

Earth is our Business

changing the rules of the game

POLLY HIGGINS



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DEDICATION

TO ALL WHO CARE FOR OUR EARTH

TO ALL WHO BELIEVE THAT EARTH IS OUR BUSINESS AND

TO ALL WHO ARE IN SERVICE TO THE WIDER EARTH
COMMUNITY

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Introduction

‘CRIMES Against Peace’ is a generic term used to describe four existing crimes that are deemed to be so abhorrent that they have been identified as international crimes against peace. These apply to humanity as a whole, regardless of whether or not your country has put in place the laws to prevent them. They are crimes which cause the diminution of our right to peaceful enjoyment of life. Globally they are considered the worst of all crimes; the four are genocide, crimes against humanity, war crimes and crimes of aggression.

They are predominantly crimes which protect our human right to life. One of them, however, identifies environmental destruction as a crime, and then only during war-time, not peacetime. Thus, we have a missing 5th crime against peace: ecocide – the environmental equivalent of genocide. This book expands on my first book, *Eradicating Ecocide*, which sets out the legal and moral premise for making ecocide a crime. Here I examine the criminal aspects of the Law of Ecocide in full detail with a sample indictment and Ecocide Act which was used as the basis for a mock trial in the UK Supreme Court on 30 September 2011. Both were tested and the outcome is an Act that is ready to implement, when ecocide is made the 5th crime against peace.

The crime of ecocide is a natural evolution of law: the Ecocide Act, set out in Appendix 2, is not radical in its remit. On the contrary, it is part of an evolution of legislation dealing with the impact of pollution and the principle of superior responsibility. In the eyes of the law, creating the crime of ecocide is not about closing the door to evil. It is in fact about protecting a higher value: the sacredness of life, all life.

Those who are *prima facie* guilty of committing ecocide are not in themselves evil – many companies have bought into the norm that it is collateral damage to destroy the earth whilst serving humanity. There is rarely wilful intent where companies are looking to help satisfy human needs, such as energy. Rather it is a blindness that prevents many from facing the truth that human needs can be well served without diminishing the earth's capacity to support life as we know it.

Genocide, unlike ecocide, was viewed as an incomparable evil. Slavery was viewed as a manifest evil. Both were moments in history when we reached a junction – prohibit and prevent or allow it to continue. Before laws were made prohibiting both genocide and slavery, neither were illegal: in fact both generated profit for many parties. The prohibitions that followed did not mean that economies collapsed. New ones evolved and new ways were found. What was once the norm, became overnight the exception. It was law that shifted societal norms. The law has a powerful force which can shape our world in ways that we can hardly comprehend. It took the holocaust to drive in the new way of thinking that gassing humans was a crime. Prior to that, it wasn't recognised as an international crime, which made it almost impossible for people like Sophie Scholl to stand up and object. She and others in Nazi Germany were fighting against something that had been endorsed by their government and the media as the norm, no matter how unpleasant it was. In so doing, the people were effectively silenced. Without the word for genocide in their vocabulary, it was almost impossible to identify what was a crime. Without it, all remained hidden in the eyes of the world for quite some time.

Genocide was justified on self-interest and collective rationality, obscene though it seems to us today. Now catastrophic corporate rationalism places self-interest and growth as justification for destruction of the environment. Those who are guilty of destroying our planet, rationalise their actions by saying they have the right to make money without taking responsibility for decisions that adversely impact all life as we know it. This is our blindness.



Climate change is just a symptom. Like a cold, we hope we can brave it out until it recedes. But this is one cold that has turned serious, not just for you and me but for the whole of humanity. The problem is we are treating it with thinly disguised placebos in the hope that they will do the trick. Without addressing the source, the symptom has no chance of being cured. Instead the symptom returns time and again, each time worse and increasingly debilitating. In time we become accustomed to the debilitation and accept it. Yet still it gets worse: like a smoker who is hacking and coughing but nonetheless drags deeply on his cigarette, choking in the knowledge that his behaviour is facilitating his own painful death. So too are we continuing to indulge a habit that has no benefit for us either in the short or the long term.

The difference is that this particular malaise is born of our failure to take responsibility for the health and well-being of planet Earth. Our bodies are capable of withstanding much abuse, but our planet has reached such a point of damage that her health is at risk of tipping over the edge into an abyss where humanity can no longer be sustained. We can ignore the reality with which we are faced: death, destruction and loss of species on an unprecedented scale, or we can face the truth and meet the consequences face on.

