

DALLA COMUNITÀ INTERNAZIONALE

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Will Ecocide Become an International Crime?

L'ecicidio diventerà un crimine internazionale?

L'articolo si concentra sulla necessità di affrontare lo stato allarmante dell'ambiente mondiale. L'articolo descrive le misure legislative che sono state adottate nel XX secolo al fine di proteggere l'ambiente. Tuttavia, gli autori analizzano che tali misure erano inadeguate e che vi è la necessità di fare di più e di andare oltre nei lavori legislativi e che non è sufficiente per adottare la legislazione nazionale per la protezione dell'ambiente. Gli autori analizzano se è necessario adottare la legislazione internazionale in forma di "ecicidio" del crimine internazionale per proteggere l'ambiente. La presentazione della definizione di "ecicidio" e lo scopo e gli obiettivi principali del progetto di legge sull'ecicidio sono gli argomenti di questo articolo. Insieme a queste idee, gli autori mostrano gli esempi positivi della legislazione nazionale che dovrebbe essere il modello anche per gli altri stati e la legislazione internazionale. Il risultato di questo articolo dovrebbe essere quello di sottolineare la necessità di adottare misure più incisive a tutela dell'ambiente e di spingere la comunità internazionale a fare i passi necessari per raggiungere questo obiettivo.

Will Ecocide Become an International Crime?

The article focuses on the need to address the alarming state of the world environment. The article describes the legislative measures that have been adopted in the 20th century in order to protect environment. However, the authors analyze, that such steps were inadequate and that there is the necessity to do more and to go further in the legislative works and that is not enough to adopt the national legislation for protection of environment. The authors analyze if there is necessary to adopt the international legislation in form of international crime "ecocide" to protect the environment. The presentation of definition of "ecocide" and the purpose and major objectives of the draft law of Ecocide are the subjects of this article. Together with these ideas authors show the positive examples of national legislation which should be the pattern also for other states and international legislation. The outcome of this article should be to point out on the necessity of adopting the stronger measures in protection of environment and to push the international community to do necessary steps in order to reach this goal.

SUMMARY: 1. Introduction. - 2. Protection of the environment in international law. - 3. The term "Ecocide" and the historical background. - 4. Current activities promoting the law on Ecocide. - 5. The "ECO" Crimes and the "ECO" situation in the world. 6. Purpose and main objectives of the draft law on Ecocide. - 7. Positive examples of national legislation. - 8. Conclusion

1. Introducition. The environment is the most valuable thing we have on our planet. It consists of several components: soil, water, flora, fauna, rocks... Without them, life on Earth could not exist. Nevertheless, humanity doesn't hesitate to devastate the environment to such an extent that it has a very negative impact on the overall climate, water supply, air, etc. Negotiations on sustainable protection of climatic conditions have been ongoing for years,

but without a successful outcome. We can now refer to the Paris Climate Agreement, which entered into force on 4 November, 2016. The parties to the treaty must reduce CO₂ emissions by 2020, which should be successful in having a limiting effect on global warming. By January 2020, the agreement had been signed by 195 countries and 187 had ratified it.¹ United States (US) president Donald Trump announced on June 1, 2017 that the United States of America (USA) would abstain from the Paris Climate Agreement.²

In many cases, private legal entities also make a significant negative impact on the world's environment. That's one of the main reasons why several "civil law countries" introduced so-called direct criminal liability of legal persons, while this institution is typical for the "common law system".

However, the environment is actually threatened, and so it is our duty to do everything to promote its renewal, regeneration and consistent protection.

The purpose of this article is not only to criticize society's approach to the environment but also to give particular support to environmental improvements which should be accelerated when we have a law on Ecocide and Ecocide becomes an international crime.

2. Protection of the environment in international law. Almost all developed nations have described in their legislation unlawful conduct against the environment and sanctions for it, whether in administrative law or criminal law, and not only in relation to natural persons but also to legal entities.³ In addition

¹ Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en, Accessed 18 March, 2020.

² TÓDA, *Trump odstúpil od klimatickej dohody. Zem sa ocitne v nebezpečnej zóne a Spojené štáty oslabnú*, 31 May, 2017, <https://denikn.sk/781949/trump-odstupil-od-klimatickej-dohody-zem-sa-ocitne-v-nebezpecnej-zone-a-spojene-staty-oslabnu/>. Accessed 18 March, 2020.

³ The legal order of the Slovak Republic distinguishes between criminal and administrative offenses against the environment.

Slovak Law on Misdemeanors (1990) regulates in the Special Part the violations in the field of agriculture, hunting and fishing and infringements in the field of environmental protection.

Slovak Criminal Code (2005) regulates in the Chapter VI. of the Special Part following crimes against the environment:

- endangering and damaging of the environment (para. 300, para. 301),
- unauthorized handling of waste (para. 302),
- unauthorized discharges of pollutants (para. 302a),
- violation of the protection of water and air (para. 303, para. 304)
- unauthorized production and handling of ozone depleting substances (para. 304a),
- violation of the protection of plants and animals (para. 305),
- violation of the protection of trees and shrubs (para. 306),
- the spread of infectious diseases of animals and plants (para. 307, para. 308),
- release of genetically modified organisms (para. 309),

tion, there are also rules on the international level or European Union (EU) level, in particular:

- Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention, 1998).⁴

- poaching (para. 310).

These crimes are mainly committed already by incurring a danger, even if there is no damage of the environment. If the offender's conduct caused damage on the protected object, generally it will be considered as a factor for use of a higher crime rate. In the Slovak Criminal Code (2005) the damage is defined as a composition of environmental injury and property damage, the property damage in itself includes the cost of putting environmental into the previous state (Slovak Criminal Code, 2005, Para. 124, Sec. 3). In the case of harm to the environment, harm caused to protected species of fauna and flora specimens and trees, the determination of injury is also based on the value prescribed by law or other generally binding legal regulation issued by law (Slovak Criminal Code, 2005, Para. 126, Sec. 2).

For most crimes against the environment are responsible natural and also legal persons.

⁴ The Aarhus Convention (1998) was signed on 25 June 1998 at the Fourth Ministerial Conference of the United Nations Economic Commission for Europe entitled "Environment for Europe" in the Danish city of Aarhus by 35 countries and the European Community. Subsequently, it was signed by an additional 4 states. It entered into force on 30 October 2001, the European Community approved it on 17 February 2005. The Aarhus Convention covers the obligations that the parties have to the public. The Aarhus Convention was adopted in the field of environmental protection and fulfills one of the fundamental human rights and freedoms which is the right to a favorable environment in accordance with the principles of sustainable development. The Aarhus Convention stands on three pillars:

- a) **The first pillar** declares the right of public access to information on environment - public should have enough information about what is happening in the environment (e.g. information about emissions that are important in terms of environmental protection must be made available publicly), public should have the opportunity to actively participate with full knowledge of the decision-making in environmental matters and participate in the other activities in the field of environmental protection, including the improvement of its environmental behavior. The Aarhus Convention or Directive 2003/4/EC of the European Parliament and the Council on public access to environmental information does not constitute public access to environmental information in an unlimited range. In terms of both regulations can be classified only specific information, the disclosure of which would indeed jeopardize safety of state, the remaining information must be made available to public (Judgment of the Supreme Court of the Slovak Republic, 3SŽi 22/2014, 2015).
- b) **The second pillar** allows active public participation in decision-making on specific major activities, plans, programs and policies and in the creation and adopting of laws of general application that may have a significant impact on the environment. Public participation in decision-making is governed by Directive 2003/35/EC of the European Parliament and the Council.
- c) **The third pillar** relates to public access to justice in environmental matters. This means that anyone whose environmental rights have been violated has the opportunity to seek fair protection by independent bodies (e.g. the courts).

