VOL. 4 - ISSUE 1 (2023)

Journal of International Criminal Law

Online Scientific Review

EDITED BY
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ISSN: 2717-1914

www.jiclonline.org

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OVERVIEW

The Journal of International Criminal Law (*JICL)* is a scientific, online, peer-reviewed journal, first edited in 2020 by Prof. Dr. Heybatollah Najandimanesh, mainly focusing on international criminal law issues.

Since 2023 JICL has been co-managed by Prof. Dr. Anna Oriolo as General Editor and published semiannually in collaboration with the International and European Criminal Law Observatory (IECLO) staff.

JICL Boards are powered by academics, scholars and higher education experts from a variety of colleges, universities, and institutions from all over the world, active in the fields of criminal law and criminal justice at the international, regional, and national level.

The aims of the JICL, *inter alia*, are as follow:

- to promote international peace and justice through scientific research and pubblication;
- to foster study of international criminal law in a spirit of partnership and cooperation with the researchers from different countries;
- to encourage multi-perspectives of international criminal law; and
- to support young researchers to study and disseminate international criminal law.

Due to the serious interdependence among political sciences, philosophy, criminal law, criminology, ethics and human rights, the scopes of JICL are focused on international criminal law, but not limited to it. In particular, the Journal welcomes high-quality submissions of manuscripts, essays, editorial comments, current developments, and book reviews by scholars and practitioners from around the world addressing both traditional and emerging themes, topics such as

- the substantive and procedural aspects of international criminal law;
- the jurisprudence of international criminal courts/tribunals;
- mutual effects of public international law, international relations, and international criminal law;
- relevant case-law from national criminal jurisdictions;
- criminal law and international human rights;
- European Union or EU criminal law (which includes financial violations and transnational crimes);
- domestic policy that affects international criminal law and international criminal justice;
- new technologies and international criminal justice;
- different country-specific approaches toward international criminal law and international criminal justice;

- historical accounts that address the international, regional, and national levels; and
- holistic research that makes use of political science, sociology, criminology, philosophy of law, ethics, and other disciplines that can inform the knowledge basis for scholarly dialogue.

The dynamic evolution of international criminal law, as an area that intersects various branches and levels of law and other disciplines, requires careful examination and interpretation. The need to scrutinize the origins, nature, and purpose of international criminal law is also evident in the light of its interdisciplinary characteristics. International criminal law norms and practices are shaped by various factors that further challenge any claims about the law's distinctiveness. The crime vocabulary too may reflect interdisciplinary synergies that draw on domains that often have been separated from law, according to legal doctrine. Talk about "ecocide" is just one example of such a trend that necessitates a rigorous analysis of law *per se* as well as open-minded assessment informed by other sources, *e.g.*, political science, philosophy, and ethics. Yet other emerging developments concern international criminal justice, especially through innovative contributions to enforcement strategies and restorative justice.

The tensions that arise from a description of preferences and priorities made it appropriate to create, improve and disseminate the JICL as a platform for research and dialogue across different cultures, in particular, as a consequence of the United Nations push for universal imperatives, *e.g.*, the fight against impunity for crimes of global concern (core international crimes, transboundary crimes, and transnational organized crimes).

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Ecocide: A New Challenge for the International Criminal Law and for Humanity

By Camila Misko Moribe[*]*, Flávio de Leão Bastos Pereira*[**] *& Nathalia Penha Cardoso de França*[***]

ABSTRACT: The present study develops the theme of ecocide, a recent approach to conducts that aim at natural environments, wiping out ecosystems, wildlife, changing climate and impacting indigenous peoples' lives in natural lands. For that, we initiate the discussions with the crime of genocide, widely consolidated within the Rome Statute, the funding legal document of the International Criminal Court, approaching its historical roots, as well as its conceptual and factual developments. Later, we debate the recent emergence of the concept of ecocide, detailed by scholars and international legal forums as a method of genocide, that is, when the destruction of ecosystems is capable of causing the annihilation of social groups. The main question this essay tries to answer is whether international criminal protection of the environment, through the crime of ecocide within the International Criminal Court's jurisdiction, is the most urgent and important development in international criminal law. All in all, this work advocates for the consideration of ecocide as a crime against humanity by itself, as well as for the recognition of the environment as a subject of law, an emerging and urgent need for the future of International Criminal Law.