No-one is calling for this Armageddon to stop; no-one is standing up and refusing to participate. We have all become complicit without questioning the consequences. Those who stand at the helm of their businesses are prevented from doing so by the law as it stands which makes profit the primary obligation, even when it means the end of our world as we know it. Now is the time to establish an over-riding duty of care as our number one priority – one that ensures that the welfare of the people and planet is placed above the corporate duty to make money for shareholders. Business has the potential to be great, to be the solution and not the problem. It will require new laws to make that happen and this book sets out the law that can do just that. The aim of this book is

to enable business and governments to take the necessary steps in a different direction from the way we are going.

All existing proposals fail to disrupt the very system that is destroying our world. Of those that have been put on the table, none are enforceable, none are capable of delivering on time and none have proven to be turnkeys. Not one of the proposals will effectively halt dangerous industrial activity: the replacement to the Kyoto Protocol (proposed to come into force in 2020) is voluntary; a Green Fund with no funds and the \$100 billion promise will not be provided by the developed countries; REDD (Reducing Emissions from Deforestation and Forest Degradation) has failed to safeguard the people and funding has been postponed until the next decade.

2020, it's too late to wait: a very different route can be taken instead. What is needed is a disruptor to our current trajectory and a law to set a framework for intervention. To rely on existing policies is a miscarriage of justice.

This is a story with two possible endings: one is fertile and abundant with life, the other is arid and speaks of death. We have a choice: to make the leap to the new and leave the old ways behind as distant memories, or follow the current route into the ecocide of the earth. By setting out the legal tools we can use, our choice can be life-affirming and can be a decision which will ensure a positive outlook for many beings. Let's face the challenge head on together.

Part 1

WHERE THE WORLD IS CURRENTLY HEADING

All it takes is for one person to stand up and speak out

Chapter 1

THE LAW OF ECOCIDE

Ecocide is the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.

AT certain points in history the world changes gear. We abolished slavery, apartheid was outlawed and we criminalised genocide. Each time humanity reached a tipping point; no longer could we justify using blacks as slaves, destroy lives and allow others to determine the outcome of a man's life. We get to a stage that we turn and face the truth, even when it is not a sight we wish to see, we give it a name and we say, 'no more'.

We are now at another point of acceleration; we are poised to move the gear stick up to the next level. We have our foot on the pedal and we are ready to go. But wait. To go to the next level we need new rules. Number one rule is set out below, others are contained within this book. Collectively they make for a safe journey into the unknown. Treat this book as your guide to take with you on your journey, to equip you with the language and the route map to the new world.

Ecocide is 'the extensive damage, destruction to or loss of ecosystems of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.'

The Law of Ecocide is a law which will change the world. The ramifications for business are huge and the lives of all who live on Earth. It will signal the beginning of business taking full responsibility. Humanity will celebrate the end of a polluting and destructive era. The earth will be given a chance to heal.

Ecocide comes in many forms and is either human-made or caused by catastrophic disaster. Human-made ecocide is corporate-driven activity such as deforestation, pollution dumping, mining. Natural ecocide includes tsunamis, floods, earthquakes, rises in sea-levels – in short any event which causes mass ecosystem collapse.

The Law of Ecocide imposes a superior obligation and a pre-emptive legal duty upon individuals who are in a position of superior responsibility within corporations, banks and governments to prohibit profit, investment and policy which causes or supports ecocide. The crime of ecocide criminalises damage, destruction or loss of ecosystems over a certain size, duration and impact. Make ecocide unlawful and a legal framework of nation-to-nation responsibility can be set up to finance humanitarian and environmental aid for ecocide-affected territories.

CRIME AGAINST PEACE

There are certain principles of universal validity and application that apply to humanity as a whole. They are the principles that underpin the prohibition of certain behaviour, for example apartheid and genocide. Such abuses arise out of value systems based on a lack of regard for human life and are now universally outlawed. The most serious of all have been declared Crimes Against Peace by the United Nations and they apply across the world, superseding all other laws. A value system based on a lack of regard for all life now needs to be universally outlawed as well. Kill our planet and we kill ourselves. Ecocide is death by a thousand cuts: each day the life-source which feeds and nourishes our human life is damaged and destroyed a little more. Restoration of territories which have been subjected to human ecocide is not being undertaken voluntarily and as a result conflict and resource wars are expected to escalate over time.

