution limit, then they can sell their excess permits to other firms. These schemes aim to use market forces to reduce pollution and encourage green technology. Those in favour of pollution permits such as Dahlberg claim that they control pollution levels in a simple way that is not detrimental to society (Dahlberg, 1999). It is also argued that tradable pollution permits are a good

type of scheme as they can decrease pollution levels in a cost-effective way. Corporations that would have to spend a lot of money on refurbishing factories, buying new machinery etc., to reduce their emissions levels, can instead buy pollution allowances from a corporation that has spare pollution allowances (Nash, 2000: 485). This ability to buy pollution allowances rather than having to reduce pollution emissions is promoted as a positive aspect of tradable pollution schemes. However, substantial change is unlikely to result because of this as if it is cheaper to buy pollution credits from other companies than to reduce pollution emissions, then corporations have little incentive to change their business practices. Furthermore, corporations that have high levels of pollution emissions may even start producing more goods, and therefore use more raw materials in order to achieve economies of scale to offset the fees that they are having to pay in buying pollution allowances. This differs from the law of Ecocide whereby corporations have to ensure that their business practices comply with the law of Ecocide. Business practices that cause severe environmental damage will have to be altered. In addition, tradable pollution allowances can also be acquired through offset projects, for example, by planting trees and setting up wind turbine projects. However, it cannot be proven that offset projects actually are the environmental equivalent of emitting carbon dioxide or using fossil fuels (Lohmann, 2008: 362-363). If emissions are not actually being offset by these projects, then tradable pollution schemes will not be successful in helping to prevent climate change and damage to the environment. Prohibiting the most environmentally harmful activities will be far more successful at reducing

environmental damage than this system of trying to counteract pollution emissions with other activities.

A further core problem with trading schemes like REDD+ is that it enables rich countries to pay for their emissions rather than forcing them to reduce emissions (Jha, 2008). This is a serious problem as it means that developed countries do not have to make any effort to reduce emissions, and can continue to increase their emissions levels and their consumption of non-renewable goods and products from forests. In addition, pollution credits end up going to wealthy, high-emitting corporations that have the finance and means available to document where emissions 'savings' are occurring. Smaller actors that are already low-emitting, or do not have the capacity to demonstrate where savings are being made will not receive credits (Lohmann, 2008: 364). It is evident that powerful corporations will be the 'winners' of pollution trading schemes, not smaller corporations and individuals, and not the environment. The concept of pollution credits is incompatible with the aims of the law of Ecocide as they allow pollution to continue. According to the law of Ecocide, in order to prevent something from causing further environmental damage, it is necessary to prohibit it

Other specific problems associated with REDD+ include, firstly, not all forests will enjoy the same level of benefits through the REDD+ mechanism. Forests which have a low volume of carbon yet are important for other reasons such as the ecosystems they support and their role in delivering fresh water will have far less

protection than forests which are high in carbon. This may result in forests without large carbon levels becoming the only available source of timber, biofuels and food. This increased pressure is likely to threaten the sustainability of these types of forests. Pressure on other types of ecosystems such as wetlands and savannahs is also likely to increase (Miles and Kapos, 2008: 1454). Secondly, programs such as REDD+ can be severely detrimental to indigenous people (CCMIN, 2009).

Governments and carbon companies may deem that the carbon content of forests means that they are so valuable that they can no longer be used by the poor communities that depend upon them. Land grabbing and forced evictions of forest dwellers may occur (Vidal, 2009). Little effort has been made to ensure that REDD+ programmes will not harm forest communities or cause them to lose their land (CCMIN, 2009). The REDD+ programme would not help to protect the people who live around the Xingu River in Brazil. Unlike programmes such as REDD+, the law of Ecocide is targeting the actions of large corporations and will not have negative impacts on poor communities or indigenous people. Instead, in the long-term they will be benefited as ecosystems and natural resources will not be destroyed and people will be able to continue to use them. Finally, REDD+ is creating a way for corrupt politicians to profit from forests and will not necessarily help to reduce climate change (Jha, 2008). If the government is corrupt, then citizens are unlikely to benefit from the money received from REDD+. Corruption will not be an issue with the law of Ecocide as it is a prohibitive law rather than a trading mechanism that generates money; therefore it is less open to exploitation by corrupt politicians.

Environmental destruction and pollution is still able to continue under REDD+ as deforestation will still occur and developed countries are still able to emit large amounts of greenhouse gases (CCMIN, 2009). Unlike REDD+, the law of Ecocide does not contain loopholes which allows environmental destruction to still take place as long as it is 'paid for'. Allowing pollution to be 'paid for' is an ineffective way of preventing pollution from continuing. Environmental change will not happen unless environmental destruction is prohibited. In order to effectively protect forests, it is vital to address the core causes of deforestation. Destructive commercial projects should not be able to be part of deforestation solutions (Guttal, 2012). This is currently occurring in the REDD+ scheme as it does not prohibit deforestation of natural forests as long as plantations or similar alternatives are used instead. The law of Ecocide directly targets the main causes of environmental destruction through prohibiting ecocide-causing projects. In order to achieve significant protection for the environment, it is necessary to directly address the actions of powerful actors rather than engage in compromise measures that fail to fully protect against environmental destruction.