KEYWORDS: Court; Crime; Ecocide**;** Environment; Genocide**.**

I. Introduction

The crime of genocide is already highly consolidated in international legal practice. It is already provided for in the Rome Statute, a document that creates and delimits

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JICL (Vol. 4 – Issue 1 – 2023), pp.28-40
ISSN 2717-1914
Doi: 10.22034/JICL.2023.172299

the competence of the International Criminal Court; it has its own Convention, which is even recently being discussed in the case of *Ukraine v. Russia* at the International Court of Justice; and the vast majority of countries have it as crimes within their domestic law. International Environmental Law is also well-established, whose conferences, conventions and meetings are repeated from time to time to re-discuss targets for depollution, reduction of deforestation, eradication of fires, carbon footprint, carbon credits, among other matters of global urgency. However, the merging of these two areas of international law is difficult to consider. Looking at the environment, biomes, fauna, flora, natural resources as subjects of law is a giant leap for the legal tradition we are used to. However, it may be that the future of the international criminalization of destructive conduct lies in the consideration of environmental damage as crimes under the Rome Statute. What harm is so borderless, speciesless, and so harmful to life on Earth than the very destruction of its habitability?

Based on this concern, we will face in this essay the combination of the crime of genocide with environmental damage and the emergence of a new definition that takes shape every day: ecocide as an international core crime.

II. Genocide and Ecocide: The Fight Against the End of Humanity

Although not a recent issue, there is little research on the theme of ecocide. What studies so far show is that this can be considered a method of genocide when the destruction of the ecology and geography of areas fundamentally threatens the existence and culture of a social group.

The typification and characterization of the crime of genocide, war crimes and crimes against humanity took place in the post-World War II context (1939-1945), after consensus among the nations, which decided to condemn the crimes committed in war conflict. As a result, in 1948, the Convention for the Prevention and Punishment of the Crime of Genocide (CONUG) was approved, a secular international order of the United Nations, which had many historical events as its founding milestones.

The Peace of Westphalia (1648) expressed the first attempt of international coordination in Europe, through some important principles of international law, such as sovereignty, equality, balance between powers,[1] self-determination of peoples, international cooperation and the peaceful resolution of conflicts, the inviolability of borders, non-intervention between States and respect for the minority.[2]

In 1863, in the context of the Civil War in the United States (1861-1865), the

[1] John Elliott, *Europa después de la paz de Westfalia*, 19 PEDRALBES 131 (1999), at 132-146.
[2] ALEJANDRO GALÁN MARTÍN, LA PAZ DE WESTFALIA (1648) Y EL NUEVO ORDEN INTERNACIONAL, FACULTAD DE FILOSOFÍA Y LETRAS, UNIVERSIDAD DE EXTREMADURA (2015).

effort to regulate the war became clearer with the emergence of the Lieber Code,[3] which also represented the first attempt to bring together the laws and customs of war and apply them to armies while in battle. The Code was intended only for Union soldiers fighting in the American Civil War, which is why it had no treaty status.

In any case, it was a strong influence on the Brussels Conference of 1874 which, together with the 1880 Oxford Manual of Laws and Customs of War, provided the basis for the International Hague Conventions of 1899 and 1907.[4] In this first Conference, there was a discussion towards an international legal regulation of the laws and customs of land wars.[5]

Years later, the so-called Great War was significant for the criminal behavior now called genocide. In 1915, facing the extermination of Armenians by the Ottoman Empire, France, Great Britain and Russia joined in a declaration that had as its content crimes committed by Turkey[6] in the face of humanity and civilization.[7] In the years that followed, the possibility of a trial for the massacre of Armenian minorities was analyzed, with their agents and government being personally held responsible.

At the same time, supporters were in favor of official German war crimes. On the 19th Paris Peace Conference, the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties was created, which had as one of the investigation and information laws on violations of humanity and customs of war. As a result of these violations, what we now call "crimes against humanity" took place.[8]

In 1933, Raphael Lemkin[9] sent a proposal to the V Conference on International Law in Madrid,[10] in order to legally classify two new crimes of barbarism and vandalism, which would have to be internationalized, since their gravity legitimized the extrapolation of the principle of territoriality. The first involved the physical destruction of national, religious or racial groups, and the second, systematic attacks carried out by the State to the detriment of these groups.[11]

In the following decade, the Polish jurist united the concepts of barbarism

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[3] International Committee of the Red Cross, *The Development of Modern International Humanitarian Law* (May 15 2010), https://www.icrc.org/pt/doc/who-we-are/history/since- 1945/history-ihl/overview-development-modern-international-humanitarian- law.