Creation of the Law of Ecocide will close the door to investment in high-risk ventures which give rise to ecocide. Decision-making will be determined on a value-driven basis premised on intrinsic values, not permit allocations. Protection of the interests of the wider Earth community will then become the over-riding consideration for business, driving innovation in a new direction.

RULES OF THE GAME

That is all that law is – rules of the game of life, rules that we humans have put in place. Law is a constantly evolving field and the rules constantly change, become modified and are expanded. Law has the ability to change the playing field radically, overnight. We can play as if there is no tomorrow, or we can look over the horizon and decide to engage in the new rules before they arrive. Thus, when we do, we have already honed our skills and are ready to move fast in a direction we are already heading in.

Any company which has an eye to the future will want to flow with the times. Our corporate culture is predicated on evaluating what is most likely to happen if business stays the same, not looking to how things can change. Banks are now having closed door conversations with others about restructuring their approach so that a principled system is put in place. They are rethinking the problem through a lens that is placing intrinsic values at the centre.

When the existing system fails to prevent that which it is set up to help, the scales of justice swing out of kilter and the rules of the game are called into question. How do we create a legal duty of care for the earth? That was the big question that has driven my thinking. I looked at existing environmental and corporate laws and I saw they were not fulfilling this particular legal obligation. None of our existing laws set out a proper duty of care for the earth. We have a Universal Declaration of Human Rights, but the same does not exist for the earth. The earth has rights too, I reasoned, such as the right not to be polluted and the right to life. What if we had a similar Declaration for the earth, a declaration that gave formal recognition to the rights of non-human beings, such as the

soil, the seas and the air we breathe. How much easier it would be for me, as a barrister, to represent my client the earth in court. Just as I can represent the unspoken words of a child because we impute human rights to them, so we can do the same for the earth.

EARTH RIGHTS

We may not have thought of other beings as having rights: however, they do exist. They may not be written down as formal laws in some jurisdictions, but to many natural law is a given. The right not be polluted is a right that belongs to the earth as much as it belongs to humans. To breach that right can be a result of neglect or an abuse. It can be an act or an omission; either by failing to do something, or by refraining from doing something, or by doing something that can result in damage, destruction or loss of ecosystems. Many of our existing laws are premised on permit allocation and limitations, not prohibition – these are laws that have proven themselves to be unfit for purpose.

Permits to pollute protect the polluter, not the earth. Fines levied after the event, when caught exceeding acceptable levels of destruction, can be sidestepped, litigated or paid-off. No amount of voluntary codes, environmental impact reports or energy efficiency targets will change matters until the concept of the ‘environment as property’, with ownership and thereby accrual of superior rights by the owner, is overturned. Slaves used to be property. It was argued that to present them with rights would be uneconomic, untenable, bring business to a halt. However, those businesses who profited out of slavery and sugar reinvented their wheels and not one went out of business as a direct result of the laws of abolition being put in place. This was in part because their slavery subsidies were replaced with subsidies which were for loss of business and to assist with facilitating new business that was not premised on the profiteering of slaves. Public pressure, mass petitions and recognition of rights for slaves combined to tip the balance and stop the trade. Laws were passed first in the UK, then other countries soon followed suit. Slaves were no longer another man’s property, to use and abuse as he so wished.

No longer was it deemed acceptable to treat other persons as if they were items, to be bought and sold for profit. The shift that occurred when slavery was abolished was seismic; extrinsic values were replaced by intrinsic values. No longer was a human valued by his price tag; now a human was valued in and of himself. The ethical imperative trumped the economic imperative.

Slowing pollution levels by permit allocation just prolongs the inevitable problem; stopping the pollution at source changes business overnight. By making large-scale pollution a crime can stop further long-term damage from occurring. Prohibition is the inevitable next step; as has been demonstrated by current laws, small incremental steps are not going to get us there. We tried the small steps – now we need to take the leap. Pollution cases in the USA are being thwarted for lack of trans-boundary legislation. International law has a gap that needs to be filled.

In 2007 I researched the possibility of creating a new body of Earth Law. The outcome was an invitation from the United Nations to speak on my proposal for a new body of law, starting with a Universal Declaration of Planetary Rights. My proposal for a Declaration triggered a response that was the beginning of international engagement on the issue. I spoke at a UN Conference on Climate Change in November 2008, just after Ecuador had successfully voted by referendum to include in their new Constitution a Bill of Rights of Nature. The top twelve rights and freedoms were drawn up and were presented at a conference in Sweden the following year; just months later Bolivia decided to take it on and they opened up the process to the people. Thousands of people engaged in the process of drafting the Declaration and the outcome is the Universal Declaration of the Rights of Mother Earth which Bolivia is now taking to the United Nations. It will stand alongside the Universal Declaration of Human Rights and the new rights will create a legal framework from which other Earth Law can evolve.