This analysis of other international environmental laws and treaties and their failures to produce substantial environmental change indicate that a new approach to environmental law is needed. Although multiple international agreements, constitutions and treaties such as the Rio Summit, the Kyoto Protocol and REDD+ include the concept that humans have a responsibility towards the environment, to protect and preserve it, currently none of them involve legally binding guidelines for

corporations and individuals (Birnie, Boyle and Redgwell, 2009: 329). The law of Ecocide is putting a legal duty of care on individuals to protect the earth. Higgins argues that this is the change needed in order to prevent environmental destruction and preserve ecosystems (Higgins, 2012: 4-5). The law of Ecocide will differ from other international approaches to the environment in the following core ways, engaging in acts that will cause long-lasting and severe damage to the environment will be prohibited, it will target the actions of corporations, prohibit actions rather than setting voluntary targets and as it is not a compromise law, states are unable to 'buy' their way out of changing their environmental practices. Whilst the law of Ecocide may seem controversial, especially when compared to other international approaches to the environment, as Higgins argues, in order to eliminate environmental destruction, radical changes need to be made (Higgins, 2010, XI). Compromise laws and voluntary agreements that allow for states to prioritise their immediate economic interests will not be successful in preventing the environmental devastation of our planet. Through allowing ecocides such as the Belo Monte dam to take place, ecosystems will be destroyed, climate change is hastened and the pollution of the planet is increased. For these reasons, the international law of Ecocide is needed as a new international environmental law, and if implemented correctly, will provide more substantial and long-lasting results than previous international environmental approaches.

Chapter Three: The Economic Case for the Law of Ecocide.

Acts of ecocide carry economic implications as well as environmental implications. Because of this there is an economic imperative to prevent ecocide-causing projects from taking place. It is estimated that the actions of the world's 3000 largest corporations resulted in \$2.15 trillion worth of damage to the environment in 2008. It is predicted that by 2050, the environmental costs of human activity will rise to \$28 trillion (UNPRI, 2010: 3). Current levels of economic activity will not be able to be maintained if resources are exhausted and ecosystems are irreparably damaged. If natural capital is not preserved, the economy will decline (UNPRI, 2010: 4). It is clear that our current actions towards to the environment are, and will continue to be extremely economically costly unless substantial changes are made. The purpose of this chapter is to investigate economic issues associated with the law of Ecocide and to look at economic reasons to implement the law. The first section of this chapter will look at the financial cost of acts of ecocide, different ways in which ecocide can prove to be costly and the economic impact of Belo Monte. The second section of this chapter will examine economic benefits that can be obtained through sustainable business practices, obstacles towards moving towards sustainable business practices and how the law of Ecocide can aid this transition.

Acts of ecocide can be extremely financially costly in a variety of different ways. Three core ways in which ecocide can have an economic impact will be

explored here. Firstly, through destroying or severely damaging natural resources, people are no longer able to continue to use them to make their livelihood from them and profit from them. The Belo Monte dam will be financially costly as large dams reduce the economic productivity of the affected areas, for example, reducing the biodiversity of the river and surrounding area, changing the chemistry of the water and causing floodplains and deltas to be less productive (Bergkamp et al, 2000: iv). The poverty-causing effects of dams can already be seen in Brazil, for example, plummeting fish stocks in the Juruena River caused by dams resulted in the Enawene Nawe tribe having to be delivered emergency food supplies by the Brazilian government (Schultz, 2013). It is likely that emergency aid will also have to be given to the people whose livelihoods are disrupted by Belo Monte as the dam will prevent people from continuing to be able to make their living from the affected sections of the Xingu River and surrounding areas. As well as damaging the environment so that people are no longer able to live off the land affected by the Belo Monte dam complex, 40,000 people will be displaced and flooding will occur in the nearby city of Altamira. The people who live and work around the Xingu River will have to move into local cities which already have high unemployment rates (Amazon Watch, 2013). Currently Brazil is launching initiatives to pull citizens out of poverty. For example, a national poverty alleviation plan called 'Brasil Sem Miséria' was launched in 2011 by President Dilma Rousseff with the intention of providing support and public services to people living in extreme poverty. Families will receive money, food and farming materials. The government has pledged to assist families to prevent people from

living in extreme poverty (Portal Brasil, 2011). As the Belo Monte dam will displace 40,000 people without finding them replacement jobs it is extremely likely that these 40,000 people will be plunged into extreme poverty and will add to the number of people whom President Dilma Rousseff has pledged to help financially. Therefore, as a result of the Belo Monte dam, rather than being financially self-sustainable, these people will be financially dependent on state money.