Part of the Aarhus Convention's Protocol on registers Pollutant Release and Transfer Registers (PRTR). It is the first international instrument aimed at allowing public access to information through the establishment of coherent national registers. Entering PRTR Protocol entered into force in October 2009 and was an important step towards achieving the objective of the Aarhus Convention provided for in Article 1: In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to

In context of the Aarhus Convention (1998), the following directives have been issued:

- Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information,
- Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment,
- Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law.⁵
- Treaty on Functioning of the EU (2012).⁶

justice in environmental matters in accordance with the provisions of this Convention. (Aarhus Convention, 1998)

Available at: <http://www.minzp.sk/eu/medzinarodne-dohovory/aarhusky-dohovor/>. Accessed 18 March, 2020.

⁵ In the preamble to the Directive it is stated: “The Community is concerned at the rise in environmental offences and at their effects, which are increasingly extending beyond the borders of the States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate response. Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment. Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law. Common rules on criminal offences make it possible to use effective methods of investigation and assistance within and between Member States. In order to achieve effective protection of the environment, there is a particular need for more dissuasive penalties for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species.” In response to these words: “This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.” These last words of the directive open the way for abuse of its objective, which can dismiss its effect.

With the Lisbon Treaty (2007), the European Community integrated into the European Union, which fully replaces the European Community. The Treaty of Lisbon entered into force on 1 December 2009.

⁶ Treaty on the Functioning of the European Union (2012) regulates the environment in a separate chapter in Title XX. In the meaning of Article 191 par. 1 EU policy on the environment contributes to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilization of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

- Paris Climate Agreement (2015).⁷

The Aarhus Convention (1998) represents a breakthrough international treaty in environmental protection, but is not effective enough (nor has any other document been effective in achieving the improvement of our planet's environmental state). Sanctions are not sufficiently deterrent. Many companies already include certain sums in their budget for fines for illegal actions against the environment. In addition, fines are imposed late and the companies go on with their business.

Due to the ever-worsening approach of humanity (whether natural persons or legal entities) to nature, which is proven by the adverse climatic changes, the need to legally enshrine the protection of the rights of the Earth is revived again today through the law on Ecocide. In April 2010, lawyer Polly Higgins submitted a draft law on Ecocide to the United Nations (UN).

It is also worth mentioning the G20 Summit in Hamburg, Germany, held on 7-8 July 2017, where 19 countries of the world met with representatives of the EU. Besides trade and security, the environment and mainly the protection of the air, was included among the main topics. The inclusion of this topic in the Summit program was desperately needed, as climate changes are perceptible around the whole world.

EU policy is also based on the principles (Article 191, paragraph. 2):

- precautionary and preventive
- environmental damage should as a priority be rectified at source and
- polluter pays.

⁷ Paris Climate Agreement (2015) is a global climate change agreement, which was reached December 12, 2015 in Paris. This agreement represents an action plan aimed at limiting global warming 'well below' 2 °C. It covers the period from 2020 onwards. Paris Conference on Climate Change was held from 30 November to 12 December 2015. It was the 21st meeting of the Conference of the Parties (COP 21) of the Framework Convention of the United Nations Convention on Climate Change (UNFCCC) and 11th Meeting of the Parties (CMP 11) of the Kyoto Protocol. The negotiations on a new global and legally binding agreement on climate change brought together delegations from about 150 countries. On 22/04/2016 an agreement on behalf of the EU signed the Dutch Environment Minister and President of the Council Sharon Dijksma and Commission Vice-President Maroš Šefčovič at the ceremony at a high level in New York (United States). Since that day the Paris Convention was opened for signature in New York. To enter into force it has to be ratified by at least 55 countries accounting for at least 55% of global greenhouse gas emissions. On 4 October 2016 Council of the EU adopted a decision on the ratification of the Treaty of Paris. After the vote in the European Parliament, which approved the ratification of the agreement, the Council adopted a decision by written procedure. This decision was on October 7, 2016 deposited with the Secretary General of the UN, which is the depositary of the Paris Climate Agreement. Paris Climate Agreement entered into force on 4 November 2016. It happened 30 days after the conditions were met Oct. 4 2016 - the agreement has been ratified by at least 55 countries that together account for at least 55 % of global greenhouse gas emissions.

Available at: <http://www.consilium.europa.eu/sk/policies/climate-change/timeline/>. Accessed 18 March, 2020.

3. *The term “Ecocide” and the historical Background.* On July 17, 1998 the Rome Statute of the International Criminal Court (Rome Statute) was adopted in Rome. The International Criminal Court (ICC) was established by the Rome Statute and is a complement to national criminal jurisdictions. It is intended for cases where the state is unwilling or unable to initiate prosecutions for international crimes committed within their jurisdiction. ICC competence focuses on the four most serious crimes:

- a) genocide,
- b) crimes against humanity,
- c) war crimes and
- d) aggression.

According to well-known Scottish international lawyer Polly Higgins – author of the campaign “Eradicating Ecocide”, aimed at protecting the environment, founder of the Earth Law Alliance Foundation and The Earth Community – it is necessary to extend the scope of these international crimes through a fifth crime – “Ecocide.”⁸ It is based on the idea that when someone:

- kills a man, it's murder,
- kills masses of people, it's genocide,
- destroys the Earth, it does not mean anything, and the blank space is only filled by a question mark.⁹

The name of this proposed crime is derived from the crime genocide, which means, in accordance with Art. 6 of the Rome Statute (2002):

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Therefore, whereas Genocide is directed against a group of people, Ecocide is directed against nature because it involves the destruction of large areas of the natural environment (mass destruction of the Earth) due to nuclear war,

⁸ HORÁK, *Aj Zem má svoje práva, vraví právnička Polly Higgins*, 24 May 2017, <https://dennikn.sk/772221/aj-zem-ma-svoje-prava-vravi-pravnicka-polly-higgins/>. Accessed 18 March, 2020.

⁹ *Ibid.*

overexploitation of natural resources, disposal of harmful chemicals, etc. – and all of that at the expense of sustainable development. Ecocide may not only be intentionally committed, for example, in reducing the cost of production or harming competitors in business but also in the area of waste processing.

Ecocide, however, is not only a wilful evil, but, unlike genocide, also involves indifference and ignorance – a time bomb which could have disastrous consequences for this and future generations due to gross irresponsibility in approaching the environment. Innumerable accidents with oil tankers, oil towers at sea or accidents at nuclear power plants are an example of unintentional widespread environmental destruction. Let's just mention the recent events that happened in 2011 in Japan (power plant accident in Fukushima),¹⁰ or the April 2010 Deepwater Horizon oil rig accident in the Gulf of Mexico.¹¹

With the topic of international protection of environment we can meet already in the 1930s, when in 1933 a Polish jurist Raphael Lemkin spoke at the International Conference for Unification of Criminal Law in Madrid, and urged the international community to converge on the necessity of banning the destruction, both physical and cultural, of human groups. Lemkin envisaged a law addressing the deliberate destruction of a nation or ethnic group in one or both of the following ways:

- a. Physical genocide; by killing its individual members, and/or
- b. Cultural genocide; by undermining its way of life.