Ecocide is the governing mechanism to protect the earth's right to life. By naming mass damage and destruction as ecocide, and by giving it legal definition, I realised we can halt escalating

greenhouse gases at source, prevent further instability and prohibit dangerous industrial activity overnight.

APPOINTING GUARDIANS FOR DAMAGED LANDS

By way of analogy, in formative years a parent owes a duty of care to their child. His and/or her duty is to ensure the well-being of their child, for that child is utterly dependent on the parental care. As a mother or father, the duty as primary carer extends to others as more children arrive into the family circle. Motherhood and fatherhood are roles specific to ensuring the well-being of the child, a responsibility that diminishes as the child enters into adulthood. When a parent abuses their child, or fails to act to protect the child's interests, that parent has failed in their duty to their child. In recognition of the child's inability to defend him/herself, laws have been put in place to provide a remedy when a parent fails in their responsibilities. In such an instance, the court will appoint a guardian to represent the child, to speak on his/her behalf and ensure his/her well-being is addressed in the course of the proceedings.

Replace the child with the planet and the mother with a corporation – for instance a logging company in the Amazon – and a very similar scenario exists. The Amazon, like the child, is unable to speak of the damage that has occurred and the needs it requires to ensure future well-being. Unlike the child, it has no recognized rights in law and as a consequence no responsibility is identified as being owed by those logging the territory. If caught, the company will be fined for logging unlawfully, nothing more. Without the recognition of the Amazon's rights and the corporation's responsibilities to the Amazon, a guardian cannot speak on behalf of the territory in court and the individuals in the company cannot be effectively held to account. However, the well-being of humanity requires that those with superior responsibility in the company owe an over-riding duty of care to the territory within which they are working. Where that duty of care has been breached, the fiduciaries – the directors – have failed to fulfil their moral obligation to prevent unreasonable loss, damage and destruction.

In 1948 the United Nations created the crime of genocide in response to the mass atrocities which arose out of World War Two. Today we face mass destruction of the planet, but unlike genocide, ecocide is not a crime of intent. Ecocide is a crime of consequence, one that often arises out of the pursuit of profit without imposition of a legal duty of care. Currently there is no crime to address this anomaly during peace-time. War Crimes prohibit mass environmental damage, yet there is no law to stop the daily destruction that has become the norm for business. Corporate law dictates that profit determines activity, regardless of the consequence to others in the earth community.

GIVING A NAME TO THE PROBLEM

Ecocide can be the outcome of external factors, of a force majeure or an 'act of God' such as flooding or an earthquake. It can also be the result of human intervention. Economic activity, particularly when connected to natural resources, can be a driver of conflict. By its very nature, ecocide leads to resource depletion, and where there is escalation of resource depletion, war comes chasing close behind. The capacity of ecocide to be trans-boundary and multi-jurisdictional necessitates legislation of international scope. Where such destruction arises out of the actions of mankind, ecocide can be regarded as a crime against peace, against the peace of all those who reside therein – not just humans but of the wider earth community as a whole. In the event that ecocide is left to flourish, the 21st century will become a century of 'resource' wars.

During wartime environmental damage is already a crime. By extending the same provisions (the size exceeds 200 kilometres in length, impact on ecosystems exceeds three months, or severely impacts on human or natural resources) to ecocide, we can protect the earth from daily destruction in peacetime too.

There is an additional reason for seeking international recognition of ecocide: until we have identified the problem, we are unable to provide the correct solutions. International law evolves in response to the changing world, and is by no means a perfect beast, growing and changing direction as it expands. But

it is an arena that must develop, by necessity. Such is the extent of ecosystem destruction with global consequences for us all that principles and legal recognition on a par with genocide are now urgently required for ecocide. Corporate-related destruction and pollution clean-up determined by voluntary governance, we know, has been manifestly unsuccessful. Creation of the crime of ecocide creates a pre-emptive obligation to act responsibly before damage or destruction of a given territory takes place. Thus, the creation of the illegality in itself translates a moral obligation into a legal duty. In doing so, the burden shifts dramatically, sending a powerful global message to the world of a reinforced moral stance for us all, not just in business, to take responsibility for the well-being of all life.