Secondly, it is extremely expensive to restore ecosystems back to their original state once they have been severely damaged and the costs of restoration are usually more than the costs of preventing environmental damage or altering business practices to be more sustainable (UNPRI, 2010: 3). This view conflicts with research conducted by Bournemouth University which claims that environmental restoration can be a cost-effective solution to environmental damage. However, this research only took place in dryland forest ecosystems, restoring other types of ecosystems may be less economically viable. The Amazon is not a dryland forest. Therefore, this research could not be used to support any possible claims that it would be cost effective to restore parts of the land damaged by the construction of the Belo Monte dam complex. Additionally, this research states that the restoration of dry forests is most cost effective if a passive approach which does not involve tree re-planting is used when restoring the forest. However, the Dryland Forest Working Group, which is a collective of specialists of dryland forests, clearly states that restoring dryland forests is highly labour intensive and requires tree planting, irrigation, fencing, and other measures (Dryland Forest, 2013). This labour intensive method will be more

expensive than the cost-effective method identified by the Bournemouth University research. This suggests that the most effective method of restoration is unlikely to be the least expensive method. Restoration of rivers after they have been dammed is extremely expensive, for example the first stage of the project to restore the Elwha River in the United States will cost \$325 million (Cho, 2011). Even if there was funding and support to completely remove the Belo Monte dam once it had been built, studies of dam removals show that it can take centuries for fish and plant populations to completely recover (Bergkamp et al, 2000: 64). Additionally, it may not be possible to 'clean up later'. Once environmental assets such as biodiversity are lost, they cannot be restored (The World Bank, 2012: 16). The most economically effective way to preserve the environment is to prevent environmentally damaging projects from occurring. This is the aim of the law of Ecocide. By prohibiting ecocide-causing projects from taking place, expensive and time-consuming restoration efforts do not have to take place.

Finally, it has been found that losing ecosystems is very economically costly. Through destroying an ecosystem, an economic asset is permanently erased. The law of Ecocide aims to prevent ecosystems from being destroyed through businesses exploiting and damaging the environment and natural resources. Smith (2010) argues against this as he views that businesses ought to be able to continue to use resources how they wish so that states can be financially prosperous. For Smith, the law of Ecocide is trying to prevent economic development. However, Smith has not taken into consideration the fact that if natural resources are destroyed, economic

downturn is inevitable. It is estimated that the total value of all of the ecosystems and products of ecosystems in the world is \$33 trillion. The Economics of Ecosystems and Biodiversity (TEEB) 2010 study found that the cost of global ecocide by the world's largest corporations in 2009 surpasses \$4 trillion. This clearly demonstrates that there is an economic imperative to prevent environmentally destructive projects from being carried out (Higgins, 2010: 65). The TEEB framework has been used to calculate that the ecosystem services provided by the Amazon are worth up to \$3 trillion, 24 billion annually (Killeen and Portela, 2012). The World Commission on Dams has found that fresh water ecosystems have a global worth of \$8.25 trillion (Bergkamp et al, 2000, iv). As a fresh water ecosystem and well-preserved part of the Amazon supporting many life forms, these figures indicate that there is an economic case for preserving the Xingu River and surrounding area so that it can continue to provide its diverse range of economically valuable services. Whilst the Belo Monte dam will provide economic gains only to the actors directly involved with the dam, the services provided from the area in its natural state provide long-term economic value both locally and globally. However, whilst it is clear that there is economic value to the services provided by the Xingu River and the ecosystems of this area, it should be acknowledged that there are difficulties involved with costing analyses.

Difficulties include, preferences can influence value judgements. This is problematic as preferences are subjective. For example, researchers may give a higher economic value to ecosystems that they have direct contact with than those that they do not (Pearce, Pearce and Palmer, 2002: 2). This means that the true

economic value of ecosystems may not be obtained. In order to combat this Bergkamp argues that many different stakeholders should be consulted when making value judgements (Bergkamp et al, 2000: 8). However, this would be a time consuming and potentially difficult process, and it is likely that not all stakeholders would be identified and therefore would fail to be consulted. Lesser known ecosystems are also likely to be given a lower economic value than ecosystems which are well known and understood (Connelly and Smith, 1999: 138). Furthermore, ecosystems are difficult to value in monetary terms due to their complex nature. At present it is not fully understood how all the different parts of an ecosystem relate to one another and interact with each other (Ring et al. 2010: 16). Without this information it is difficult to have a full understanding of the value of different ecosystems. It is also difficult to price ecological services that do not have a clear market value (Bolt, Kuta and Sarraf, 2005: 11). These difficulties mean that caution should be taken when using exact figures to claim that ecocide-causing projects should not take place. Currently the ecocide literature uses figures from the TEEB study in this way without acknowledging limitations with costing analyses.

There is now substantial support for the idea that through being sustainable, businesses can benefit economically and that global economic growth can be achieved through sustainable business projects (The Saltus Forum, 2013: 3). It is estimated that if green businesses and green strategies were supported by the right governmental policies and institutions, the UK's economy could be boosted by nearly £20 billion by 2014/15 (CBI, 2012: 31). A core criticism of moving to sustainable

business practices is that it is a costly process. However, although up-front capital investment costs for making state-wide changes such as reducing greenhouse gas emissions are high, the savings made by using more efficient and sustainable production methods will largely cover the initial costs of making green changes. The World Bank (2012: 9-11) has found that on average, \$1 spent on making energy production more efficient will save \$2. Developing countries will receive higher levels of savings. For companies, costs of implementing green changes are often relatively low. This is because companies have the ability to adapt their methods in innovative ways in order to remain profitable. Therefore whilst making the necessary changes to production methods required by the law of Ecocide will be costly for some producers, it is unlikely to cause severe problems for the majority of corporations. Most corporations will be able to adapt and avoid engaging in projects that will cause severe environmental devastation, although it should be acknowledged that this will not be the case for all corporations.

