

The 2022 Callao Oil Spill: utilising national law in conjunction with the international criminalisation of Ecocide - an alternative solution to the mens rea and culpability dilemma.

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Abstract

This paper studies the 2022 Callao Oil Spill in order to highlight the main issues associated with the mens rea of ecocide. Described as the largest ecological disaster in Peruvian history, the spill was caused by a rupture in an underwater pipeline the day after a volcanic eruption in Tonga. However, important questions surface relating to whether it would be feasible and fair to hold Respol (the oil company) accountable under international criminal law (ICL), despite an apparent lack in mens rea. This paper ultimately suggests that national law be utilised in conjunction with the International Criminal Court (ICC) by separating ecocide into three distinct crimes of varying levels of culpability: First-Degree Ecocide will be criminalised within the ICC and will relate to environmental destruction committed with intent. Second degree ecocide will prosecute acts committed with recklessness and will be criminalised under either international or national criminal law. Finally, Third-Degree Ecocide will be incorporated into national law and will prosecute acts committed with criminal negligence such as the Callao Oil Spill. This model will uphold the severity of ICL being reserved for the most heinous crimes making it favourable politically, whilst a wider scope of conduct will be punishable under national law, therefore maintaining the deterrent effect of the crime.

Keywords: ecocide; mens rea; culpability; oil spills; national law.

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Introduction

The early common law of England was closely connected with Roman theory in that it established the mens rea principles of 'dolus' and 'culpa'.¹ These principles undertake an inspection into both the subjective mindset of the perpetrator and the objective foresight that a prudent person ought to have.² From this, criminal law adopted the maxim, 'Reum non facit nisi mens rea', meaning 'an act does not make a person guilty unless the mind be also guilty.' Connected to the notion of mens rea is the essence of culpability, descending from the Latin concept of fault (culpa) and which refers to the degree of one's blameworthiness in the commission of a crime.

Intention is the most serious level of culpability, followed by recklessness, and then negligence. Several scholars have pondered whether negligence can be regarded as a mental state as it purely relates to when an accused has not foreseen the potentially adverse effects of his conduct, therefore putting a particular victim at risk of suffering injury or loss. However, it has been debated that such a significant departure from the standard of care might demonstrate a 'culpable disregard' for the safety of others.³ Consequently, for criminal negligence the fault lies in the failure to foresee. Such a failure and disregard can be deemed 'morally reprehensible, socially dangerous, and properly punishable.'⁴ The distinction between recklessness and negligence therefore pertains to the presence or absence of foresight as to the associated risk of the potentially dangerous conduct. A further form of culpability is strict liability, referring to when an actor is held responsible for damage regardless of his mental state; though this standard is restricted for 'exceptional instances of technical misdemeanours.'⁵

It has been argued that perhaps the most disputed element of the ecocide movement pertains to the mens rea and culpability standard that should be applied.⁶ Whilst Higgins advocated that ecocide should be a crime of strict liability,⁷ others such as Falk have argued that this is unfeasible and that some degree of mens rea be proved.⁸ The recent definition proposed by the Independent Expert Panel (IEP), states ecocide can be defined as '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 caused by those acts';⁹ this aligns closest to a recklessness standard of culpability. However, the vast number of different formulations of ecocide has led Greene to contest that 'the vagueness can make ecocide seem more like a concept than a crime', and the dispute as to the most appropriate mens rea is central to this issue.¹⁰

Appropriately, this paper will critique the matter of mens rea and culpability, by studying the Callao Oil Spill of 2022 in order to justify an alternative method of criminalising ecocide. Ultimately, the article will suggest separating ecocide into three distinct crimes, each one prosecuting the mass destruction of the environment, but with differing mens rea and culpability standards attached. However, whilst an alternative model is suggested, the author believes that the Stop Ecocide movement and the definition suggested by the IEP is a workable proposal nonetheless; this is merely one alternative solution to the mens rea and culpability dilemma.