I OWE VERSUS I OWN

When the old that does not work collapses, space is created to make way for the new. It is at this juncture that we are afforded an invaluable opportunity to put in place new systems that do work and systems that provide resilience. However, as all architects know, first we must ensure the correct foundations are in place. The bedrock upon which we build is our choice: it can be solid, one with the inherent values of the planet at its very centre. It can be based on intrinsic humanitarian and ecological values, values which belong to all of us and the planet globally. When seeded from the outset, all else that comes thereafter will grow and flow from them. These values will renew and shape the world of our financial systems, our legal precepts, our governmental bodies, the very decisions which we will make in our every day life. These values and their corresponding rights can be placed at the centre of all decision making, which will in turn shape our behaviour and action for the future. Where our decisions are not intrinsically-value based, then our decision-making will be built on fast dissipating sands, which can do little to ensure we create a better world. Climate negotiations demonstrate a non-engagement on owing a duty of care, instead the focus was on ownership. Markets to buy and trade trumped any dialogue about

owing a duty to ensure the climate is restored. The very fact that we have a 'negotiation' about a global issue, as if it were a market trading house where everyone has a different pricing scheme, is an indication of just how far removed we have become. Our climate is not for negotiating as a commodity; it is our duty to create a system that guarantees its and our health and well-being.

Where it is accepted that environmental imbalance (and the consequential escalation in greenhouse gases) is largely the result of human-created pollution, then it raises both a legal and moral argument that we have a duty of care to ensure that the pollution must stop. The introduction of contaminants – be they synthetic or an excess of natural – into the environment can lead to a point that causes instability, disorder, harm or discomfort to physical systems and living organisms: they are then termed 'pollutants'. For example, noise pollution – such as at a late night party in your neighbour's house will only be remedied when the music is turned off. Your sense of well-being is restored and a good nights sleep is no longer impeded. Likewise, polluting the atmosphere: stop the pollution at source and the issue is remedied. Reduce the pollution and you are the recipient of low-level but continual build of irritant; in the example of your neighbour playing music all night every night you may find the pressure begins to build. Likewise with pollution of the atmosphere – the pressure continues to build. Stop the ecocide at source, and offsetting, carbon crediting and carbon capture and storage becomes redundant. No longer is the pressure re-directed elsewhere, leaving a legacy for future generations to contend with. It is not the risk of the potential ecocide that is carried which needs to be evaluated, but the consequences when it goes wrong. Evaluation based on consequences will give a fuller understanding of the outcome we leave for others to resolve. To leave a problem unresolved for others to work out is to leave our world in a worse place than when we arrived. Alternatively we can choose another route: one that leaves our world with a legacy of life and systems that do not store problems for the future.

Justice encompasses ecological justice (as argued by jurists for centuries). If we accept that premise, then peace must also

apply to the functioning of all those that reside within a territory – both people and planet. To ensure ecological justice is to ensure that ecosystems remain intact and functioning. When ecosystems malfunction, we have system breakdown and ecocide which in turn leads to resource depletion, and then to conflict and ultimately war.

ABDICATION OF RESPONSIBILITY

Three days before the conclusion of the 2010 UN climate negotiations Ban Ki-moon spoke at a private audience in the luxurious confines of the beach Hotel Marriott. Sharing the platform was the President of Walmart, the largest corporation in the world, who received rapturous applause when he declared himself an environmentalist. ‘Every second of every minute of every day a football pitch-size of forest is destroyed’ we were informed. Yet despite seeking reliance on this sobering fact, destruction of the earth was not recognized to be a crime. Ban Ki-moon, the head of the UN and the man with ultimate superior responsibility to ensure that a solution was found by the conclusion of the climate negotiations, rushed off to fly out of Cancun that afternoon safe in the knowledge that the negotiations were to prove futile in the face of such enormous mass ecocide. Ban Ki-moon’s departure was symbolic of the lack of engagement by those in a position of superior responsibility. Instead, the planning officials acting on behalf of the people and our planet – the governments and their negotiators – were advancing the interests of big business by the creation of mechanisms and trade deals to secure rights over the worlds forests. There is a ‘growing acceptance’, as *The Economist* commented, ‘that the effort to avert serious climate change has run out of steam.’*