There is increasing business support for engaging in sustainable business practices and increasing numbers of corporations are now considering environmental impacts and ways to be sustainable in their business practices. Many investors are also now choosing to invest in companies that are taking environmental concerns into consideration. This indicates that there is increasing awareness in the corporate world of the need to preserve ecosystems and prevent resources from being exhausted. Additionally, environmental regulations have not been found to cause corporations to move their operations to states without strict environmental

regulations (The World Bank, 2012: 10-11). There are many other factors that influence choice of location, such as cost of labour, proximity to materials and customers and the other governmental regulations of that state (Copeland, 2012: 7). This is a positive indication that the law of Ecocide will not cause companies to start operating in countries that are not members of the Rome Statute.

However, despite a move towards sustainable business practices being supported both in economic terms and by increasing numbers of businesses, there are difficulties associated with moving towards a more sustainable society. Firstly, at present, unsustainable patterns of behaviour are entrenched in society (The World Bank, 2012: 4). It is necessary to change the behaviour of corporations and consumers and the views of society over what constitutes acceptable behaviour towards the environment. The law of Ecocide will send the message that there needs to be a change in our understanding of our responsibility to the environment and our approach to the environment. A core aspect of the law of Ecocide is that it is intending to change people's behaviour and perceptions and create a shift in people's understanding of sustainability and their responsibility towards the environment (The Saltus Forum, 2013: 5). Through making it illegal for corporations to commit ecocide, social understanding will increase about the damaging effects of ecocide and its long-term consequences and the importance of preventing these actions from taking place. The law of Ecocide is a top-down approach that is intended to increase social consciousness of the need for a sustainable world and environmentally responsible business practices.

In addition, currently governmental policies do not support a move to sustainable business practices. Laws do not presently encourage businesses to be resource efficient, low carbon and to have minimal environmental impact (Eradicating Ecocide, 2013). Policy changes are needed to reform structural inefficiencies which are contributing to poor governance of resources (UNPRI, 2010: 10). Better approaches are needed in order to encourage investment, direct the market and drive innovation (CBI, 2012: 6). The law of Ecocide creates a legal impetus for businesses to engage in sustainable and non-environmentally harmful practices. Through putting the law of Ecocide into place, sustainable projects and corporations are given a competitive advantage which under current laws and policies they do not have. (The Saltus Forum, 2013: 3). An interviewee from the Eradicating Ecocide campaign argues that through giving companies with sustainable strategies a competitive advantage, they will attract more investment, provide better returns for their shareholders and gain greater market share. Putting a law into place that will encourage sustainable business practices will be far quicker and more effective at generating change than waiting for this process to happen naturally. As observed by an interviewee from the Eradicating Ecocide campaign, it is important to demonstrate to states that the law of Ecocide will be beneficial for economic growth as this will increase state support for the law.

It is clear from this analysis of the economic case for the law of Ecocide that the law can be economically beneficial. Two core ways in which the law of Ecocide can provide financial benefits have been identified. Firstly, through prohibiting

ecocide-causing projects, the negative economic effects caused by ecocide will cease to occur. This is of great importance as the economic effects of ecocide are frequently severe and permanent. It does not make economic sense to allow these acts to continue. Secondly, whilst it has been identified that a move to sustainable business practices is financially beneficial for a state, as resources do not become depleted, wastage is reduced and new avenues for income are identified, currently the economic potential for sustainable business practices is not being realised. Through prohibiting destructive business practices, the law of Ecocide will encourage sustainable business practices, through which long-term profit may be obtained. It will also enable green corporations to be more competitive and achieve greater participation in the global economy. Through legally entrenching the notion that environmental destruction is unacceptable, the law of Ecocide can be a trigger for substantial transformation, at the governmental, corporate and societal levels.

Conclusion

The increasing amount of severe and long-lasting damage being done to the environment is making it vital to develop ways to prevent this destruction from continuing. Currently ecocide is allowed to take place in the hunt for short-term profit even when this is at the expense of the environment and long-term sustainability. This environmental destruction needs to cease for the good of our planet and for human wellbeing. Under the law of Ecocide, acts of ecocide are prohibited and those who cause extreme damage to occur to the environment can be held accountable for their actions. The purpose of this research has been to discover whether the law of Ecocide could be an effective solution to environmentally destructive projects such as the Belo Monte dam. In order to develop an answer to this question, academic literature has been used alongside up-to-date news sources and information gained from conducting interviews in order to achieve a well-balanced response to the question.

