

Text 4: Laudation by Dr H. G. Brauch for Dr V. Tsilonis: on ‘ecocide’ as a ‘new crime’ for the protection of the environment

Dr Victor Tsilonis is managing partner at Newlaw, Greece's candidate for the ICC judges' elections in 2020, and a distinguished member of the International Criminal Court Bar Association. He was a lecturer at the Hellenic Open University.

I am critical of the fragmentation of science and politics and advocate a holistic analysis that combines perspectives on international security (strategy research) and peace research with ecology for the human era (Anthropocene) and since 1945 (nuclear era)

What do I strive for as a political scientist? A complex overall analysis (peace ecology) and, as a citizen, an ecological peace policy based on international law for the protection of the environment.

Dr Tsilonis' excellent book: “International Criminal Court” (2024) addresses some of the most pressing legal challenges of our time, including the regulation of deadly autonomous weapons systems, artificial intelligence, cyberwarfare and the emerging crime of ecocide. It is based on his doctorate in international criminal law, which he obtained from the Aristotle University of Thessaloniki.

Dr Tsilonis is an international criminal law expert. As the first legal counsel in Greece, he was authorised to appear before the International Criminal Court.

- He deals with human rights law and has represented clients before the European Court of Human Rights. With a strong commitment to international legal standards, he has worked to uphold human rights by representing victims before the European Court of Human Rights.
- He was involved in research on the Greek prison system since 2001 and contributed to the largest research project on Greek prisons (2005-2009). He participated in litigation monitoring in various courts, including the International Criminal Tribunal for the former Yugoslavia (ICTY), with an understanding of legal processes and reforms. (War in Ukraine)

Dr Tsilonis' book is clearly structured into 12 chapters:

v Chapter 1: What are war crimes? Ecocide: environmental destruction, expansion of the offence of a crime through:

1. Damage to marine ecosystems
2. Loss of biodiversity
3. Economic consequences
4. Health risks
5. Long-term environmental impacts

6. Climate change

- Chapter 2: Preconditions for the International Criminal Court (Nuremberg and Tokyo Trials of German and Japanese Aggressors)
- Chapter 3: Crime of Genocide
- Chapter 4: Crimes against Humanity (Humanity)
- Chapter 5: ICC's Jurisdiction over War Crimes
- Chapter 6: Crime of Aggression
- Chapter 7: International Immunity
- Chapter 8: Jurisdiction of the ICC by referral of the Security Council against states that are not members of international conventions and courts.
- Chapter 9: Complementarity principle

v Chapter 10: Ecocide: new crime under the jurisdiction of the ICC (Rome Statute) in The Hague

- Chapter 11: Lethal autonomous weapons, drones, robots
- Chapter 12: Cyberwarfare: International criminal law

The emergence of ecocide in the Anthropocene

Tsilonis defined 'ecocide' as: 'Any intentional act, lawful or unlawful, direct or indirect, by any actor, that may result in significant deterioration, damage or disruption to the natural environment and ecosystems and has potentially irreversible, near-irreversible or poorly reversible consequences. ... Criminal acts... include: Participation in activities that result in the death, injury or displacement of protected or unprotected fauna or flora from their natural habitats within the ecosystem.'

- Conducting activities that could destroy or significantly damage the ecosystem that supports various living organisms, such as overfishing or the introduction of invasive species.
- Induce the release, emission or disposal of hazardous substances, waste or similar materials that can cause significant harm or deterioration to the natural environment or the organisms living in it.
- Provoke or directly or indirectly cause the emission of greenhouse gases, including both large-scale and cumulative emissions on a smaller scale.
- Be involved in large-scale deforestation or activities that lead to land degradation, regardless of their legal status.
- Be involved in the production, disposal or mismanagement of materials that cause significant environmental pollution, including but not limited to plastic waste, heavy metals and radioactive substances.
- Overexploitation of natural resources, including but not limited to water, soil, minerals and biological resources.
- Any other acts or omissions that meet the conditions set forth in the cases above, including cumulative acts over time that result in significant environmental damage or serious ecosystem disruption.
- Causing damage or destruction to the natural environment or resulting in the death, harm or displacement of fauna or flora through the restrictive acts or omissions mentioned above would be considered an aggravating circumstance and would be given due consideration when determining the level of penalty, in line with the

principles of the International Criminal Court for the Protection of the Environment, which are in accordance with the Rome Statute of the International Criminal Court.

- The aim of the above definition is to capture a wide range of criminal acts that pose a significant threat to the environment and to highlight their potential long-term consequences. It seeks to capture activities that can harm ecosystems, biodiversity and the overall health of the planet, while also creating a specific definition with sufficient precision.

Tsilonis proposes a new International Criminal Court for the Protection of the Environment

The crime of ecocide is fundamentally different from the ICC's current core crimes. First, whereas crimes under the current ICC framework are framed in an anthropocentric logic, a viable legal definition of ecocide would have to operate in an ecocentric logic.

The first advantage of this new court would be that the drafters would be free to fully embrace an ecocentric approach to ecocide. ... This new court would be free to decide on elements such as criminal liability... in a way that would effectively work towards the prosecution of ecocide...

Another possibility under a new *International Criminal Court for the Environment* (ICCPE) would be to also bring corporations to justice and establish corporate criminal liability. The ICC has exclusive jurisdiction over natural persons and therefore cannot prosecute corporations, which are often behind widespread and/or long-term environmental destruction. ... Establishing international corporate criminal liability would only be practically feasible and legally permissible through the creation of a new international criminal jurisdiction. ...

A major advantage of this would be that the ICC would not be overburdened with the introduction of yet another international crime. This stems from the concern that the Court... would get even more work by trying to take ecocide into account. ... A new court focused on ecocide would be better equipped to handle these cases. ...

A group of scholars and practitioners delivered a statement during an event calling for 'the creation of a special tribunal to punish the crime of aggression against Ukraine'. The idea was supported by Ukraine. It is also a response to the ICC's lack of jurisdiction over the crime of aggression. It is worth noting, however, that the OTP has stated that it would be competent to investigate genocide, crimes against humanity and war crimes committed on the territory of Ukraine if the aggression is perpetrated by a state that does not recognise the jurisdiction of the ICC (such as Russia) and the situation is not referred by the UN Security Council. The proposal has understandably been criticised for logistical and issues of selective justice.

Likewise, it is possible to imagine a special jurisdiction for the crime of ecocide. ... An *International Criminal Court for the Protection of the Environment* (ICCPE). The environment and climate change are increasingly part of the agenda for states.

My assessment of his book for the 2nd HGBS Science Prize 2024:

- Very good textbook in public international law & for international relations
- Inventory for the 5th crime (environment) for ISGH
- Important overview of the discussion on ecocide in international public and criminal law

- Political discussion about a new ISGH for the protection of the environment (in addition to ad hoc tribunals, e.g. for the former Yugoslavia, Cambodia, Sierra Leone, etc.).
- After the end of the two current wars in the Ukraine and the Middle East, some
- warring parties may become candidates for legal proceedings before the existing international courts in The Hague (ICJ, ITLOS) because of their acts of war against the environment.
- Analysing these complex legal interrelations requires an overall perspective.