* ‘How to live with climate change’, *The Economist*, 25.11.2010

BREACH OF OUR HUMAN RIGHT TO LIFE

Confining ourselves to breaches of human rights fails to take in the wider picture. Climate change cases are failing at the court door for being argued on Human Right breaches. For the crime

of ecocide however, the damage is to the environment and all who live there (or who are impacted by the ecocide). Human damage can be and often is secondary (it arises out of the primary damage – for instance the polluted waters can give rise to illness). Thus the *actus reus* (the physical element – the doing of the act) of the crime is the establishment of damage to the *territory*, not specifically the doing damage directly to the people. For instance, it is not the people who are destroyed, but the land on which they live and, as a result, their health and well-being is compromised. There is a crucial point here that has until now been overlooked: our human right to life is placed at risk when damage, destruction or loss of ecosystems occurs. It may be that the risk to life is not immediately apparent, in so far as people are not exhibiting injury or pain, however the injury to the persons can manifest later or in a people in another territory.

Thus, a belching power-plant may cause injury to as yet unborn children. Furthermore it contributes its pollution to the atmosphere and along with other industrial activity builds a dangerous legacy for persons unknown in other territories. Ecocide can be a crime against the right to life of not only current beings, but also unknown and future generations.

It is a death by a thousand cuts. Each time a cut is accepted, our lives are compromised bit by bit. No one cut can be said to be the final determinant, as a whole the overall impact can be viewed as a risk of such enormous magnitude to human life that we have little choice but to take the route to outlaw it. We haven't done this yet, but the arguments to do so are already in place. Morally we have no choice if we are to uphold the right to life for future generations.

Human Rights case law demonstrates that our EU states are in breach of their duties to EU citizens where an EU State fails to protect the human right to life. Failing to protect our right to life includes failure to prevent injury and risk to health which arises from dangerous industrial activity.

In 2009 one crucial term was agreed at the climate negotiations, held in Copenhagen. To prevent dangerous anthropogenic

interference with the climate system, the Copenhagen Accord¹ recognized ‘the scientific view that the increase in global temperature should be below 2 degrees centigrade’, in a context of sustainable development, to combat climate change. In other words, ‘dangerous’ was accepted to mean a 2 degree (or more) increase in temperature.

Under Article 2 of the European Convention on Human Rights (ECHR), our Right to Life is defined as the following:

‘Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.’

Our right to life is a statement of principle. Statements of principle require interpretation by courts to bring meaning when applied to the facts of a given situation. Current ECHR case law governing our right to life under Article 2 has this to say: ‘any activity, public or private in which the right to life is put at risk, especially dangerous industrial activities, must be prohibited where there is knowledge that the risk to life and the duty to stop is known. Authorities which knew or ought to have known of the risks are, where they should have taken measures and did not, in breach of Article 2.’²

In other words, governments and corporations who know that their activities are contributing to placing humanity at risk of danger to life must halt their dangerous activities. Failure to do so places them at risk of prosecution under Article 2 of the ECHR. Placed within the context of climate change, this case law is a ruling which could be found to be binding on all EU nations. It is a case that could change the rules of the game.

The implications for companies that own power stations, generate or sell energy from fossil fuel extraction, are huge. All

1 The Copenhagen Accord is a document that delegates at the 15th session of the Conference of Parties (COP 15) to the United Nations Framework Convention on Climate Change agreed to “take note of” at the final plenary on 18 December 2009.

2 *Oneryildiz v Turkey* [2004] ECHR 657

energy companies contribute enormously to the generation of excess greenhouse gases which in turn exacerbate climate change. Governments already accept that excess greenhouse gases are caused by human activity, it's just a matter of examining which activities are the most damaging of all. The major contributors are those in the extractive industry who generate a substantial%age of the overall excess. Contribution to the pool of greenhouse gases by any industrial activity that places human life at risk can be said to be ecocide.

Dangerous industrial activity is classed as a criminal act and as an offense against persons, according to ECHR case law. Where this is the case, authorities have a legal duty of care to take preventive operational measures to protect individuals whose lives are at risk from the criminal acts of another individual.³ States, EU case law tells us, must put in place legal and administrative mechanisms to deter the commission of offenses against the person.⁴ Under existing case law, the time is ripe for new laws to be put in place.

Law shapes our societies, our way of thinking, our behaviour. By labelling our world a thing of property, legal systems have legitimised and encouraged the abuse of Earth by humans. Now we know the problem, we have a responsibility to put it right.