The 2022 Callao Oil Spill

If one was to undertake an inspection of the literature in support of ecocide criminalisation within the ICC, a broad consensus points to the notion that oil spills are perhaps the most notorious example of such¹¹- *Deepwater Horizon*, *Exxon-Valdez* and *Amoco Cadiz* are three spills frequently used to justify the amendment of the Rome Statute.¹² However, upon review of the facts it becomes clear that often, oil spills are not always significantly culpable acts.¹³ Whilst occasionally, there is a degree of recklessness and negligence involved, as was certainly the case in *Deepwater Horizon*,¹⁴ difficult questions arise as to whether those blamed for the spills are capable of having the requisite degree of mens rea and culpability to brand them as international criminals.

To demonstrate this, the Callao Oil Spill can be studied. This was a crude oil spill that ensued in January 2022 in the province of Callao, Peru.¹⁵ Described by the United Nations as the worst ecological disaster in Peru's recent history,¹⁶ and by the Peruvian Prime Minister as 'one of the largest ecocides ever on our coasts and seas',¹⁷ the oil slick has spread 140km north of the refinery,¹⁸ covering approximately 713 hectares of sea, an area the size of Paris and twice the size of Manhattan.¹⁹ Moreover, some 28 beaches have also been affected,²⁰ poisoning 180 hectares of sand, and covering a distance 41km.²¹

With approximately 11,900 barrels of crude oil leaked,²² the spill has been regarded as a 'massacre' of the hydrobiological diversity according to the leader of the local fisherman.²³ Whilst the number of fish and seabirds killed is currently undetermined, experts 'fear devastating consequences' for the marine species.²⁴ Thus, in order for the ecosystem to fully recover, it has been estimated that it will take approximately 10 to 20 years.²⁵ Accordingly, locals are calling for punitive measures to be imposed on Respol, the energy company in charge of the refinery.

However, the dispute over who is ultimately responsible for the spill has made the attachment of blame particularly difficult. At first, Respol contested that it was caused by an 'unforeseen maritime event',²⁶ after the eruption of the Hunga Tonga-Ha'apei sub-marine volcano the day prior allegedly caused 'sudden and extraordinary anomalous waves' that tossed the tanker around and triggered the spill.²⁷ However, this defence was later dismissed after witnesses claimed that no extraordinary waves reached the area near the refinery;²⁸ likewise, the captain of the Italian tanker, the Mare Doricium, has said that the water was not particularly rough.²⁹

Thus, it was later established that the spill was caused by a rupture in an underwater pipeline;³⁰ though Respol now allege that the shifting of position by the Mare Doricium caused the spill, allegations that the captain of the tanker denies.³¹ Indeed, increased examples of purported negligence on behalf of Respol seems to be the substantiating cause of the ecological destruction. For example, it has been reported that 'the early-warning leak detection system was not working, and that Respol did not have the equipment and materials, nor adequately trained personnel to mitigate a spill of such large dimensions.'³² Furthermore, images have recently appeared showing the pipelines covered in rust.³³

Moreover, the company has been criticised for its slow response, failing to report the spill in a timely manner and launching its contingency plan the following day,³⁴ whilst originally claiming that only 7 barrels of oil were spilled.³⁵ Indeed, the failure to adopt preventative measures, combined with the actions subsequent to the leak has led the UN Special Rapporteur on Toxics and Human Rights to assess that Respol 'aggravated the impacts.'³⁶ This notion is supported by Collantes, an expert in oil spills who has proclaimed that 'there were flaws from the start, it was not accidental.'³⁷

The facts of this case suggest that Respol are ultimately responsible for the destruction of the environment caused by the spill, an idea supported by Pulgar Vidal, the global leader of climate and energy at WWF, who believes the company must be held accountable under Peru's strict liability laws.³⁸ However, others, such as Antigua and Barbuda's Ambassador to the OAS, contends that the Callao Oil Spill exemplifies the 'need for a more comprehensive and international framework for dealing with liability from oil spills and ecological damage'.³⁹

The remainder of this paper will therefore use this example as a case study to hypothesise the extent to which it is desirable to hold perpetrators of oil spills to account for ecocide under ICL. The arguments will consider whether lower standards of culpability such as negligence are serious enough to warrant international criminalisation, and if not, how the legal system can still be utilised in order to hold those responsible for oil spills to account for the resultant

ecocide. Note that this article does not consider the actus reus of the crime and will therefore not be concerned with whether the damage caused passes the specific damage threshold required- rather, the article uses oil spills to discuss the mens rea and culpability standards that ecocide might include.

