



The Application of International Water Law in Ecocide

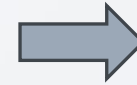
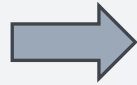
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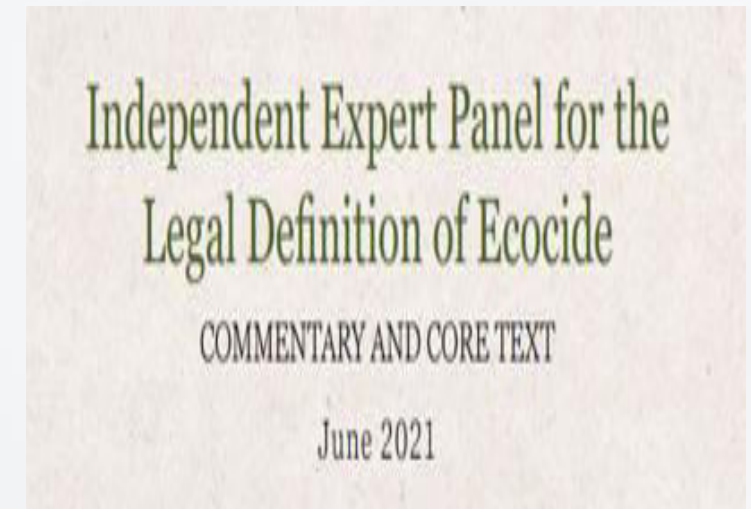
Content

- **What is the background of ecocide?**
- **Can international water law be applied to the issue (crime) of ecocide?**
- **What elements of international water law could be applied to accusation of ecocide?**
- **Can international water law and ecocide jurisprudence learn from each other?**

What is the background of ecocide?



- Swedish prime minister, Olof Palme, pushed the concept at the 1972 UN environmental conference in Stockholm.
- Article 1(1) of the Environmental Modification Convention (ENMOD), Articles 35(3) and 55(1) of Additional Protocol I (API) to the Geneva Conventions, Article 8(2)(b)(iv) Rome Statute.
- Decision on the Prosecution' s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir (ICC)
- Potential Long-Term Impact of the Destruction of the Kakhovka Dam (UNCT Joint Analytical Note- 9 June 2023)



Harm on transboundary waters?

Case	Reasons for the allegations	Specific content of the allegations
Gabcikovo-Nagymaros Project	Hungary suspended and abandoned the works on the project in 1989, claiming that it would cause an ecological catastrophe to the Danube River and its surroundings.	Slovakia accused Hungary of breaching its obligations under the 1977 Treaty on the project, and of causing material damages to Slovakia by depriving it of the benefits expected from the joint utilization of the river.
Pulp Mills on the River Uruguay	Uruguay authorized, constructed and operated two pulp mills on the banks of the river without complying with the notification and consultation procedures under the 1975 Statute of the river.	Argentina accused Uruguay of violating its obligations under the 1975 Statute of the river, and of causing significant harm to the river and its environment by polluting its waters and affecting its ecological balance.

Can international water law be applied to the issue (crime) of ecocide?

• Scope of application'

- E. "' Environment' means the earth, its biosphere, cryosphere, lithosphere, **hydrosphere** and atmosphere, as well as outer space." (IEP' s definition)

: 'Emphasizing international measures to prevent, control and reduce the release of hazardous substances into the **aquatic environment.**' (UNECE Water Convention)

- Ecocide In armed conflict?/Protection of International Watercourses in armed conflict?

International Watercourses and Installations in time of Armed Conflict: (Article 29 | UNWC)

ILA Water Resources and Installations in Times of Armed Conflict (Madrid Rules)

Berlin Rules on Water Resources Article 52 (Berlin Rules)

What elements of international water law could be applied to the accusation of ecocide?

- The principle of equitable and reasonable utilization
- The due diligence obligation not to cause significant harm
- Rules for protection and preservation
- The principle of cooperation
- Joint Bodies
- The dispute settlement procedure
- Scope
- Substantive rules
- Procedural Rules
- Institutional Mechanism
- Dispute Settlement

Can international water law and ecocide jurisprudence learn from each other?

E. “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused by those acts”. (IEP’s definition)



- Assessing the impacts of ecocide-addressing the Transboundary harm
- Linking Ecocide to Specific Activities- identifying the acts and fact finding

Can international water law and ecocide jurisprudence learn from each other?

Assessing the impacts of ecocide----addressing the Transboundary harm

	The Criteria of Ecocide	Water-related environmental harm
intensity	“Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources.	<i>physical indicators</i> , such as the amount of water, the speed of water flow, the depth of water, the force of water pressure, or the level of contamination. <i>Social indicators</i> , such as the number of casualties, the extent of property damage, or the degree of disruption to normal activities.
duration	‘long-term‘ means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time.	temporal indicators, such as hours, days, weeks; functional indicators, such as the time required for recovery, restoration, or adaptation.
location	“Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings.	physical indicators, such as area, distance, direction, or elevation. administrative indicators, such as country, region, city, or neighborhood.