[4] Mariano Nagy, *Genocidio: derrotero e historia de un concepto y sus discusiones*, 27(2) MEMORIA AMERICANA 10 (2019), at 11-33.

[5] Permanent Court of Arbitration, *The Hague Peace Conferences and the Permanent Court.*

[6] TANER AKCAM, UN ACTO VERGONZOSO: EL GENOCIDIO ARMENIO Y LA CUESTIÓN DE LA RESPONSABILIDAD TURCA (2010).

[7] WILLIAM SCHABAS, GENOCIDE IN INTERNATIONAL LAW. THE CRIMES OF CRIMES (2009).

[8] *Id.,* at 22-23.

[9] Ana Filipa Vrdoljak, *Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law*, 20(4) THE EUROPEAN JOURNAL OF INTERNATIONAL LAW 1163 (2009), at 1164-1194.

[10] PHILIPPE SANDS, CALLE ESTE-OESTE, SOBRE LOS ORÍGENES DE "GENOCIDIO" Y "CRÍMENES CONTRA LA HUMANIDAD (2017).

[11] RAPHAEL LEMKIN, *Estudio preliminar en Lemkin,* in EL DOMINIO DEL EJE EN LA EUROPA OCUPADA (Daniel Feierstein ed., 2008), at 23-38.

and vandalism, forming the master concept of genocide that we have today, connecting the Greek word "*genos*" (tribe/race) with the Latin word "*cide*" (killing/destruction). Lemkin defined genocide as a coordinated plan, with various types of actions, which aims to destroy the fundamental foundations of the life of national groups (religion, security, freedom, health, human dignity, language, feeling of patriotism), aiming at their annihilation.[12] In this regard, the following famous passage should be mentioned:

> Genocide has two phases: one, destruction of the national pattern of the oppressed group: the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals.[13]

Lemkin considers that culture is an integral part of human societies and it conditions the fulfillment of individual material needs, thus functioning as a key and memory of each social group, deserving protection. For this reason, culture is the concept that would trigger the "*genos*" in the definition of genocide, so that the destruction of culture can be understood as a method of group destruction.[14]

This definition was fundamental for the new international legal order and conscience:[15] the variety of methods or techniques of genocide ends up being ignored when the concept is only attributed to physical mass murder; the limitation in the groups understood as victims and the requirement of intent in the complete or partial destruction of groups makes the figure extremely restricted.[16]

Genocide, then, still a reality in many parts of the world, did not offer protection to those groups it was supposed to protect, which led the United Nations to review the effectiveness of the Genocide Convention. It is in this review that we witness the first attempt to criminalize serious environmental destruction in international law,[17] a topic that has been discussed for more than 40 years, including the level of intent necessary to define "ecocide" or "serious damage to the environment".

What started the debate was the serious environmental damage caused by the United States in chemical wars against Vietnam, Cambodia and Laos. Due to its context of emergency, the concept of ecocide was associated with war situations,

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[12] *Id*., EL DOMINIO DEL EJE EN LA EUROPA OCUPADA (2009), at 153.
[13] Mohammed Abed, *Clarifying the Concept of Genocide*, 37(3) METAPHILOSOPHY 308 (2006).
[14] Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress*, 51(1) THE AMERICAN HISTORICAL REVIEW 117 (1944), at 79-95; For further discussion on this see A. DIRK MOSES, RAPHAEL LEMKIN, *Culture and the Concept of Genocide*, in THE OXFORD HANDBOOK OF GENOCIDE STUDIES (Donald Bloxham, A. Dirk Moses eds., 2010), at 33.
[15] Ana Filipa Vrdoljak, *Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law*, 20(4) THE EUROPEAN JOURNAL OF INTERNATIONAL LAW 1163 (2009), at 1164-1194.
[16] Matthias Bjornlund, Eric Markusen,Martin Mennecke, *¿Qué es un genocidio?*, in GENOCIDIO, LA ADMINISTRACIÓN DE LA MUERTE EN LA MODERNIDAD (Daniel Feierstein, ed. 2005), at 17-48.
[17] Nicode`me Ruhashyankik, UN, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Question of the Prevention and Punishment of the Crime of Genocide (July 4, 1978).

in which the primary objective was environmental destruction.