Lemkin's original definition crucially identified the destruction of people by means other than direct physical extermination, which could include the destruction of the environment.¹² Although at that time the word "Ecocide" was not known, we can say that the basement of the term Ecocide was evolved from the ideas of Lemkin's cultural genocide – «Ecocide is the direct physical destruction of a territory which can in some instances lead to the death of humans and other beings. Ecocide can and often does lead to cultural damage and destruction; and the direct destruction of a territory can lead to cultural genocide.»¹³

¹⁰ See e.g.: <https://www.world-nuclear.org/information-library/safety-and-security/safety-of-plants/fukushima-accident.aspx>, Accessed 18 March, 2020.

¹¹ See e.g.: PALLARDY, *Deepwater Horizon oil spill*, 13 March 2020, <https://www.britannica.com/event/Deepwater-Horizon-oil-spill#accordion-article-history>, Accessed 18 March, 2020.

¹² LEMKIN, *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress*, Washington, D.C.: Carnegie Endowment for International Peace, 1944, p. 79.

¹³ GAUGER, RABATEL-FERNEL, KULBICKI, SHORT, HIGGINS, *The Ecocide Project: "Ecocide*

The word Ecocide has been known since 1960s. The legal definition of this term is provided by Polly Higgins: Ecocide resides in excessive damage or loss of ecosystem in a given territory where the peaceful coexistence of people is seriously threatened. Damage to ecosystems can occur in several ways through human activity or natural processes like tsunamis. With regard to human activities, we know how serious the negative impact of fossil fuel production is and how much this industry contributes to greenhouse gas emissions.¹⁴ Ecocide as a proposed international crime dates back to the 1970s. This word was recorded at the Conference on War and National Responsibility in Washington in 1970, where American biologist and bioethicist Arthur Galston first referred to massive damage and destruction of ecosystems as Ecocide and proposed a new international agreement to ban Ecocide.¹⁵ At the 1972 UN Stockholm Conference on the Human Environment (which adopted the Stockholm Declaration), Prime Minister of Sweden Olof Palme, in his opening speech, spoke explicitly of the Vietnam war as an Ecocide¹⁶ and it was discussed in the unofficial events running parallel to the official conference. The Stockholm Conference focused international attention on environmental issues perhaps for the first time, especially in relation to environmental degradation and trans-boundary pollution. The latter concept was particularly important, as it highlighted the fact that pollution does not recognize political or geographical boundaries, but affects territories, countries, regions and people beyond its point of origin. Others, including Indira Gandhi from India and Mr. Tang Ke, the leader of the Chinese delegation, also denounced the war in human and environmental terms.¹⁷ They too called for Ecocide to be an international crime. A Working Group on Crimes Against the Environment was formed at the conference, and a draft Ecocide Convention was submitted to the UN in 1973.

At that time, the Stockholm Convention on Ecocidal War was also held, un-

is the missing 5th crime against peace". Human Rights Consortium, School of Advanced Study, University of London, 2013, p. 6.

¹⁴ HORÁK, *Aj Zem má svoje práva, vraví právnička Polly Higgins*, 24 May 2017, <https://dennikn.sk/772221/aj-zem-ma-svoje-prava-vravi-pravnicka-polly-higgins/>. Accessed 18 March, 2020.

¹⁵ GAUGER, RABATEL-FERNEL, KULBICKI, SHORT, HIGGINS, *The Ecocide Project: "Ecocide is the missing 5th crime against peace"*. Human Rights Consortium, School of Advanced Study, University of London, 2013, p. 5.

¹⁶ Ibid.

¹⁷ BJÖRK, *The emergence of popular participation in world politics: United Nations Conference on Human Environment 1972*, Department of Political Science, University of Stockholm, 1996, p. 15. <http://www.folkrorelser.org/johannesburg/stockholm72.pdf>. Accessed 18 March, 2020.

der the auspices of the International Fellowship of Reconciliation (IFOR), which, among other things, sought to define and condemn Ecocide as an international war crime. The convention brought together many people, including Richard A. Falk, expert on the international law of war crimes, who drafted an Ecocide Convention in 1973, explicitly urging at the outset to recognize «that man has consciously and unconsciously inflicted irreparable damage to the environment in times of war and peace.»¹⁸ It recognized that the Convention on Genocide was deficient and that there was a need for another international law that could address ecological crimes. Falk's draft convention, though, primarily focused on Ecocide as a war-crime committed with intent, failing to set out peacetime provisions.¹⁹

John H. E. Fried, an educator, specialist in international law and member of the Lawyers' Committee on Nuclear Policy, believed Ecocide to denote «various measures of devastation and destruction which... aim at damaging or destroying the ecology of geographic areas to the detriment of human life, animal life, and plant life.»²⁰

In 1978, debates about the Law on Ecocide continued. The Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) prepared a study for the UN's Human Rights Commission discussing the effectiveness of the Genocide Convention, proposing the addition of Ecocide, as well as reintroduction of cultural genocide, to the list of crimes. The study was prepared by the Special Rapporteur Mr. Nicodeme Ruhashyankiko.²¹ «Any interference with the natural surroundings or environment in which ethnic groups lived was, in effect, a kind of ethnic genocide because such interference could prevent the people involved from following their own traditional way of life,» said member of the Sub-Commission Mr. Abdelwahab Bouhdiba. Supporters who spoke out in favour of a crime of Ecocide included Romania, Austria, Poland, Rwanda, Congo, Zaire and Oman.²²

¹⁸ FALK, *Environmental Warfare and Ecocide - Facts, Appraisal, and Proposals*, in THEE (ed.), *Bulletin of Peace Proposals, Volume 1*, Universitetsforlaget, Oslo, Bergen, Tromsø, 1973 p. 80-96.

¹⁹ GAUGER, RABATEL-FERNEL, KULBICKI, SHORT, HIGGINS, *The Ecocide Project: "Ecocide is the missing 5th crime against peace"*. Human Rights Consortium, School of Advanced Study, University of London, 2013.

²⁰ FRIED, 'War by Ecocide', in THEE (ed.), *Bulletin of Peace Proposals, Volume 1*, Universitetsforlaget, Oslo, Bergen, Tromsø, 1973

²¹ GAUGER, RABATEL-FERNEL, KULBICKI, SHORT, HIGGINS, *The Ecocide Project: "Ecocide is the missing 5th crime against peace"*. Human Rights Consortium, School of Advanced Study, University of London, 2013, p. 8.

²² Ibid.