Crimes that 'shock the conscience of humanity' and the mens rea of ecocide

It was the brutalities of the Second World War under the Nazi regime that propelled the establishment of ICL, under the assumption that certain acts that 'shock the conscience of humanity' create such a degree of moral outrage that the international criminalisation of these wrongs are warranted.⁴⁰ Accordingly, there is a wide debate within the literature as to whether ecocide creates such uproar that it deserves to be regarded as a fifth crime against the peace. On the one hand, Lay et al assess that both genocide and ecocide often 'result in similar amounts of death and destruction.'⁴¹ However, there is a risk that a definition of ecocide that 'sets the bar too low' would imperil the legitimacy of the ICC being reserved for truly heinous atrocities,⁴² urging Smith to assess that an ecocide crime risks trivialising true evils' such as the Rwandan Genocide, which should remain the focus of the ICC.⁴³

Indeed, an ecocide crime must not risk overburdening the ICC, warranting a damage threshold being established to guarantee against a 'flood of frivolous litigation' ensuing and to ensure that only the most shocking acts are proscribed under ICL.⁴⁴ In a similar manner, a theme in the literature points to the 'special type of stigma' attached to those convicted in the ICC.⁴⁵ This stigma is a product of the fact that international criminal proceedings are reserved for 'the most serious crimes of concern to the international community',⁴⁶ which Mégret assesses 'threatens to put its targets (the criminal defendants) on the outer borders of humanity' and which denounces the guilty parties as 'an enemy of mankind.'⁴⁷

Accordingly, as those convicted under the ICC are perhaps subject to the maximum level of denunciation,⁴⁸ it is widely accepted that the resulting effects and punishment of being deemed an international criminal necessitates an 'inquiry of the mental state of the accused and proof of their culpability.'⁴⁹ The default mens rea standard under Article 30 states that a person shall be criminally responsible if the material elements are committed with 'intent and knowledge,'⁵⁰ which reflects both the severity and the ramifications associated with being an international criminal. Caselaw can offer further insights into the contents of this provision.

During the *Lubanga* case of 2007, the Pre-Trial Chamber I (PTC I) of the ICC ruled that the Rome Statute incorporates into Article 30 three degrees of intent.⁵¹ The three degrees of 'dolus' take the form of *dolus directus*, whereby the perpetrator directly foresees and intends to cause

specific harm; *dolus indirectus*, where there is knowledge that the circumstance will occur in the ordinary course of events (a virtual certainty), and *dolus eventualis*, whereby a perpetrator 'is aware of the risk that his or her actions will bring about the objective elements of a crime, and accepts such an outcome by reconciling himself or herself with it or consenting to it'⁵²-recklessness can roughly be deemed the common law equivalent to this standard. As explained by the War Crimes Research Office, the Chamber when justifying the inclusion of *dolus eventualis* (a less restrictive *mens rea*), did not provide support for the choice, but instead, merely explained that the concept has been used in previous international criminal tribunals.⁵³

Consequently, the PTC II in the subsequent case of *Bemba* deviated from this ruling by asserting that Article 30 did not in fact cover *dolus eventualis*, but simply relates to *dolus directus* and *indirectus*.⁵⁴ Once more, this has been deemed an unsurprising development since the *travaux préparatoires* 'strongly suggest a decision on the part of the drafters to exclude both the concept of recklessness and that of *dolus eventualis* from the statute.'⁵⁵ Accordingly, whilst the ICC have in some instances accepted definitions falling under the remit of the '...unless otherwise provided' proviso of Article 30, it must be accepted that the gravity of ICL *usually* presupposes 'intent and knowledge.'⁵⁶