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“**Wanton**” means with reckless disregard for damage which would be *clearly excessive* in relation to the social and economic benefits anticipated. (IEP’s definition)

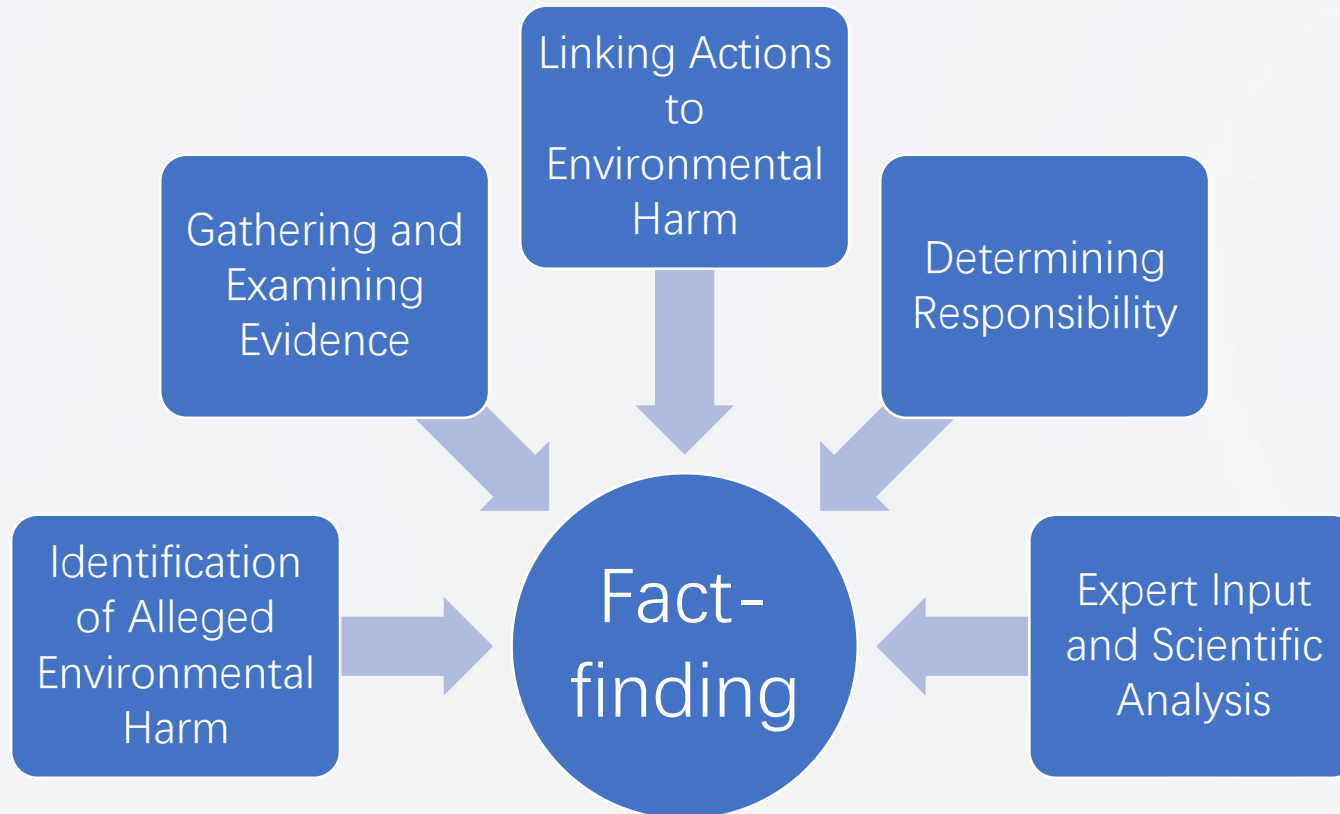
- The elements for the crime of wanton destruction: (i) the destruction of property occurs on a large scale; (ii) the destruction *is not justified by military necessity* (ICTY, Kordic and Cerkez, Trial Chamber Judgement, 2001)
- Article 8(2)(a)(iv) – ‘extensive destruction and appropriation of property, not justified by military necessity’ (Rome Statute)

‘No significant harm rule’ ----- *a due diligence standard of conduct*

- [State] practice indicates a general willingness to tolerate even significant harm, provided that the watercourse State of origin is making its best efforts to reduce pollution to a mutually acceptable level (Commentary to Draft Article 21 UNWC).
- “a state of necessity” is “the only way for the State to safeguard an essential interest against a grave and imminent peril” (Gabcikovo-Nagymaros case, Judgement para. 51)

Can international water law and ecocide jurisprudence learn from each other?

- Linking Ecocide to Specific Activities-Fact-finding
- UNWC Art. 33: Settlement of disputes—Fact-finding Commission.
- UNECE Water Convention Annex IV: Arbitration--- 'take all appropriate measures to establish the facts '.



Observation

- In determining whether a certain environmental damage constitutes ecocide, legal and practical obstacles may exist:
 - ① The definition and scope of ecocide.....
 - ② The jurisdiction and authority of the courts.....
 - ③ The evidence and proof of the damage.....
- An opportunities for international water law to interact with international criminal law.
- International water law can provide reference for the clarification of some elements of the issue of Ecocide.



Thanks For Listening!
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