The year 1985 saw continued deliberation on the issue of Ecocide as an international crime. Some members of the Sub-Commission proposed that the definition of genocide should be broadened to include cultural genocide or “ethnocide”, and also “Ecocide”: adverse irreparable alterations to the environment – for example through nuclear explosions, chemical weapons, serious pollution and acid rain, or destruction of the rainforest – which threaten the existence of entire populations, whether deliberately or through criminal negligence. Report on the question of the prevention and punishment of the crime of genocide prepared for the Sub-Commission by then Special Rapporteur Mr. Benjamin Whitaker. A draft article on cultural genocide had also been prepared although not adopted. In the UN report on its 38th session in 1985, there was no reference to the outcome of the work of Sub-Commission. For reasons not known the effort to enshrine Ecocide as a crime was not pursued any further by the Sub-Commission.²³

In 1987, discussion of international crimes continued in the International Law Commission, where it was proposed that «the list of international crimes include Ecocide, as a reflection of the need to safeguard and preserve the environment.»²⁴

In 1991, the Draft Code of Crimes Against the Peace and Security of Mankind contained 12 crimes, one of them Ecocide as “wilful and severe damage to the environment”.²⁵

In 1993, only three countries: the Netherlands, the United Kingdom and the USA, opposed the inclusion of an environmental crime.²⁶

In 1996, Canadian/Australian lawyer Mark Gray published his proposal for an international crime of Ecocide, based on established international environmental and human rights law. He demonstrated that states, individuals and organizations causing or permitting harm to the natural environment on a massive scale breach a duty of care owed to humanity in general. He proposed that such breaches, where deliberate, reckless or negligent, should be identified as Ecocide where they entail serious, and extensive or lasting, eco-

²³ Ibid.

²⁴ Yearbook of the International Law Commission (1987). Vol. I., p. 56, para. 38. http://legal.un.org/ilc/publications/yearbooks/english/ilc_1987_v1.pdf. Accessed 18 March, 2020.

²⁵ Yearbook of the International Law Commission (1991). Vol. I., Art. 26, p. 234, para. 58. http://legal.un.org/docs/?path=../ilc/publications/yearbooks/english/ilc_1991_v1.pdf&lang=EF SRC. Accessed 18 March, 2020.

²⁶ Yearbook of the International Law Commission (1993). Vol. II., p. 82-88, p. 97-105. http://legal.un.org/ilc/publications/yearbooks/english/ilc_1993_v2_p1.pdf. Accessed 18 March, 2020.

logical damage.²⁷

The 1998 is the year of the adoption of the Rome Statute, in which Ecocide was not included as a separate crime. The Rome Statute contains only war crimes. Article 8 of the Rome Statute contains within war crimes in sec. 2 letter b/ n. (iv), also a part about protection of the environment:²⁸

«Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.»

Prior to adopting the Rome statute there had been extensive engagement in the International Law Commission about the inclusion of a law regarding extensive environmental damage in the Rome Statute. Article 26 of the Draft Code stated, «an individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced...» Wilful and severe damage to the environment was the main feature of this drafted crime. Article 26 did not address environmental crimes by name - it contained no reference to Ecocide. Article 26 was reduced to ‘wilful and severe damage to the environment’. Criticisms focused on the inclusion of the element of intent and on the fact whether Ecocide was a crime of intent. The governments of Australia, Belgium, Austria and Uruguay went on criticism the re-drafting, in recognition of the fact that Ecocide during peace-time is often a crime without intent as it occurs as a by-product of industrial and other activity.²⁹ However, the International Law Commission instead of removing reference to the element of intent from the Article determined to remove Article 26 altogether. Thus the Rome Statute’s Article 8 (b IV) on War Crimes is the only provision in international law to hold a perpetrator responsible for environmental damage. The Article does, however, limit the crime to wartime situations and to intentional damage.

²⁷ GRAY, *The international crime of Ecocide*, in *California Western International Law Journal*, Volume 26, 1996, p. 215 et seq.

²⁸ Rome Statute (2002). Rome Statute of the International Criminal Court. https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf. Accessed 18 March, 2020.

²⁹ GAUGER, RABATEL-FERNEL, KULBICKI, SHORT, HIGGINS, *The Ecocide Project: “Ecocide is the missing 5th crime against peace”*. Human Rights Consortium, School of Advanced Study, University of London, 2013, p. 9.

4. Current activities promoting the law on Ecocide. After a several-year-long pause came a revival in the form of another proposal to include the offense of Ecocide as the fifth international crime against peace in the Rome Statute, presented to the UN by the aforementioned internationally recognized Scottish lawyer Polly Higgins in March 2010.

A very nice feature about Polly Higgins is that fact that she spreads awareness of the need to change the approach of humanity to the environment not only out of her office by electronic communication but also by travelling extensively to different regions of the world and giving soulful, persuasive talks about her ideas, proposals and emotions involved in her activities in combating the destruction of ecosystems and improving the state of our environment. Polly Higgins is also known as “the lawyer of the Earth” - a lawyer whose only client is our planet Earth.³⁰ Polly Higgins' decision to take this path was invoked by her own words when she defended one of her clients as a lawyer before the court. After the end of the hearing, she stared out of the window in the court hall, where she had a good view of the city of London, and she realized she was seeing a huge problem in terms of the environment and that there was an urgent need to do something about it. That's why she became a lawyer of the Earth instead of a lawyer of men. Man who becomes a victim of a crime and not represented by a lawyer, can somehow defend himself, but of course, our planet cannot.³¹ It is welcomed that somebody is aware of the helplessness of the Earth and is making real steps towards positive changes and progress in the process of adoption of the law on Ecocide.

Polly Higgins, as well as former US Supreme Court justice William O. Douglas, have been supporters of the approach that the earth should have its rights, because if corporations - legal persons - are entitled to their rights (even if they are merely artificial persons), why shouldn't the Earth have its rights when it constitutes a living organism. We must realize that if we destroy the ecosystems, we will not be here either.³² In the four crimes against peace (genocide, crimes against humanity, war crimes, crimes of aggression), the Rome Statute protects humans, unlike the proposal of Ecocide, where the victim is the environment and nature.

In June 2012, the idea of making Ecocide a crime was presented to legislators

³⁰ HORÁK, *Aj Zem má svoje práva, vraví právnička Polly Higgins*, 24 May 2017, <https://dennikn.sk/772221/aj-zem-na-svoje-prava-vravi-pravnicka-polly-higgins/>. Accessed 18 March, 2020.

³¹ Ibid.

³² Ibid.

and judges from around the world at the World Congress on Justice, Governance and Law for Environmental Sustainability held in Mangaratiba, Brazil before the Rio +20 Earth Summit, the UN Conference on Sustainable Development. Making Ecocide an international crime was voted as one of the top twenty solutions for achieving sustainable development.

In October 2012, a range of experts gathered at the international conference Environmental Crime: Current and Emerging Threats, held in Rome at the UN Food and Agricultural Organization Headquarters and hosted by the UN Interregional Crime and Justice Research Institute (UNICRI) in cooperation with the UN Environmental Program (UNEP) and the Ministry of the Environment (Italy). It was recognized that environmental crime is an important new form of transnational organized crime in need of a greater response.³³

On January 22, 2013, a committee of eleven citizens from nine EU countries officially launched the European Citizens' Initiative (ECI)³⁴ "End Ecocide in Europe" to criminalize Ecocide and extensive damage and destruction of ecosystems, including in particular the prohibition of access to products which can be fundamentally linked to Ecocide on the market of the EU and a ban on investment in activities causing Ecocide. The ECI was not able to gather the more than one million signatures necessary to submit their proposal to the European Commission.³⁵

For Ecocide to become an international crime, support in 86 countries to amend the Rome Statute would be needed.³⁶ By placing Ecocide among international crimes, companies would be forced to behave gently towards our planet by using innovative methods and tools in activities such as the extraction of coal, precious metals, etc. Preventive measures would avoid and therefore significantly reduce harmful action against the environment.