Thus, the term was first used prominently in 1970 by Professor Arthur W. Galston, at the Conference on War and National Responsibility in Washington:[18]

> Although not legally defined, its essential meaning is well-understood; it denotes various measures of devastation and destruction which have in common that they aim at damaging or destroying the ecology of geographic areas to the detriment of human life, animal life, and plant life.[19]

Galston, then, related genocide and ecocide, since environmental destruction can have genocidal results, referring to the destruction of social groups, as well as the figuration of the environment as a subject of law, as a victim of ecocide.[20] Ecocide, however, was still seen as a military offense committed in times of war and peace, conditioned to the specific intent of destroying the environment.[21]

There has been a great deal of academic debate about the constitutive elements of crime, specifically about the need (or needlessness) of intent to destroy ecosystems.[22] Some experts, such as Richard A. Falk, understood that ecocide often occurs because of human economic activity and not as a predetermined attack on the environment:[23] "man has consciously and unconsciously inflicted irreparable damage to the environment in times of war and peace".[24] In the same vein, Arthur H. Westing, one of the pioneers in studies on the subject, asserted that "intent may not only be impossible to establish without admission but, I believe, it is essentially irrelevant".[25]

Currently, Polly Higgins leads the Eradicating Ecocide campaign, which aims to raise awareness of the numerous existing cases of ecocide and its human consequences worldwide, as occurs, for example, with indigenous people who, due to their cultural relationship with the land, suffer genocidal results from environmental destruction. Finally, Higgins created a network that defends the criminalization of ecological destruction through law and with strict liability.[26] Even with the movement, until recently, there was no clear definition of the concept of genocide.

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[18] Barry Weisburg, *Ecocide in Indochina,* NEW YORK TIMES (Feb. 26, 1970).
[19] John H.E. Fried, *War by Ecocide*, in BULLETIN OF PEACE PROPOSALS (Marek Thee ed., 1973).
[20] TORD BJORK, THE EMERGENCE OF POPULAR PARTICIPATION IN WORLD POLITICS – UNITED NATIONS CONFERENCE ON HUMAN ENVIRONMENT (1996).
[21] Richard A. Falk, *Environmental Warfare and Ecocide – Facts, Appraisal and Proposals*, 1 BULLETIN OF PEACE PROPOSALS (Marek Thee ed., 1973), at 80– 96.
[22] Arthur H. Westing, *Proscription of Ecocide*, 30(1) BULLETIN OF THE ATOMIC SCIENTISTS 24 (1974).
[23] *Id*.
[24] *Id* .
[25] Arthur H. Westing, *Proscription of Ecocide. Arms Control and the Environment*, in THE VIETNAM WAR AND INTERNATIONAL LAW (Richard A. Falk ed., 1974).
[26] Polly Higgins, Damian Short, Nigel South, *Protecting the Planet: A Proposal for a Law of Ecocide*, 59(3) CRIME, LAW AND SOCIAL CHANGE 251 (2013), at 252-266.

III. The Doctrinal Concept of Ecocide and the War Crime Through the Destruction of the Environment of Art. 8 (2)(b)(iv) of the Rome Statute

In June 2021, twelve lawyers from around the world convened to form an Independent Expert Panel by the Stop Ecocide Foundation proposed a legal definition of ecocide, in order to guide an amendment to the Rome Statute of the International Criminal Court.

This is because, until the proposal, there was no legal concept. What we had, broadly, was that it was a matter of mass destruction of ecosystems, with the knowledge of the risks that the acts represented, but not necessarily with the specific intention of destroying the environment, as was maintained at the emergence of the concept.

As a result of the collaboration of the expert panels, the legal definition of ecocide was elaborated, proposing the classification of a fifth international crime, alongside the other four core crimes already existing in the Rome Statute. It was defined as follows:

> unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.[27]

The crime was then structured as a crime of threat and not as a crime of result, since the need for an effective cause of damage was recognized, but only through the risk or substantial probability of causing it. This is what we have in the figure of genocide, for example, which does not depend on the concrete destruction, in whole or in part, of a social group; the mere conduct for this purpose is sufficient (art. 6 of the Rome Statute).

The figure, however, we intend to defend in this article is not to be confused with another one already provided for by the Rome Statute, in its art. 8 (2)(b)(iv), that is, one of the definitions of what is meant by war crimes. This provision punished the act of intentionally launching a military attack against a certain area, aware 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.[28]

The penalty for this crime is imprisonment of up to a maximum of 30 years or life imprisonment.