This dissertation has examined three core arguments for the implementation of the international law of Ecocide. The first argument considered is that international environmental laws are a more effective approach to tackling environmental issues than national laws. The environmental laws of Brazil have been analysed in order to determine whether an international law such as the international law of Ecocide is needed to protect the Brazilian environment. From examining Brazilian environmental law it is clear that there is an increasing Brazilian

commitment to preserving the environment and that this is represented in Brazilian law-making. However, limitations in the Brazilian legal process are making Brazilian environmental laws less effective; because of this an international law is needed. Ecosystems in states like Brazil which do not have adequate environmental protection measures will gain greater levels of protection through being guarded against severe damage by an international law. However whilst international laws can provide greater protection for the environment than national laws, there are potential difficulties associated with international laws. The most pressing of these is that it is essential to gain state support in order for an international law to be successful, this is especially important for the law of Ecocide given the limitations of the International Criminal Court.

The second argument analyses the need for the law of Ecocide due to limitations with other international attempts to protect the environment. From examining literature on international environmental laws and agreements it is clear that there are inadequacies and failings with current approaches to the environment. The 1992 Rio Earth Summit and the REDD+ were chosen as examples of specific environmental approaches. Interestingly, none of the examined literature on the 1992 Rio Earth Summit claims that it has been a successful force for environmental protection. The REDD+ has also generated far more negative academic attention than positive. These academic criticisms of other approaches to the environment provide support for the proposal that a new environmental law is needed, a law that is more far-reaching in its ideas and takes a different approach to the problem of

continued ecological destruction. It is apparent from failures of other approaches to create substantial change that innovative ideas are needed. The law of Ecocide, as a prohibitive law that directly targets the actions of corporations rather than allowing environmentally destructive acts to continue is a new and radical approach. Through the successful implementation of this law, greater changes will result than those achieved from previous environmental approaches which have often consisted of compromise laws and non-legally binding agreements.

The final argument is that there is an economic case for the law of Ecocide. As evidenced by data from the TEEB study, ecocide has both far-reaching and local negative economic impacts. Projects that will cause ecocide might create short-term profit, but in the long-term they will drain and damage the resource to such an extent that profit cannot be obtained and the resource will be depleted. For financial reasons, ecocide needs to stop. As well as being a way to avoid the financial cost of ecocide, the law of Ecocide can also help to generate money. Through banning environmentally harmful projects which often maximise profits at the expense of natural resources, businesses which use sustainable methods will be able to be more competitive. Long-term profits can be gained from sustainable business projects, whereas unsustainable business projects will only be profitable until the resource runs out or the ecosystem becomes too damaged to use. Through encouraging a move to sustainable business projects, the law of Ecocide is encouraging long-term profitability.

This research has provided environmental and economic reasons to prohibit acts of ecocide with the international law of Ecocide. Through examining the law through the prism of the Belo Monte dam it has been possible to take a detailed look at how the law could affect a specific situation. It is clear that currently as the Belo Monte dam is supported by President Dilma Rousseff, despite the environmental and social effects that will result from the dam and the high amount of national and international opposition to the dam, the development of the dam complex will continue. However, if the law of Ecocide is implemented as an international law, projects such as the Belo Monte dam and the financing of these projects will be prohibited. Making these projects illegal will be an effective deterrent for CEO's and investors who can use their resources in other ways, will not want to put their organisations into disrepute and would not wish to risk criminal proceedings. Investing in and developing sustainable and non-environmentally harmful projects will be seen as a preferable option. Projects such as the Belo Monte dam will be rejected before construction starts to take place.

As this dissertation concerns a proposed future law, it is not currently possible to ascertain whether the law of Ecocide will be successful in its goals and make ecocide an international crime, thereby preventing further environmental damage being incurred from projects such as the Belo Monte dam and helping green businesses and sustainable solutions be more competitive in the global market. If the Rome Statute is amended and the law is implemented as an international law it will be possible to discover whether the predictions and arguments of this dissertation

are correct and the law of Ecocide will be a transformational force in helping to end environmental destruction.

This research upon the law of Ecocide and the impact it could have could be expanded into further research. An important area of study would be to compare the potential effects of the law of Ecocide in Brazil to the potential effects of the law in another state. Discovering how the impact of the law of Ecocide could differ between different states, particularly between states with different socio-economic statuses would provide information about different variables affecting the usefulness of the law and barriers to its success.

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Appendices

Appendix 1: Ecocide Act

Draft Ecocide Act (Eradicating Ecocide, 2013).

Preamble

Ecocide as the 5th international Crime Against Peace

Ecocide is the extensive damage to, destruction of 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 or will be severely diminished.

The objective and principles governing the creation of the offence of Ecocide as the 5th international Crime Against Peace:

1. To stop the extensive damage to, destruction of or loss of ecosystems which is preventing peaceful enjoyment of all beings of the Earth and to prevent such extensive damage to, destruction of or loss of ecosystems from ever happening again.
2. Ecocide is a crime against peace because the potential consequences arising from the actual and/or future extensive damage to, destruction of or loss of ecosystem(s) can lead to:-
 - (i) loss of life, injury to life and severe diminution of enjoyment of life of all inhabitants;
 - (ii) the heightened risk of conflict arising from impact upon human and non-human life which has occurred as a result of the above;
 - (iii) adverse impact upon future generations and their ability to survive;
 - (iv) the diminution of health and well being of inhabitants of a given territory and those who live further afield;
 - (v) loss of cultural life.
3. The aim of establishing the crime of Ecocide is to:-
 - (i) prevent war;
 - (ii) prevent loss and injury to life;
 - (iii) prevent dangerous industrial activity;
 - (iv) prevent pollution to all beings;
 - (v) prevent loss of traditional cultures, hunting grounds and food.
4. The crime of ecocide creates an international and trans-boundary duty of care to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).