Polly Higgins organized a simulated trial which took place as though the

³³ Available at: <http://www.unicri.it/topics/environmental/conference/>. Accessed 18 March, 2020.

³⁴ ECI - a tool of the Lisbon Treaty to support of representative and direct democracy, the aim of the European Citizens' Initiative is to propose new amendments to legislation directly to the European Commission, as the institution authorized to propose new EU legislation. Citizens' initiative must be supported by at least one million EU citizens from at least 7 out of 28 Member States of the EU. In each of these seven Member States, it is necessary to collect minimum number of signatures. Available at: <http://ec.europa.eu/citizens-initiative/public/basic-facts>. Accessed 18 March, 2020.

The rules and procedures governing the ECI are set out in the Regulation No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (2011).

³⁵ THOMAS, *History of Ecocide*, <https://www.endEcocide.org/history-of-Ecocide/#7>. Accessed 24 February, 2020.

³⁶ RAINGOLD, *Ecocide: crime against nature and the need for a law to prevent it*, 10 October 2011, <https://www.theguardian.com/sustainable-business/blog/Ecocide-environment-green-policy-un-law>. Accessed 18 March, 2020.

crime of Ecocide had already been adopted by the UN. Judges, lawyers and the jury were real; only the defendants were imaginary – two chief executives were convicted of global felonies comparable to genocide and war crimes. Sanctions against the convicted persons were comparable to those associated with genocide and war crimes, even though the actions of the accused had not led to a single loss of human life. To illustrate the types of sentences, we offer Article 77 of the Rome Statute (2002):³⁷

(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years;

(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

(c) A fine under the criteria provided for in the Rules of Procedure and Evidence;

(d) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

The defendants faced the prospect of years behind bars due to the extensive environmental damage caused by their companies in extracting oil from the Tar Sands in Canada. The principal victims of their crimes were migrating birds.³⁸

To compare with reality, where we do not yet have a law on Ecocide, a businessman on a Board of Directors advocating that the mining of minerals should proceed in a gentle way to the environment would probably be thrown off of the Board of Directors because of promoting more financially demanding and more complicated procedures. However, when we do have the law on Ecocide, such a situation will not be possible because the proposed procedure will be required by the law itself and everyone would think twice whether it is worth enduring a criminal prosecution and sanctioning for the crime of international Ecocide.

5. The “ECO” Crimes and the “ECO” situation in the world. In every country, people can notice that in places where there were once woods, fields or meadows there are now homes, commercial buildings, complex-

³⁷ Rome Statute (2002). Rome Statute of the International Criminal Court. https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf. Accessed 18 March, 2020.

³⁸ RAINGOLD, *Ecocide: crime against nature and the need for a law to prevent it*, 10 October 2011, <https://www.theguardian.com/sustainable-business/blog/Ecocide-environment-green-policy-un-law>. Accessed 18 March, 2020.

es, factories, etc. Small streams and rivers have receded or even dried up, there are fewer animals in the meadows and we are affected by various natural disasters which are the result of the insensitive and irresponsible behaviour of all of us inhabitants of the Earth. Without any doubt, supranational corporations have the greatest influence on this, in some cases (maybe even in many cases) having the quiet consent of the states. For example, the illegal felling of trees in Central and South America produces the wood for the international trade in the whole world. This activity is often supported by corrupt politicians. Such illegal interventions destroy the ecosystem, then trigger floods, which result in damaging the atmosphere – and this whole process will eventually be manifested in the form of changes to the climate. Due to these changes, water supplies are rapidly diminishing in turn. The UN declared that if the problem is not resolved stridently, in fifteen years, half of the world's population will be fighting for drinking water. Only then will we realize how precious water is, but it will be too late. Almost two million people die per year due to lack of drinking water. In Africa, people carry drinking water from miles away.

This has ultimately an impact on humanity itself, because the loss, damage or destruction of the ecosystems causes climate crises, which produce climate refugees, and the result is 750 million displaced people. Polly Higgins stated that at present, 21,000 climate refugee camps have been created, the largest being in Columbia.³⁹ In the region of Lapland in northern Scandinavia, where indigenous peoples live land is taken from indigenous people in the name of nickel and cobalt mining, and the subsequent emission of chemicals into the water and the surrounding environment changes it into a barren landscape. The lives of the inhabitants are threatened and they are forced to leave their country.⁴⁰ Due to climate changes and the problem of global warming, the inhabitants of the Marshall Islands in the Pacific Ocean are also endangered. The water is gradually taking over more land and a real danger exists that the Marshall Islands over time will find themselves under the sea. Cases similar to this are unfortunately not rare in the world.

At the present time, it is not punishable at the international level to do enormous ecological damage and destroy ecosystems. We have, for example, the Convention on Human Rights, Genocide Convention which allows punish-

³⁹ HORÁK, *Aj Zem má svoje práva, vraví právnička Polly Higgins*, 24 May 2017, <https://dennikn.sk/772221/aj-zem-ma-svoje-prava-vravi-pravnicka-polly-higgins/>. Accessed 18 March, 2020.

⁴⁰ *Ibid.*

ment for genocide at the international level as it is international crime. An Earth Convention for the Protection of the Earth does not yet exist that would condemn Ecocide and guarantee protection against it. At the international level, therefore, we do not have protection of the Earth, nor do we have implemented international crime of the Ecocide - the mass destruction of the Earth.

According to those kinds of ecological disasters, Polly Higgins divides ecological “harms” into different kinds of “ecological crimes”. We can mention four main ‘primary’ categories of “eco” crimes that negatively affect the environment and species as a result of human actions, as Polly Higgins state them in her works about draft law on Ecocide:⁴¹

1. Crimes of water pollution. During the 20th century the global population tripled, water consumption multiplied sixfold and half the world’s rivers and lakes have become polluted by waste water. Some 58 % of the world’s reefs and 34 % of all fish may be at risk due to over-fishing, poaching and non-sustainable fishing techniques, as well as pollution.⁴² Freshwater and marine pollution was highlighted as a global story in April 2010 by the explosion of the BP Deepwater Horizon oil well, which had turned into an ecological disaster on an enormous scale. This was however, only the latest in a line of incidents in which the oceans of the world and coastal eco-systems and economies have been ravaged and damaged by oil spills.⁴³

2. Crimes of air pollution. Air pollution crosses national boundaries and can affect all who live and work in cities or centres of high industrial concentration although it cannot be said that pollution is egalitarian in impact insofar as those who are more able than others to live in low pollution areas can avoid the worst excesses that are suffered by those living in high density locations. All populations will however be subject to the effects of climate change and ozone depletion, which are predominantly driven by air pollution.⁴⁴ The World Health Organisation estimates that air pollution causes the annual premature death of two million people worldwide through respiratory infections, heart disease and lung cancer - all accelerated by, or the direct result of, poor air quality ... Not only are humans placed at risk, but wildlife, water, ag-

⁴¹ HIGGINS, SHORT, SOUTH, *Protecting the planet: a proposal for a law of Ecocide*, in *Crime, Law and Social Change*. Springer, April 2013.

⁴² ANNAN, FLAVIN, *State of the world, 2002: a worldwatch institute report on progress toward a sustainable society*. London: WW Norton and Company, 2002.

⁴³ HIGGINS, SHORT, SOUTH, *Protecting the planet: a proposal for a law of Ecocide*, in *Crime, Law and Social Change*. Springer, April 2013.