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[27] Stop Ecocide Foundation, *Independent Expert Panel for the Legal Definition of Ecocide* (2021).

[28] ICC, Rome Statute of the International Criminal Court (1998), at 5 https:// www.icc-cpi.int/resource-library/documents/rs-eng.pdf.

It is impossible not to consider this provision as the first international criminal norm of an environmental nature, since, among the legal interests protected by the norm, is the environment. There was, therefore, a concern of the drafters of the statute for environmental protection. This is because any rule that concerns the environment is part of environmental law, and when it comes to crime, we are facing an international environmental criminal type.

However, it cannot be said that this crime encompasses any and all destruction of the environment. Some peculiarities deserve to be highlighted: (i) the offense requires specific intent, as it speaks of "intentionally launching an attack"; (ii) the crime still requires knowledge that such an attack will cause loss of life and environmental damage, and that such prediction is ignored so that, even so, the agent still chooses to attack; (iii) no environmental damage is protected, but only those "which prove to be clearly excessive in relation to the expected military advantage", that is, it must be immense to the point of questioning such conduct.

Ecocide, on the other hand, as we have seen, deals specifically and especially with the crime of destroying nature, causing environmental damage, that is, the illicit or arbitrary act – not only in the context of wars and armed conflicts – perpetrated with the awareness that there is a high probability that it will cause serious damage that is extensive or lasting to the environment.

Therefore, one cannot confuse the crime already provided for in the Statute of Rome, in art. 8 (2)(b)(iv) with the concept that is studied, debated and intended to be added to its text, which would deal separately with environmental damage outside the context of war.

IV. *Recta Ratio* in Cançado Trindade's Thought: Genocide and Ecocide

In Cicero, we see the first systematization of the Aristotelian concept of *recta ratio*, corresponding to his *orthos logos*, that is, right reason prescribes what is good, and the law must conform to this right reason. The Stoics carried on and perfected this thinking to defend the path of ethical virtue, saying that everything that is right is determined by the *orthos logos*.

Thus, each subject of law has a moral, ethical and legal duty to behave with justice, good faith, benevolence. They are cogent principles that emanate from human consciousness, affirm it in an ineluctable relationship between law and ethics.

The "*recta ratio"* is identified, from the so-called founders of international law, between the 16th and 17th centuries, as belonging to the domain of the foundations of natural law, and, for some people, to identify itself fully as natural law. The Aristotelian-Thomist conception of the *recta ratio* and justice, which conceived the human being as a social, rational being, endowed with intrinsic dignity, and, therefore, responsible for his life and for the life of his community,

started to consider the *recta ratio* as indispensable to the survival of international law.[29]

Natural law reflects the dictates of the *recta ratio*, on which justice is based. Cicero conceptualized the right attuned to the *recta ratio* as endowed with perennial, non-derogable validity. Its validity extends to all nations at all times, it is untransferable. As Cicero says in *De Re Publica*:

> Right reason, according to nature, engraved in all hearts, immutable, eternal, whose voice it teaches and prescribes the good, distances itself from the evil it forbids, and, sometimes with its mandates, sometimes with its prohibitions, it never uselessly addresses the good, nor is it powerless before the bad. This law cannot be contested, nor partially derogated from, nor annulled; we cannot be exempted from its observance by the people or the senate; there is no need to look for another commentator or interpreter for her; it is not a law in Rome and another in Athens, – one before and another after, but one, eternal and immutable, among all peoples and in all times.[30]

In ancient Rome, Cicero pondered that there was "nothing more destructive to States, nothing more contrary to right and law, nothing less civil and human, than the use of violence in public affairs".[31]

This classic *jus gentium* of Roman law, by transcending, over time, its origins in private law, was completely transformed and associated with the emerging rights of peoples. Particularly in the writings of Francisco de Vitória, Francisco Suárez, Hugo Grotius, Samuel Pufendork, among others. The new *jus gentium*, as Antônio Augusto Cançado Trindade states, "became associated with humanity itself, committed to ensuring its unity and the satisfaction of its needs and aspirations, in accordance with an essentially universalist (in addition to pluralist) conception".[32] While natural law was identifiable by *recta ratio*, as in Thomas Aquinas' view, being a superior law of universal application, positive law, on the other hand, was promulgated by different public authorities for different

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[29] ANTÔNIO A. CANÇADO TRINDADE, A HUMANIZAÇÃO DO DIREITO INTERNACIONAL (2006); and id., *La Recta Ratio Dans les Fondements du Jus Gentium Comme Droit International de L'Humanite*, 58(91) REVISTA DE FACULDADE DIREITO UNIVERSIDA DE FEDERAL MINAS GERAIS 3 (2011).