5. All Heads of state, Ministers, CEO's, Directors and any person(s) who exercise rights, implicit or explicit, over a given territory have an explicit responsibility under the principle of superior responsibility that applies to the whole of this Act.

6. This Act places upon all Heads of state, Ministers, CEO's, Directors and/or any person who exercises jurisdiction over a given territory a pre-emptive legal obligation to ensure their actions do not give rise to the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).

7. The burden of responsibility to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s) rests jointly with any person or persons, government or government department, corporation or organization exercising a position of superior responsibility in respect of any activity which poses the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).

8. The primary purpose of imposing an international and trans-boundary duty of care is to:-

(1) hold persons to public account for the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s);

(2) enforce the prevention of risk of or actual extensive damage to or destruction of or loss of ecosystem(s);

(3) evaluate consequence of risk of or actual extensive damage to or destruction of or loss of ecosystem(s).

9. The offences created under this Act are strict liability; sentence will be determined by the culpability of the person(s) and organization found guilty as per the provisions of this Act.

10. This Act shifts the primary focus away from evaluation of risk to evaluation of the consequences whereby risk of ecocide gives rise to the potential for and/or actual extensive damage to or destruction of or loss of ecosystem(s).

11. This Act creates a legal duty of accountability and restorative justice obligations for a given territory upon persons as well as governments, corporations and or any other agency found to have caused the ecocide.

PART I

Definition of Ecocide

1. Ecocide

Ecocide is the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that:-

(1) peaceful enjoyment by the inhabitants has been severely diminished; and or

(2) peaceful enjoyment by the inhabitants of another territory has been severely diminished

2. Risk of Ecocide

Ecocide is where there is a potential consequence to any activity whereby extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, may occur to such an extent that:-

(1) peaceful enjoyment by the inhabitants of that territory or any other territory will be severely diminished; and or

(2) peaceful enjoyment by the inhabitants of that territory or any other territory may be severely diminished; and or

(3) injury to life will be caused; and or

(4) injury to life may be caused.

Breaches of Rights

3. Crime against humanity

A person, company, organisation, partnership, or any other legal entity who causes ecocide under section 1 of this Act and has breached a human right to life is also guilty of a crime against humanity.

4. Crime against nature

A person, company, organisation, partnership, or any other legal entity who causes ecocide under section 1 of this Act and has breached a non-human right to life is guilty of a crime against nature.

5. Crime against future generations

A person, company, organisation, partnership, or any other legal entity who causes a risk or probability of ecocide under sections 1 or 2 of this Act is guilty of a crime against future generations.

6. Crime of Ecocide

The right to life is a universal right and where a person, company, organisation, partnership, or any other legal entity causes extensive damage to, destruction of or loss of human and or non-human life of the inhabitants of a territory under sections 1 – 5 of this Act is guilty of the crime of Ecocide.

7. Crime of Cultural Ecocide

Where the right to cultural life by indigenous communities has been severely diminished by the acts of a person, company, organisation, partnership, or any other legal entity that causes extensive damage to, destruction of or loss of cultural life of the inhabitants of a territory under sections 1 – 6 of this Act, is guilty of the crime of cultural Ecocide.

8. It will be an offence of Ecocide where a person, company, organisation, partnership, or any other legal entity is found to be in breach of section 1 and 7 of this Act.

9. (a) Any person pleads guilty or is found guilty of Ecocide under any sections of this Act or

(b) any person who pleads guilty or is found guilty of aiding and abetting, counseling or procuring the offence of Ecocide, under any sections of this Act shall be liable to be sentenced to a term of imprisonment.

Either in addition to or substitution of imprisonment, any person convicted of Ecocide can exercise the option of entering into a restorative justice process.

10. Size, Duration, Impact of Ecocide

The test for determining whether Ecocide is established is determined on either one or more of the following factors, which have impact on the severity of diminution of peaceful enjoyment by the inhabitants, namely :

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

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

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

PART II

11. Proceeds of Crime

The provisions of the Proceeds of Crimes Act 2002 will apply in the event of conviction for any offence pursuant to this Act.

Extent

12. Strict Liability

Ecocide is a crime of strict liability committed by natural and fictional persons.

13. Superior responsibility

(1) Any director, partner, leader and or any other person in a position of superior responsibility is responsible for offences committed by members of staff under his authority, and is responsible as a result of his authority over such staff, where he fails to take all necessary measures within his power to prevent or to stop all steps that lead to the commission of the crime of ecocide.

(2) Any member of government, prime minister or minister in a position of superior responsibility is responsible for offences committed by members of staff under his authority, and is responsible as a result of his authority over such staff, where he fails to take all necessary measures within his power to prevent or to stop all steps that lead to the commission of the crime of ecocide.