⁴⁴ *Ibid.*

riculture, buildings and natural heritage are also damaged by air pollutants at great financial, cultural and environmental expense. In addition, air pollution is a major contributor to climate change and the increase in so called “natural disasters”.⁴⁵

3. Crimes of deforestation and spoiling of the land. Across the world the impact of illegal logging is depleting forestry resources and this has worrying implications for global warming. The impact of giant industrial logging companies on areas like the Amazon basin is devastating for the rainforest. Meanwhile, both criminal enterprises and legitimate businesses continue to engage in toxic dumping and unsafe waste disposal.⁴⁶

4. Crimes against animals/non-human species. Abuse, mistreatment or death of animals and birds may be visible and stark as in cases of destruction of habitats by war, catastrophe, oil spills, deforestation, or be less visible and indeed socially accepted when related to farming, medical experiments, clearance of land for building, or where damage results from activities that cause air or water pollution, soil erosion or climate change. Illegal wildlife trafficking is now a global business rivalling the drugs and arms trades but whether licit or illicit, the smuggling of live animals or trading of animal parts is poorly and inadequately regulated.⁴⁷

For now, in law outside of wartime, it is not a crime to cause mass destruction or loss of ecosystems. Our world has normalized the daily Ecocide caused by the practices that drive economies as they currently function.⁴⁸

5. Purpose and main objectives of the draft law on Ecocide. Of course, in response to these various issues and challenges, legal and criminological tools have been developed and applied, cases of environmental crime have been reported and prosecuted, and matters of responsibility and reparation have been analysed and debated. However the current system of governance is weak.⁴⁹ «Primary cause of environmental destruction is the fact that current

⁴⁵ WALTERS, *Air crimes and atmospheric justice*, in BRISMAN, SOUTH (Eds.), *The Routledge International Handbook of Green Criminology*. London: Routledge, 2013

⁴⁶ FABER, *Capitalising on environmental crime: a case study of the U.S.A. Polluter-industrial complex in the age of globalization*. in KANGASPUNTA, MARSHALL (Eds.), *Eco-crime and justice*. UNICRI: Turin, 2009, p. 94-101.

⁴⁷ SOUTH, WYATT, *Comparing illicit trades in wildlife and drugs: an exploratory study*, in *Deviant Behavior*, 32(1), 2011, 1-24.

⁴⁸ AGNEW, *The Ordinary Acts that Contribute to Ecocide: A Criminological Analysis*, in SOUTH, BRISMAN (Eds.), *The Routledge international handbook of green criminology*. London: Routledge, 2013

⁴⁹ HIGGINS, SHORT, SOUTH, *Protecting the planet: a proposal for a law of Ecocide*, in *Crime, Law*

legal systems are designed to perpetuate human domination of nature instead of fostering mutually beneficial relationships between humans and other members of the earth community.»⁵⁰

According to Article 25 of the Rome Statute, the ICC has jurisdiction only over natural persons; only they are subject to punishment in accordance with this statute, which only applies to individual criminal responsibility. Therefore, legal persons cannot be held criminally liable and punished under the Rome Statute. In relation to legal persons, a number of states have introduced so called “direct criminal responsibility of legal persons,” thanks to which legal persons can be sanctioned according to the provisions of criminal law, of course not excluding crimes against the environment. The criminal liability of legal persons has its own justification mainly for this category of offenses and also for economic crimes. Different states, however, have differently modified the scope of criminal liability of legal persons.⁵¹

Although the criminal liability of legal persons exists, we rarely see effective sentencing of them for their illegal conduct in relation to the environment. The threat of sanctions appears to be insufficient. The companies count on certain financial sanctions for unlawful acts directed against the environment in advance in their budgets. The current system is based mainly on models of deregulation and voluntary compliance (based on the belief that the market will provide effective and efficient remedies) and legislative-balancing-acts (where agencies who are tasked with encouragement of compliance in the course of doing business are also charged with prosecuting and penalising in cases of offending).⁵² In addition, regulators are largely representatives of the regulated and they successfully contribute to “trivialisation” of injurious actions.⁵³

A law of Ecocide should recognise human-caused environmental damage and degradation (whether committed during or outside of war-time), as a crime of strict liability (in other words, without intent).⁵⁴ An international law where in-

and Social Change. Springer, April 2013.

⁵⁰ CULLINAN, *Earth jurisprudence: from colonization to participation*, in *Worldwatch Institute (Eds.) State of the world*, 2010, transforming cultures. www.Worldwatch.org.

⁵¹ TURAYOVÁ, TOBIÁŠOVÁ, et al., *Trestná zodpovednosť právnických osôb (Medzinárodné a európske aspekty, právno-teoretické východiská)*. Bratislava : Comenius University Bratislava, Faculty of Law, 2014, p. 150.

⁵² SOUTH, BRISMAN, *Critical green criminology, environmental rights and crimes of exploitation*. in WINLOW, ATKINSON (Eds.), *New directions in crime and deviance*. London: Routledge, 2012.

⁵³ DE PREZ, *Excuses, excuses: the ritual trivialisation of environmental prosecutions*, in *Journal of Environmental Law*, 12, 2000, p. 65–77.

⁵⁴ HIGGINS, SHORT, SOUTH, *Protecting the planet: a proposal for a law of Ecocide*, in *Crime, Law*

intent is a necessary component of the crime opens up the legal loophole of sidestepping responsibility on the basis that mass damage or destruction was not intended. Most corporate Ecocide is not intended; often it is deemed collateral damage or an accident. When intent or knowledge is required, many corporations would hide behind the defence that they did not know what was happening or what could happen.⁵⁵

Implementation of the crime of Ecocide stops the flow of destruction at source and creates a pre-emptive duty on corporate activity to prohibit mass damage and destruction to ecosystems from the outset. The crime of Ecocide becomes a powerful preventative measure that would render those in a superior position of responsibility at-risk of prosecution where they are responsible for taking decisions that lead to, support or finance mass damage and destruction. It will impose a legal duty of care upon all nations to pre-emptively help.

Each sanction (and not only for environmental offenses) should meet two basic functions:

1. Deterrent - potential subjects should be deterred from committing a criminal offense. If it still occurs, it is necessary to be deterrent in preventing its continuation.
2. Reparable feature - effort towards reversal of the consequences and a return to the original state (if possible); for example, if someone contaminates a stream with waste materials, he/she must ensure that is cleaned, because if he/she is only charged with a fine, he/she will pay and the stream will remain polluted.

One further important perspective and tool already applied in various cases of contestation and conflict is the idea of restorative justice. This is now seen to hold considerable promise as a means to resolve responsibility and agree recompense for crimes against the environment and the human and non-human beings affected.⁵⁶ Restorative justice is built on an understanding of our relationship with nature and the duty to remedy the harm caused, addressing “the needs of the beleaguered party to restore that which has been harmed rather than simply fixating on the punishment of the perpetrator”.⁵⁷ Thus, instead of “the polluter pays”, the new governing principle should be-

and Social Change. Springer, April 2013.

⁵⁵ Ibid.

⁵⁶ HIGGINS, SHORT, SOUTH, *Protecting the planet: a proposal for a law of Ecocide*, in *Crime, Law and Social Change*. Springer, April 2013.

⁵⁷ HIGGINS, *Eradicating Ecocide: laws and governance to prevent the destruction of our planet*. London: Shephard-Walwyn, 2010.

come “the polluter does not pollute”.