[30] "A *razão reta, conforme à natureza, gravada em todos os corações, imutável, eterna, cuja voz ensina e prescreve o bem, afasta do mal que proíbe e, ora com seus mandatos, ora com suas proibições, jamais se dirige inutilmente aos bons, nem fica impotente ante os maus. Essa lei não pode ser contestada, nem derrogada em parte, nem anulada; não podemos ser isentos de seu cumprimento pelo povo nem pelo senado; não há que procurar para ela outro comentador nem intérprete; não é uma lei em Roma e outra em Atenas, – uma antes e outra depois, mas una, sempiterna e imutável, entre todos os povos e em todos os tempos*". MARCUS T. CICERO, *Chapter XVII*, in DA REPÙBLICA, BOOK III (Nélson J. Garcia trans., 2001), https://www.portalabel.org.br/images/pdfs/da-republica-marco-tulio-cicero.pdf.

[31] Free translation of "*mais destrutivo para os Estados, nada mais contrário ao direito e à lei, nada menos civil e humano, que o uso da violência nos assuntos públicos*". *Id*., at 172.

[32] "*passou a ser associado com a própria humanidade, empenhado em assegurar sua unidade e a satisfação de suas necessidades e aspirações, em conformidade com uma concepção essencialmente universalista (ademais de pluralista)*". ANTONIO A. CANÇADO TRINDADE, A RECTA RATIO NOS FUNDAMENTOS DO JUS GENTIUM COMO DIREITO INTERNACIONAL DA HUMANIDADE (2005), https://biblioteca.corteidh.or.cr/tablas/25184.pdf.

communities, making reason subservient to the will. . The *jus gentium* was intended to regulate human relations on an ethical basis, forming a kind of reason common to all nations, in search of the common good.

Therefore, *recta ratio* effectively endowed the *jus gentium*, in its historical evolution, with ethical bases, and gave it a universal character, as it is a right common to all, emanating from a universal legal conscience. And in a world marked by the diversification of peoples and cultures, by the pluralism of ideas and cosmo-visions, the new *jus gentium* ensured the unity of society. As Francisco de Vitória stated, the *jus gentium* applies to all peoples and human beings, even without the consent of its recipients, and society was the expression of the fundamental unity of humanity.[33]

Likewise, Francisco Suárez sustained that the *jus gentium* far transcended jus civile and private law, as it is formed by the uses and customs common to humanity, being shaped by natural reason for all humanity as a universal right. For him, the precepts of *jus gentium* are imbued with equity and justice, since it is the complete harmony with natural law, from which its norms emanate, revealing the same truly universal character.[34]

Unfortunately, the reflections of these founders of international law – especially the thinkers of the Iberian School of Peace and the Spanish Theological School, in addition to Grotius in the Netherlands –, who conceived it as a truly universal system, came to be supplanted by the emergence of legal positivism, that personified the State, endowing it with a will of its own and reducing the rights of human beings to those that the State: "granted" to them in fact, they were always conquered through a lot of struggle and blood in the streets.

Thus, the consent or will of States became a predominant criterion in international law, which certainly weakened the understanding of an international community and reduced international law to an inter-State law, no longer above, but between sovereign States, subject to the wills of these.

However, the environmental issue forced the return of cooperation studies, with a universalist vision and the necessary joint protection by the States, since environmental damage knows no borders, and the impact of the destruction of biomes, fauna, flora, air pollution, rivers and seas, soil and subsoil degradation, etc. it has a planetary character and the consequences are not restricted to the people of a single nation.

This is one of the ongoing renaissances of natural law, which seeks again to reinforce the universality of human rights and international law in general. This eternal return of natural law is always preceded by serious crises, such as global warming, and the increasingly visible and palpable consequences of human action in nature.

It can be said, therefore, that the *recta ratio* defended by Cançado Trindade

[33] FRANCISCO DE VITÓRIA, RELECCIONES – DEL ESTADO, DE LOS INDIOS, AND DEL DERECHO DE LA GUERRA (1985), at 1-101.
[34] FRANCISCO SUÁREZ, DE LEGIBUS (1974).

pulls international law back to universal axes and allows us to once again look at the planet as a unit of territories, people, natural assets, cultures, the home of all of us, subject to individual legal protection in its own right.