(3) With respect to superior and subordinate relationships not described in subsection (1) and (2), a superior is responsible for offences committed by staff under his effective authority, as a result of his failure to exercise authority properly over such staff where he failed to take all necessary measures within his power to prevent or repress their

commission or to submit the matter to the competent authorities for investigation.

(4) Any agency purporting to lobby on behalf of (1), (2) or (3) where steps lead to the commission of ecocide shall be regarded as aiding, abetting, counselling or procuring the commission of the offence.

(5) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.

(6) In interpreting and applying the provisions of this section the court shall take into account any relevant judgment or decision of the ICC.

(7) Nothing in this section shall be read as restricting or excluding—

(a) the liability of any superior, or

(b) the liability of persons other than the superior.

14. Knowledge

(1) Any director, partner, leader and or any other person in a position of superior responsibility is responsible for offences committed by him where his actions result in ecocide, regardless of his knowledge or intent;

(2) Any member of government, prime minister or minister in a position of superior responsibility is responsible for offences committed by him where his actions result in ecocide, regardless of his knowledge or intent.

15. Withdrawal of immunity of government officials and other superiors

Where any government official and other superior or their members of staff are in breach of Article 2 of the Universal Declaration of Human Rights, after the commencement of this Act, the prosecution may be enforced as of right by proceedings taken for that purpose in accordance with the provisions of this Act.

16. Unlawful use of land

Where any land has been destroyed, damaged or depleted as a result of ecocide or any offences in this Act, any person who exercises authority over and/or responsibility for the land shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

17. Culpability of a company, organisation, partnership, or any other legal entity

(1) Where an offence under any provision of this Act is committed by a company, organisation, partnership, or any other legal entity is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or a person who was purporting to act in any such capacity, he as well as the company, organisation, partnership, or any other legal entity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a person of superior responsibility is convicted of an offence under this Act by reason of his position as CEO, director, manager, secretary or a person who was purporting

to act in any such capacity for a company, organisation, partnership, or any other legal entity, as a consequence of the conviction the company shall be held jointly responsible for the actions of its servant.

PART III

Orders

18. Power to order Restoration and Costs

Where any person, company, organisation, partnership, or any other legal entity has committed an offence under this Act -

a Restoration Order shall be made; and

a Costs Order shall be made; and

the named person, company, organisation, partnership, or any other legal entity that had business in the given territory shall be deemed responsible for the clean-up operations to the extent that the territory be restored to the level it was before the ecocide occurred.

19. Restorative Justice

(1) Subject to subsection (2), where a defendant pleads or is found guilty, the court must remand the case in order that the victim(s) shall be offered the opportunity to participate in a process of restorative justice involving contact between the offender and any representatives of those affected by the offence.

(2) The court need not remand the case for the purpose specified in subsection (1) where it is of the opinion that the offence was so serious that this would be inappropriate.

(3) The court has the power to order heads of agreement.

(4) Heads of agreement pursuant to a Restorative Justice process can include the following:-

(i) Restoration Order

(ii) Cost Order

(iii) EPO

(iv) Suspension of Operations

(v) Environment Investigation Agency Order

(vi) Publicity Order

(vii) Enforcement Notice

(viii) Earth Health and Well-being Report

19. Environmental Protection Order (EPO)

Where any person, company, organisation, partnership, or any other legal entity has on the balance of probabilities caused or is likely to cause extensive destruction, damage to or loss of ecosystems of a given territory an EPO shall be made for the duration of any related proceedings and shall only be extinguished by either an acquittal or by an imposition of a Restoration Order.

20. Suspension of Operations Order

Any person, company, organisation, partnership, or any other legal entity identified under a restoration order shall be suspended from operating until the territory has been restored to a level that is acceptable to an independent audit, undertaken by the Environmental Investigation Agency.

21. Determination by the Environmental Investigation Agency

The Environmental Investigation Agency shall determine whether appropriate remediation has been undertaken within the timescale set by the court, whether additional steps (such as the imposition or discharge of an EPO) are to be applied for identify the nature of remediation outstanding and how best to implement.

22. Publicity Order

Where any person, company, organisation, partnership, or any other legal entity has committed an offence under this Act a Publicity Order may be ordered by the Court setting out: -

- a) the fact of the conviction;
- b) the terms of any restorative justice, remedial and/or commercial prohibition order(s);
- c) the amount of any financial order;
- d) specified particulars of the offence.

A publicity order can be renewed at any review hearing following a plea of guilty or conviction.

23. Prohibition notice

(1) Where a person, organisation or government agency can demonstrate on the balance of probabilities that activities that fall within the definition of Ecocide within this Act are at risk of commencing, or have commenced, or are continuing and involve an imminent risk of Ecocide, the court shall issue a notice (a “prohibition notice”) on the person(s) and/or the company(s) carrying on the process.

(2) Where a person, organisation or government agency can demonstrate on the balance of probabilities that a failure to take steps by any company, organisation, partnership, government department or any other legal entity can lead to an imminent risk of Ecocide, the court shall issue a notice (a “prohibition notice”) on the person(s) and the company(s) carrying on the process.