The law of Ecocide should fulfil these two main goals: first, prohibit mass damage, destruction or loss of ecosystems, and second, impose a legal duty of care upon persons in positions of superior responsibility.

6. Positive examples of national legislation. Some states transferred the draft Crimes against Peace, including Ecocide, into their own national penal codes. Vietnam was the first country to include a crime of Ecocide in its domestic law, followed by Russia in 1996. Although Ecocide had been taken off the table at the United Nations, the crime itself was adopted by states that preferred to include all the draft Crimes against Peace in their national penal codes. In the aftermath of the collapse of the USSR, over a period of couple of years, new states have included Ecocide as a named Crime Against Peace, specifically Armenia, Belarus, Republic of Moldova, Ukraine and Georgia, Kazakhstan, Kyrgyzstan and Tajikistan.⁵⁸ Further research is needed to determine whether the crime of Ecocide in these national laws is a crime of strict liability and to assess how effective these laws are, because law of Ecocide was intended to deal with such crimes as with crimes against humanity and mankind thus crimes affecting the whole world and all people. It is questionable whether these crimes in national legislation could help to punish and prevent huge and massive violating of environment which crosses the borders of one national state.

Some states over the world go even farther than to introduce the crime of Ecocide into their penal codes. They finally adopted the legislation that gives the same rights to nature as to people. «We need a jurisprudence that would provide for the legal rights of geological and biological as well as human components of the Earth community. A legal system exclusively for humans is not realistic.»⁵⁹ There are not many of them, but they do exist. We are speaking about Ecuador, Bolivia and from 2014 also about New Zealand.

Ecuador has recognized the rights of Mother Earth (Pachamama),⁶⁰ including the fundamental right for her existence to be respected, preserved and for the restoration of her vital cycles, structure, functions and evolutionary processes,

⁵⁸ GAUGER, RABATEL-FERNEL, KULBICKI, SHORT, HIGGINS, *The Ecocide Project: “Ecocide is the missing 5th crime against peace”*. Human Rights Consortium, School of Advanced Study, University of London, 2013, p. 12.

⁵⁹ BERRY, *The great work: our way into the future*, New York : Bell Tower, 1999, p. 161.

⁶⁰ On the basis of resolution of the UN General Assembly on 22 April of 2010, this day is celebrated as the International Day of Mother Earth. The phrase "Mother Earth" reflects interconnection between the Earth, natural ecosystems and a man (Chmelár, 2017).

by adopting a new Constitution in 2008.⁶¹ Ecuador is the first country to recognize the rights of nature in its constitution. The rights of nature are contained in Title VII, Chapter 2 of the Ecuadorian Constitution. The Constitution also enshrined the obligation of the state to apply preventive and restrictive measures to prevent actions that could lead to the extinction of animals and plants, the destruction of ecosystems and to the permanent disruption of natural cycles. It is prohibited to use organisms and organic or inorganic materials in such a way that permanently damages the genetic information of plants and animals. Natural resources can not be the subject of private ownership. The relevant articles of the Ecuadorian Constitution were applied in 2011, when there was serious interference with the Ecuadorian River Vilcabamba. During the construction works, the workers dumped gravel into the river that blocked the river flow and the water flooded the surrounding land. Mother Earth was successfully legally represented by lawyers. The provincial court in Loja found a violation of the rights of the river to flow as an unimpeded natural riverbed and decided on compensation of the river.⁶² In Article 396 of the Constitution in that context, it is stated that in the case of environmental damage, in addition to appropriate sanctions, there exists an obligation to restore the ecosystem and compensate people and communities depending on the affected natural ecosystems. Prosecution and punishment of persons responsible for environmental damage shall not be subject to preclusion or time limits. In Article 397, it is stated that in the event of environmental damage, the state must act immediately to ensure the protection of human health and the restoration of ecosystems. This will be required by the perpetrator of the actions that caused damages to the environment under the conditions and pursuant to procedures established by law. Responsibility also applies to civil servants responsible for the implementation of environmental monitoring. To guarantee individual and collective rights to live in a healthy and ecologically balanced environment, the following public commitments are incorporated:⁶³

1. To permit any natural person or legal entity, human community or group, to file legal proceedings and resort to judicial and administrative bodies with-

⁶¹ Constitution of Ecuador (2008). <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>. Accessed 18 March, 2020.

⁶² CHMELÁR, *Dali by ste Váhu, Dunaju alebo Tatram práva ako živým bytosťami?* 21 April 2017, <https://europskenoviny.sk/2017/04/21/eduard-chmelar-dali-ste-vahu-dunaju-alebo-tatram-prava-ako-zivym-bytosťami/>. Accessed 18 March, 2020.

⁶³ Constitution of Ecuador (2008), Art. 397. <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>. Accessed 18 March, 2020.

out detriment to their direct interest, to obtain from them effective custody in environmental matters, including the possibility of requesting precautionary measures that would make it possible to end the threat or the environmental damage that is the object of the litigation. The burden of proof regarding the absence of potential or real danger shall lie with the operator of the activity or the defendant.

2. To establish effective mechanisms to prevent and control environmental pollution, restore degraded natural spaces, and to provide for the sustainable management of natural resources.

3. To regulate the production, import, distribution, use, and final disposal of materials that are toxic and hazardous to persons or the environment.

4. To ensure the intangibility of protected natural areas, so as to guarantee the conservation of biodiversity and the maintenance of the ecological functions of the ecosystems. The State shall be in charge of management and administration of protected natural areas.

5. To establish a national prevention, risk management and natural disaster system based on the principles of immediateness, efficiency, precaution, responsibility and solidarity.

Articles 396 and 397 of the Ecuador Constitution are part of Title VII, chapter 2 named “Biodiversity and natural resources.”⁶⁴

In 2010, the Law of the Rights of Mother Earth was adopted in **Bolivia**, which aims to recognize the rights of Mother Earth and the obligation of the state and society to ensure these rights.⁶⁵ This is the first law in the world that confers the same rights to nature as to the people declare the rights of Mother Earth as a matter of public interest. The law is most influenced by the philosophy and thinking of Andean indigenous peoples and their spiritual world. They consider the goddess known as Pachamama to be the center of any life.⁶⁶ The Law defines Mother Earth as «a dynamic living system comprising an indivisible community of all living systems and living organisms, inter-related, interdependent and complementary, which share a common destiny.»⁶⁷ In Article 2, the binding principles that govern this law are incorpo-

⁶⁴ Constitution of Ecuador (2008). <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>. Accessed 18 March, 2020.

⁶⁵ CALLAHUANCA, *Law of Mother Earth. The Rights of Our Planet. A Vision from Bolivia*, 2010, <http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html>. Accessed 18 March, 2020.

⁶⁶ BUREŠ, *Bolívie přizná přírodě stejná práva, jako mají lidé*, 12 May, 2011, <http://denikreferendum.cz/clanek/10048-bolivie-prizna-prirode-stejna-prava-jako-maji-lide>. Accessed 18 March, 2020.

⁶⁷ CALLAHUANCA, *Law of Mother Earth. The Rights of Our Planet. A Vision from Bolivia*. Chapter

rated.⁶⁸

1. Harmony. Human activities, within the framework of plurality and diversity, should achieve a dynamic balance with the cycles and processes inherent in Mother Earth.