V. The Worldwide Movement of Natural Elements as Subjects of Law

The views analyzed above indicate a certain paradigm shift in the scope of international legal reasoning, based on the convergence of different factors, such as, for example, greater awareness of the importance of containing the advance of climate change for the survival of the human species; the perception of the connection between the preservation of biomes and the survival of millenary indigenous cultures, as well as non- indigenous and dominant societies; the understanding that decisions or omissions that are destructive to the environment and traditional cultures cannot go unpunished; the gradual incorporation of foundations to the idea of biocentrism as a vision of the future, since nature is now considered by law as a "subject of law".

Although the vision of biocentrism, that is, the consideration of nature, in all its manifestations, as the recipient of legal protection by itself, regardless of the human being, constitutes a challenge from a scientific and dogmatic point of view for a considerable portion of jurists, the attention given to this idea presents an interesting foundation in the consideration of crimes against peace (genocide; crime against humanity; war crimes and crime of aggression) as core crimes. Said foundation refers to the element 'severity' and designates the factor related to the magnitude of the impacts and consequences of its commitment, either in terms of the number of human beings directly affected, or in view of the chronological factor, that is, the long period of the aforementioned consequences, their extension over time.

This is the case of the conducts that are intended to be included in the future international criminal type of ecocide.

Thus, it is important to emphasize that the very historical origin of the large-scale destruction of the environment, when for the first time it was called Ecocide, refers to the Vietnam War. In this sense, we have already registered that:

> It should be clarified that the neologism ecocide came to be used during the Vietnam War, deriving from the Greek word *oikos* (house, home) and the Latin expression *cide* (destruction). It was exactly in the year 1970 that a group of American scientists coined the term to denounce the environmental destruction and a probable catastrophe for human health due to the herbicide war program developed during that conflict and called Operation Ranch Hand. The aforementioned movement triggered by the aforementioned scientists forced the US government to review its war policy, including renouncing the use of herbicides

in future wars.[35]

It should not be overlooked, in the debate related to the consideration of nature as a "subject law", that the term ecocide was coined exactly during one of the bloodiest wars ever fought by France and the United States, western countries so-called democratic, in Vietnam, a war that would last for twenty years (1955-1975), considering the French and North American cycles, resulting in about three million deaths and a terrible legacy of the use of chemical weapons against civilian populations.

The proposition has embodied what some researchers and scholars already call a green criminology, associated with the increasingly accepted idea of state-corporate criminal liability, for example, the oil companies operating in Africa (e.g., Nigeria) in which State-Corporation promiscuity proved itself lethal to entire populations and the biomes on which they depended.

Not without reason, the intimate nexus between the crime of genocide, proposed by Lemkin in his work "Axis Rule in Occupied Europe" (1944) and the term ecocide, suggested by Arthur Galston in 1970, as mentioned earlier, was soon realized, although the debate on the bases and elements of the crime of ecocide have developed more narrowly in the specialized literature. In this sense, Lynch, Fegadel and Long explain:[36]

> The concept of ecocide, proposed by Arthur Galston in 1970, refers to the human destruction of ecosystems as a crime. Interestingly, he linked ecocide to genocide, suggesting that just as destroying humans and their ways of life is a crime, so should the destruction of the natural environment be defined as crime. Later, despite Falk´s argument linking ecocide and genocide, these two concepts have traditionally been examined as distinct or unique issues. This is especially true in the criminological literature where discussions of genocide have largely been confirmed to the state-corporate crime literature, while discussions of ecocide have been limited to the green criminological literature.

With the mention of Swedish Prime Minister Olof Palme[37] at the 1972 Climate

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[35] Translation from Flávio de Leão Bastos Pereira, *Desenvolvimentismo e ecocídio: causa e (possível) consequência no contexto de ruptura das bases existenciais dos povos originários no Brasil,* 17(51) BOLETIM CIENTÍFICO DA ESCOLA SUPERIOR DO MINISTÉRIO PÚBLICO DA UNIÃO 257 (2018), at 275: "*Cabe esclarecer que o neologismo ecocídio passa a ser utilizado durante a guerra do Vietnã, derivando da palavra grega oikos (casa, lar) e da expressão latina cide (destruição). Foi exatamente no ano de 1970 que um grupo de cientistas norte-americanos cunharam o termo para denunciar a destruição ambiental e uma provável catástrofe para a saúde humana em razão do programa de guerra herbicida desenvolvido durante aquele conflito e denominado Operação Ranch Hand. Referido movimento desencadeado pelos aludidos cientistas obrigaram o governo norte-americano a rever sua política de guerra, inclusive renunciando ao uso de herbicidas em guerras futuras*".

