

## International

What's in a name?

# Is it time for "ecocide" to become an international crime?

A growing movement wants destruction of the environment to be treated like genocide and crimes against humanity



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AT THE NUREMBERG trials, which began on November 20th 1945, allied forces prosecuted leading Nazis for atrocities committed during the Holocaust and the second world war. Among the charges against them was something which, just four years earlier, Winston Churchill had called "a crime without a name": genocide, the deliberate destruction of a group of people. The term, and a convention against it, was then formally adopted by the United Nations. Half a

CONVENTION AGAINST IT, WAS THEN FORMALLY ADOPTED BY THE UNITED NATIONS. Half a century later it became one of just four crimes punishable by the International Criminal Court (along with crimes against humanity, war crimes and the crime of aggression). Now, there is a push to name another concept as an international crime—destruction of ecosystems and the environment, also known as “ecocide”.

In November last year a group of international lawyers set about formally defining ecocide. The panel—which is co-chaired by Philippe Sands, a lawyer who has appeared before the ICC and the European Court of Justice and wrote a book about bringing the Nazis to justice, and Dior Fall Sow, a former UN international prosecutor—will publish its draft definition in June. After that, they hope, it will be proposed and eventually adopted as an amendment to the Rome Statute, which governs the work of the ICC. If it is, ecocide will be susceptible to all the frustrations and limitations that plague efforts to halt other international crimes. But it could also mark a turning-point in how the relationship between humans and the natural world is understood.

That environmental damage might be curtailed through international criminal law is not a new idea. Some scholars have seized upon the fact that the UN genocide convention prohibits “deliberately inflicting” on the group attacked “conditions of life calculated to bring about its physical destruction”. They argue this could include the devastation of the ecosystems on which the group relies.

In 1972 at the UN Environment Conference in Stockholm, Olof Palme, then prime minister of Sweden, accused the American government of “ecocide” over its use of Agent Orange, a herbicide used to defoliate forests and wither crops, in Vietnam, leaving vast tracts of land barren. Early drafts of the Rome Statute included crimes of “severe environmental damage” but these were ultimately not adopted, apart from a slim provision under war crimes which prohibits “environmental modification techniques”, like Agent Orange, that have “widespread, long-lasting or severe effects”.

The subsequent campaign to have ecocide adopted as an international crime was chiefly the work of Polly Higgins, a barrister and activist who died in 2019. In 2010 Higgins lobbied the UN law commission to make ecocide—which she defined as the “extensive destruction, damage to or loss of ecosystem(s) of a given territory”—a fifth crime against peace. Though it refused, the ICC subsequently agreed to examine cases of environmental destruction as “crimes against humanity”, provided they had a sufficiently deleterious impact on

people living within an area. (Early this year, such a case was submitted to The Hague by indigenous leaders against Jair Bolsonaro, Brazil's president, over deforestation in the Amazon. The ICC is considering it.) Higgins also co-founded the Stop Ecocide Foundation, an NGO, which has continued to advocate since

her death for the recognition of ecocide as an international crime and which convened the legal panel currently drafting a definition.

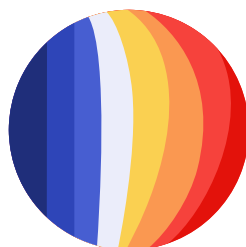
All the crimes overseen by the ICC focus on the protection of humans. Most attempts to include environmental damage in international criminal law have been similarly anthropocentric, tying the status of ecosystems to the benefits they confer to the people that rely on them for homes, livelihoods or food. Mr Sands thinks that ecocide should be defined by the need to protect the environment as an end in itself. This would require it to have its own free-standing basis as a new crime, rather than being slotted under existing ones. Though he does not speak for the group, whose decision must be made collectively, Mr Sands is hopeful that others might feel similarly. "My sense is that there is a broad recognition that the old anthropocentric assumptions may well have to be cast to one side if justice is truly to be done, and the environment given a fair degree of protection," he says.

Any amendments to the Rome Statute must be proposed by one of the countries that signed it, then approved by two-thirds of the others. Vanuatu and the Maldives, both low-lying archipelagic countries greatly threatened by climate change, have expressed interest in putting forward such an amendment. France and Belgium have promised diplomatic support. Mr Sands believes that the world's growing environmental consciousness, and public pressure on politicians, will see other countries follow suit. But the required consensus is elusive.

Even if the notion of ecocide is ultimately adopted by the ICC, so what? International criminal law serves mostly as a backstop, and an imperfect one at that. Though countries often change their domestic laws to match global accords, in many instances governments simply delete provisions they dislike. Saudi Arabia, for example, ratified the UN convention on the elimination of "all forms of discrimination against women" in 2001, but refused to accept rules that contradict sharia. Some states simply refuse to sign up at all. Neither China nor America is party to the Rome Statute.