2. Collective good. The interests of society, within the framework of the rights of Mother Earth, prevail in all human activities and any acquired right.

3. Guarantee of the regeneration of Mother Earth. The state, at its various levels, and society, in harmony with the common interest, must ensure the necessary conditions in order that the diverse living systems of Mother Earth may absorb damage, adapt to shocks, and regenerate without significantly altering their structural and functional characteristics, recognizing that living systems are limited in their ability to regenerate, and that humans are limited in their ability to undo their actions.

4. Respect and defend the rights of Mother Earth. The State and any individual or collective person must respect, protect and guarantee the rights of Mother Earth for the well-being of current and future generations.

5. No commercialism. Neither living systems nor processes that sustain them may be commercialized, nor serve anyone's private property.

6. Multiculturalism. The exercise of the rights of Mother Earth requires the recognition, recovery, respect, protection, and dialogue of the diversity of feelings, values, knowledge, skills, practices, skills, transcendence, transformation, science, technology and standards, of all the cultures of the world who seek to live in harmony with nature.

Article 7 of the Law of the Rights of Mother Earth incorporates the rights of "Mother Earth".⁶⁹

1. To life: The right to maintain the integrity of living systems and natural processes that sustain them, and capacities and conditions for regeneration.

2. To the diversity of life: It is the right to preservation of differentiation and variety of beings that make up Mother Earth, without being genetically altered or structurally modified in an artificial way, so that their existence, functioning or future potential would be threatened.

3. To water: The right to preserve the functionality of the water cycle, its existence in the quantity and quality needed to sustain living systems, and its protection from pollution for the reproduction of the life of Mother Earth

II, Art. 3, 2010, <http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html>. Accessed 18 March, 2020.

⁶⁸ Ibid. Chapter I, Art. 2.

⁶⁹ Ibid. Chapter III, Art. 7.

and all its components.

4. To clean air: The right to preserve the quality and composition of air for sustaining living systems and its protection from pollution, for the reproduction of the life of Mother Earth and all its components

5. To equilibrium: The right to maintenance or restoration of the interrelationship, interdependence, complementarity and functionality of the components of Mother Earth in a balanced way for the continuation of their cycles and reproduction of their vital processes.

6. To restoration: The right to timely and effective restoration of living systems affected by human activities directly or indirectly.

7. To pollution-free living: The right to the preservation of any of Mother Earth's components from contamination, as well as toxic and radioactive waste generated by human activities.

Control and supervisory powers for protection of the rights of Mother Earth are fulfilled by an ombudsman appointed for this purpose. The detailed arrangement is provided by the implementing legislation. With powers to monitor and control polluting industries, communities are also involved in the protection of the rights in question.⁷⁰

Although critics complain about the vagueness of the law, it does represent an effort to reach a comprehensive solution to the various problems posed by the anthropocentric conception of legal protection of the environment. In any case, it is an inspiration for other states, and significant changes have already occurred in the legislation of several countries spurred on by the South American concept.⁷¹

Bolivian President Evo Morales became the UN's outspoken critic of industrialized countries that are not prepared to limit the temperature rise to one degree Celsius. Bolivia is struggling to cope with rising temperatures, melting glaciers and more extreme weather events, including more frequent floods, droughts, frosts and mudslides. Research by glaciologist Edson Ramirez of San Andres University in the capital city of La Paz suggests that temperatures have been rising steadily for 60 years and started to accelerate in 1979. They are now on course to rise a further 3.5-4 degrees Celsius over the next 100

⁷⁰ VOMÁČKA, *Země jako subjekt práv? Tendence v ekocentrickém pojetí právní ochrany životního prostředí*, in ŠMAJS, *Ústava Země*, Banská Bystrica : Vydavateľstvo PRO, 2015 p. 26-31, <https://www.ustavazeme.cz/cz/zeme-jako-subjekt-prav>. Accessed 18 March, 2020.

⁷¹ CHMELÁR, *Dali by ste Váhu, Dunaju alebo Tatram práva ako živým bytosťami?* 21 April 2017, <https://europskenoviny.sk/2017/04/21/eduard-chmelar-dali-ste-vahu-dunaju-alebo-tatram-prava-ako-zivym-bytosťami/>. Accessed 18 March, 2020.

years. This would turn much of Bolivia into a desert.⁷²

In 2014, Te Urewera National Park in **New Zealand** won the same rights as man and in 2016 the New Zealand Parliament also granted those rights to the Whanganui River. This is the first river in the world with human rights. The Whanganui is located on the North Island of New Zealand and is the third longest river in the country, which has great significance for the Maori indigenous people. They believe that they come from the earth and the Earth has its own personality, its own pulse, its own health and its own soul. The natives led the long-term struggle for the rights of this river with the government and officials in New Zealand. Finally, after 170 years, they managed to get what the river deserves. The Whanganui River will have its own representatives who will defend the best interests and needs of the river. One deputy will come from the tribe of Maori and the other will be chosen by the government. The new law ordered the representatives to always act in the best interest of the river.⁷³

Similarly, the court in the **Indian** state of Uttarakhand granted the same rights to the sacred rivers Ganga and Jamuna as to man. The Ganga, Jamuna and their tributaries have been declared legal entities with all the corresponding rights, duties and responsibilities.⁷⁴

7. Conclusion. Insensitive human intervention in nature disturbs the natural balance in the ecosystem. The impacts of climate change are already felt all around the world. The term Ecocide is used to describe the destructive impact of humanity on its own natural environment. American environmental theorist and activist Patrick Hossay argues that humanity is committing Ecocide through the effects of industrial civilization on the global environment.⁷⁵ The law on Ecocide designed by internationally recognized lawyer Polly Higgins would be able to slow down the vicious circle and give nature a chance to regenerate.

⁷² VIDAL, Bolivia enshrines natural world's rights with equal status for Mother Earth, 10 April 2011, <https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>. Accessed 18 March, 2020.

⁷³ LUKÁŠ, *Pocta pre planétu Zem. Novozélandská Whanganui sa stane prvou riekou s ľudskými právami na svete*, 16 March 2017, <https://www.interez.sk/pocta-planetu-zem-novozelandska-whanganui-sa-stane-prvou-riekou-ludskymi-pravami-svete/>. Accessed 18 March, 2020.

⁷⁴ CHMELÁR, *Dali by ste Váhu, Dunaju alebo Tatrám práva ako živým bytostiam?* 21 April 2017, <https://europskenoviny.sk/2017/04/21/eduard-chmelar-dali-ste-vahu-dunaju-alebo-tatram-prava-ako-zivym-bytostiam/>. Accessed 18 March, 2020.

⁷⁵ HOSSAY, *Unsustainable: A Primer for Global Environmental and Social Justice*, United Kingdom: ZED Books, 2006

We can only ask whether we will finally manage to get enough support to introduce Ecocide as an international crime and if the combat against the large-scale destruction of our ecosystems will become a priority agenda in the international political arena. «Giving weight to considerations of justice in the context of sustainability poses a significant challenge to established ways of thinking in several respects.»⁷⁶ It will take a lot of time and effort to lead the activities that will achieve this goal.

⁷⁶ BENTON, Ecology, community and justice: the meaning of green, in BEIRNE, SOUTH (Eds.), *Issues in green criminology*. Cullompton: Willan, 2007, p. 10.