[36] Michael J. Lynch, Averi Fegadel, Michael A. Long, *Green Criminology and State-Corporate Crime: The Ecocide-Genocide Nexus With Examples From Nigeria*, 23(2) JOURNAL OF GENOCIDE RESEARCH236 (2021), at 238-239.

[37] Sven Olof Joachim Palme was the Prime Minister of Sweden between 1969 and 1976 and between 1982 and 1986, the year he was murdered in Stockholm, a crime that has never been revealed as to his authorship.

Conference in Stockholm, the term Ecocide gained recognition as never seen before.

Still in 1985, the important and well-known Whitaker Report was presented to the United Nations by Benjamin Whitaker, before the 38th Period of Sessions, Economic and Social Council, Commission on Human Rights, Subcommittee on Prevention of Discrimination and Protection of Minorities.[38]

This report proposed a series of measures to make the prevention and repression of the crime of genocide more effective, including the consideration of new genocidal dynamics, among which ecocide, such as ethnocide or cultural genocide, closely connected to the behavior of crimes against nature.

In more recent times, as mentioned earlier, the Scottish lawyer and ecologist Pauline Helène Higgins, who died prematurely in 2019, in addition to the communicator Jojo Metha, both co-founders of the End Ecocide on Earth movement, took relevant actions in favor of the legal classification by the International Criminal Court, through the signatory States of the Rome Statute, of ecocide as the fifth international crime, a debate still ongoing.

The criminalization of ecocide is a topic that makes up the international agenda, especially the international law efforts and debates, including within the scope of the European Union. Important and recent reports published in 2021 address the issue: the first one was prepared and published by the Legal Affairs Committee on corporate liability for environmental damage, which ordered the European Commission to develop studies to assess the importance of criminalization of ecocide (para. 12 of the aforementioned report); the second one was developed and disseminated by the Foreign Affairs Commission on the effects of climate change on human rights and the role of environmental defenders. The latter moved in the same direction and ordered the European Union to adopt actions aimed at encouraging the International Criminal Court to foster the necessary debates among the signatory States of the Rome Statute to define the crime of ecocide through the adoption of amendment procedures.

The recognition of the need to criminalize actions of destruction of nature in large proportions demonstrates the advance of the vision in relation to nature as a living being, integrated with the human being, after all, a component element of the cosmologies of the thousands of indigenous cultures existing in the world.

Not without reason, in 2017, an important decision by the Parliament of New Zealand passed legislation that recognized legal personality to the sacred Maori River Whanganui, which thus came to be considered as a "person".[39] In other words, in the historically inverse way in which dominant societies destroyed the

[38] UN, Revised and updated report on the question of the prevention and punishment of the crime of genocide (1985), at 38 https://digitallibrary.un.org/record/108352.

[39] Press Release of the New Zealand Parliament, *Innovative Bill Protects Whanganui River with Legal Personhood*, (Nov. 29, 2019), https://www.parliament.nz/mi/get-involved/features/innovative- bill-protects-whanganui-river-with-legal-personhood/.

cosmological references of traditional peoples, replacing them with the cultural, legal and economic standards of colonizing and oppressive peoples, New Zealand, which also exterminated and discriminated against the Whanganui people, recognized references of this native people to shape its legislation. Such a movement has been observed in other countries, such as India (Ganges and Yamuna rivers), Bangladesh (Turag river), Ecuador, Colombia and Bolivia.

VI. Conclusion

The proposals presented over decades for the recognition of the crime of ecocide from visionary minds demonstrate that the world is gradually changing its perception of its dependence on ecosystems and biomes. The planet's climate has been changing in an indisputable way and a relevant part of the causes for this phenomenon originates in human actions.

If, as humanity, we understand that serious crimes of international scale must be investigated and their perpetrators must be punished before an international court, it is high time to consider the conduct of destroying the environment criminal, whose impacts are beyond borders and beyond – species.

After analyzing the history of debates on biocentrism, the first discussions on ecocide and recent academic movements on the subject, we conclude that the criminalization of crimes against nature can mean, in addition to an emerging and urgent need, the future of International Criminal Law.