Decades of treaties condemning genocide—and UN stipulations that countries must intervene to stop it—have not prevented it occurring, even when a crime is defined as such by the United Nations. Witness the fate of the Rohingyas in Myanmar. But supporters argue that naming international crimes helps set norms for acceptable behaviour. International court cases also create lasting records of wrongdoing and strip perpetrators of the illusion of impunity. Before the Nuremberg trials, Mr Sands points out, countries were “entirely free to treat their own citizens as they wished. If they wanted to kill half their population, they could do that,” he says. “And that changed in an instant.”

*Correction: Dior Fall Sow is co-chair of the panel to define ecocide, not Florence Mumba as we first wrote. We apologise for the error*

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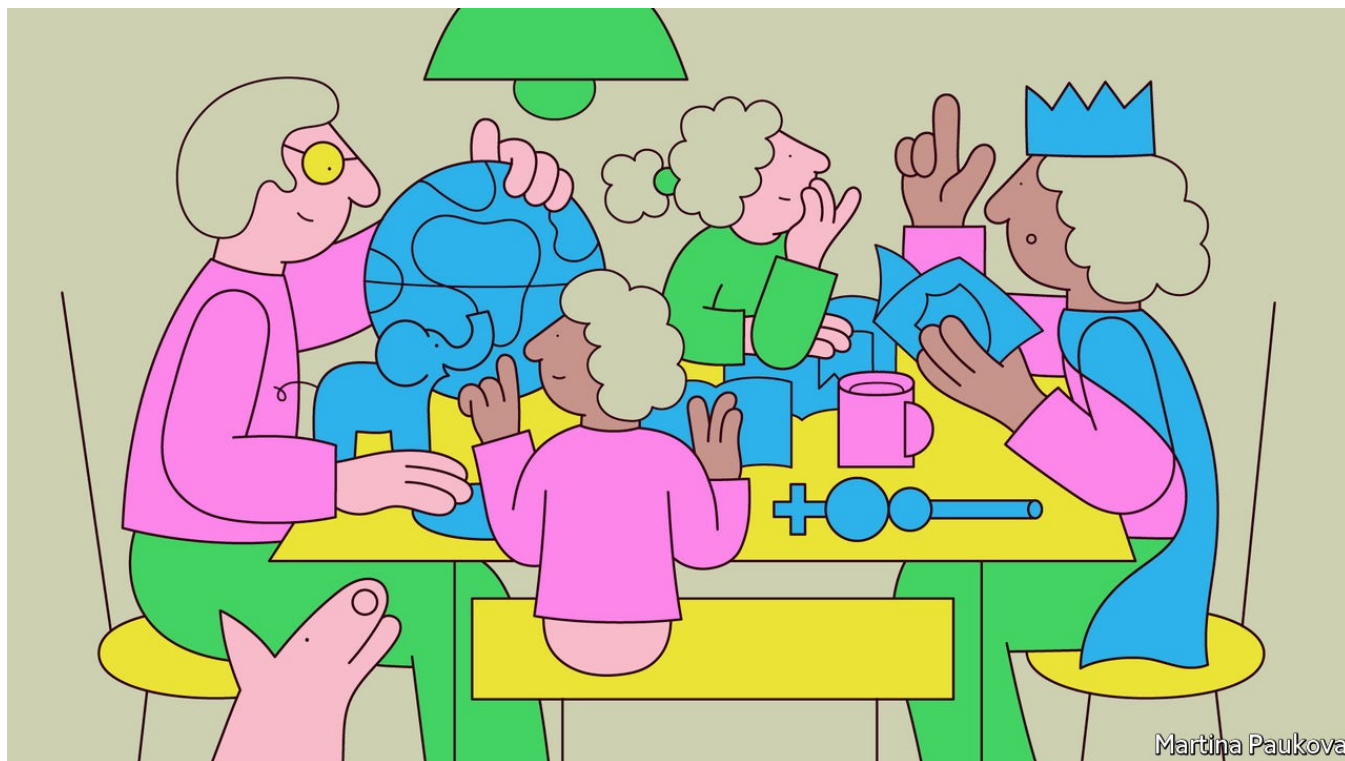
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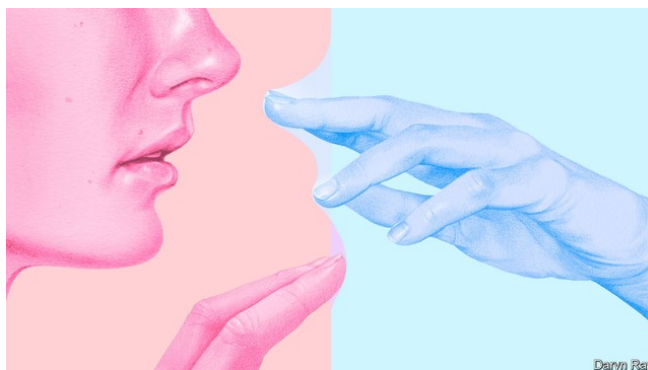
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