(3) A prohibition notice shall direct that the authorisation shall, until the notice is withdrawn, wholly or to the extent specified in the notice cease to have effect to authorise the carrying on of the process; and where the direction applies to part only of the process it may impose conditions to be observed in carrying on the part which is so authorised.

24. Enforcement Notice

(1) Any person, company, organisation, partnership, or any other legal entity or government agency that is at risk of being prosecuted for ecocide may be issued with an

enforcement notice giving an order made by the court to cease all activities that may give rise to ecocide.

(2) Any person, company, organisation, partnership, or any other legal entity or government agency that has been found guilty of ecocide shall be issued with an enforcement notice giving an order made by the court to cease all activities that may give rise to ecocide and pay any consequential losses.

(3) Where an enforcement notice has been ordered by a court, an enforcement notice shall be issued by the Environment Investigation Agency setting out the steps to be taken and specify the period within which those steps must be taken.

25 Earth Health and Well-being Report

Where a territory has been identified as an area at risk of ecocide or has been named as a territory for the purposes of section 21, an Earth Health and Well-being Report shall be ordered by the court.

26. False written statements tendered in evidence

Where any person tenders a written statement in any proceedings under this Act which he knows to be false or does not believe to be true, he shall be liable to be imprisoned.

27. False oral statements tendered in evidence

Where any person tenders evidence in any proceedings under this Act which he knows to be false or does not believe to be true, he shall be liable to be imprisoned.

28. Committing perjury

The Perjury Act 1911 shall have effect as if this Part were contained in that Act.

29. Disclosure of Finances

Any person, company, organisation, partnership, or any other legal entity who is charged with an offence under this Act must provide full disclosure of their finances to the court and failure to disclose by any person ordered by the court for the purposes of this Part shall be liable to be sentenced to a term of imprisonment.

30. Jurisdiction

(1) Where a person commits Ecocide in a different jurisdiction then, notwithstanding that he does so outside England and Wales, he shall be guilty of committing or attempting to commit the offence against this Act as if he had done so in England or Wales, and he shall accordingly be liable to be prosecuted, tried and punished in England and Wales without proof that the offence was committed there.

(2) Where a person of UK residence is in a different jurisdiction and who is charged with, or found guilty of in absentia, any sections under this Act, a warrant for his arrest shall be issued.

(3) Where there is more than one person, in different jurisdictions and who are charged

with, or found guilty of in absentia, any sections under this Act, multiple warrants may be issued at the same time.

Restoration and Consequential Loss Costs

30. Restoration and Consequential Loss Costs

Where any person, company, organisation, partnership, or any other legal entity has been convicted of Ecocide, he and/or it shall be held responsible for any restoration costs that have arisen from causing Ecocide and any consequential losses arising from injury, loss of life, diminution of health or well being of the inhabitants of the given territory.

31. Balance of probabilities

No costs shall accrue to any person, organisation or government agency when seeking an order, interim order or prosecution pursuant to the provisions of this Act; costs shall only apply when the person, organisation or government agency fails to establish on the balance of probabilities that there exists a prima facie case pursuant to the provisions of this Act.

32. Costs assessment

Where ecocide has occurred, the health and well-being of the community shall be restored as far as possible to the condition as it existed before the Ecocide occurred; and

- (1) such costs of cultural ecocide shall be accorded equal priority with restoration of any ecological ecocide; and
- (2) any costs shall be assessed at a separate cost hearing and shall be enforceable under an enforcement notice.

Extent

34. Section 51 of the International Criminal Court Act 2001 as amended, shall now read:

- (1) It is an offence against the law of England and Wales for a person to commit genocide, a crime against humanity and nature, crime of aggression, a war crime or ecocide.
- (2) This section applies to acts committed—
 - (a) in England or Wales, or
 - (b) outside the United Kingdomby a United Kingdom national, a United Kingdom resident or a person subject to UK service jurisdiction.

35. Short title, application and extent

This Act:-

- (1) may be cited as the Ecocide Act 2010;
- (2) extends to the whole of the United Kingdom;
- (3) may be subject to additions and shall prevail over all other legislation;

No exemptions shall be made subsequent to this Act being enacted.

33. Interpretation

In this Act: —

“ecosystem” means a biological community of interdependent living organisms and their physical environment.

“territory” means any domain, community or area of land, including the people, water and/or air that is affected by or at risk or possible risk of Ecocide.

“other causes” means naturally occurring events such as but not limited to; tsunamis, earthquakes, acts of god, floods, hurricanes and volcanoes.

“peaceful enjoyment” means the right to peace, health and well-being of all life.

“inhabitants” means any living species dwelling in a particular place.

“Earth Health and Well-being Report ” means a report which shall include an assessment of human, cultural and non-human health and well being impact from damage, destruction to or loss of ecosystem(s) of the immediate and/or any other territories affected or at risk of being affected.

“restorative justice” means a process applied as an alternative to conventional sentencing. Where guilt has been accepted or a defendant has been found guilty, he/she may choose to enter into a restorative justice process where he/she shall engage with representatives of parties injured to agree terms of restoration.

“cultural ecocide” means the damage, destruction to or loss of a community’s way of life.

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