THE END OF THE ROAD

Climate negotiations have reached a critical point. On the current trajectory, scientists now estimate that a four to seven degree centigrade increase in temperature is now certain. The Kyoto Protocol is unlikely to mitigate to any great degree the onslaught of climate refugees fleeing the land most likely to be destroyed or lost to catastrophic rising sea levels, floods and storms. None of this will be remedied by a trade in carbon. Neither will it prevent the loss of biodiversity and species extinction that is sweeping across all nations with the speed of a forest fire. Grassroots organizations and citizens from all over the world mobilized in Cancun to call for putting people and planet first. They had marched and protested peacefully

3 *Osman v UK* [1998] 29 EHRR 245

4 *Makaratzis v Greece* [2004] 41 EHRR 1092

but their voice was not heard. The day before the conclusion of the summit a stadium in Cancun was filled with 5,000 people who had travelled from all corners of the globe to voice their concerns at the negotiations. Heavily armed militia had ensured that civil society stayed out of sight of those they wanted to communicate with and as one negotiator confided to me, their protests were either unknown of or simply ignored. Only one leader went to hear what the people had to say and to speak with them: that was Evo Morales.

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Evo Morales is a leader of 10 million people in Bolivia where thirty-seven indigenous languages are spoken. He is himself the first indigenous leader to be elected president in South America. As an Aymara Indian president he is changing the politics of climate change. Morales is also titular president of Bolivia's *cocalero* movement, a federation of coca growers' unions, who are resisting the efforts of the United States government to eradicate coca in Bolivia under the United Nation's (UN) 1961 Vienna Convention on Narcotic Drugs. The coca leaf is part of everyday life for people in the Andean region. An estimated seven million people in a region stretching from southern Colombia through Ecuador, Peru, Bolivia, northern Chile and Argentina chew coca leaves, as did their ancestors going back many generations. Renowned for its stimulating and blood oxygenation benefits, each leaf is overflowing with vitamins and numerous health-giving alkaloids. Regardless, the Narcotics Convention designates the coca leaf as a narcotic, and has banned the growth and use of coca. Coca does indeed release a mild narcotic, which serves to combat altitude sickness, hunger and fatigue when chewed. Its use in a country where altitude sickness, hunger and fatigue are every-day problems is essential for social cohesion and functioning. Bolivia's new Constitution describes coca as a 'cultural heritage, a renewable natural resource' and a key biodiversity element that helps maintain Bolivian well-being. Nevertheless, the United States continued to oppose the Bolivian proposal to lift the ban on using coca for medicinal purposes. Morales has now withdrawn his country from the Vienna Convention on Narcotic Drugs. His decision was based on the fact that the Convention

contradicted Bolivia's 2009 Constitution. This bold move puts indigenous rights in the limelight and underlines the anachronistic and discriminatory nature of the 1961 Convention, as well as the need to revisit this treaty in order to create a more appropriate international law directed towards coca chewing. Whether these actions will alienate Bolivia in the international arena remains to be seen, but Bolivia's bold withdrawal from the Convention actually may prove beneficial in raising awareness both regarding coca chewing and indigenous rights. This single act highlights the injustice of a system that is insensitive to cultural differences. The Convention is flawed and fails to protect fundamental indigenous rights: as such it is no longer fit for purpose.

CLOSING THE DOOR TO DANGEROUS INDUSTRIAL ACTIVITY

On the 15 of March 2012 the Organisation for Economic Cooperation and Development issued a stark warning; carbon dioxide emissions from energy use are expected to grow by 70% in the next thirty-eight years because of our dependence on fossil fuels. As a result, by 2100 the global average temperature will have increased to between three and six degrees centigrade.⁵ The causal link has been established, the evidence is there for all to read; conventional energy production and use will take us over the danger line. The continued use of fossil fuel is dangerous and risk of injury to human and non-human life is real and immediate. In Europe we already have a legal duty of care to close down any dangerous industrial activity and morally all nations have the same duty too. Humanity is faced with a choice: continue with 'business as usual' or confront the urgent need to adapt.

Our existing global policies have proven no longer to be fit for purpose. Emergency measures are called for, to create a global stabilisation policy. The Law of Ecocide provides a framework for intervention to stop dangerous industrial activity that causes increase in carbon dioxide emissions, to disrupt 'business as usual' and to act as a bridge to the green economy.

5 http://www.oecd.org/document/11/0,3746,en_2649_37465_49036555_1_1_1_37465,00.html