Contrarily, a common theme in the ecocide literature advocates for a less restrictive *mens rea* than that in Article 30, as 'the crime of ecocide covers a variety of mental elements,'⁵⁷ from strict liability,⁵⁸ to negligence,⁵⁹ to *dolus eventualis*, as recently suggested by the IEP. In the commentary to the 2021 definition, the IEP explained that the default standard of Article 30 would result in conduct not being prosecutable despite the resultant damage passing a damage threshold, thus warranting a move away from the traditional principles of ICL.⁶⁰ For example, Pereira argues that 'many instances of environmental offences are committed without intention, including in the context of accidental oil spills or nuclear accidents.'⁶¹ Under this assumption, a lower degree of *mens rea* is advocated in the hope that oil spills such as Callao will potentially be punishable. It is argued by Wang that acts passing a threshold would 'be so dangerous, harmful, and morally deplorable that they deserve condemnation, even if merely committed recklessly.'⁶² This argument is often stated by ecocide proponents and is one that I myself am sympathetic to. Indeed, Article 30 does certainly leave room for less strict standards of intent; this is already the case in various examples within the Elements of Crimes, whereby the Preparatory Commission for the Elements felt a less restrictive standard was justified.⁶³ Accordingly, whether ecocide will be adopted with a *dolus eventualis* standard depends on whether the ASP are convinced that such a standard is warranted.

However, many ultimately deem this unfeasible.⁶⁴ Mwanza rightfully assesses that those provisions of the Rome Statute with a lower mental element remain the exception as the Core Crimes do primarily require the default standard,⁶⁵ it has therefore been argued that this would result in ecocide being an 'anomaly.'⁶⁶ Again, this does not automatically remove the possibility of recklessness being 'otherwise provided', but several authors point to the drafting history of the Rome Statute whereby the drafters 'were overwhelmingly opposed to including recklessness' as the crimes were 'too serious to justify such an easily satisfied mens rea.'⁶⁷ Accordingly, it has been deemed 'highly improbable' that the ASP would accept a less stringent culpability standard,⁶⁸ which may face political 'obstacles'⁶⁹ and opposition by states.⁷⁰

Consequently, whilst on the one hand it might be argued that the destruction caused by ecocide is serious enough to warrant international criminalisation as a result of the devastating effects which often transcend boundaries, it must be accepted that 'ecocide warrants a fault standard appropriate to the gravity and stigma of ICL.'⁷¹ Thus, the diplomatic difficulties that would result from the advocacy of a lower culpability standard would make the likelihood of ecocide being outlawed more of an unfeasible possibility. For those reasons, whilst it could reasonably be argued that standards such as recklessness or negligence would 'catch more cases'⁷² and ease the burden on prosecutors when litigating against certain acts of ecocide such as oil spills,⁷³ others have pointed to the notion that such low culpability requirements risk betraying an international society that is 'willing to blur the line between human negligence and human evil.'⁷⁴ Accordingly, it has been suggested that perhaps these standards would be more appropriately applied to national law, rather than within the ICC.⁷⁵

An alternative solution: a hierarchical system of ecocide

In light of the discussion above, it is not surprising that academics have deemed the issue of mens rea the most disputed element of the crime. It is an arduous task to offer a mens rea standard that is consistent with the long-established principles of ICL whilst also ensuring that acts causing a certain level of environmental destruction are not excluded by the stringent criteria of Article 30. This task is made more difficult by the fact that ecocidal consequences are often caused by a variety of different perpetrators with differing levels of mens rea and culpability, and political opposition to a crime with a lesser degree of mens rea is more likely within the international criminal arena. Whilst it is imperative to implement an ecocide crime consistent with the principles of the Rome Statute, Patel points to the notion that the prohibitive mens rea requirements of the ICC will make it difficult to 'prosecute anything other than "intentional inflictions of environmental harm", resulting in largely unprosecuted negligent and reckless damage',⁷⁶ such as that caused during the Callao Oil Spill.

Thus, the purpose of this paper is to provide an alternative solution to the mens rea dilemma associated with ecocide in a way that could resolve some of the issues outlined throughout. It is imperative that all acts of human-instigated destruction that cross a damage threshold are punished, even if ICL is not the favoured avenue for acts caused with lesser culpability. Accordingly, this paper proposes the following solution:

Ecocide should refer to a universal damage threshold, that suggested by the IEP perhaps, namely 'severe and either widespread or long-term damage to the environment.'⁷⁷ However, rather than criminalising one general and individual crime, a hierarchy of three distinct ecocide crimes should be established, namely:

- 1) **First Degree (Intentional) Ecocide-** Severe and either widespread or long-term damage caused to the environment by an individual who acted with intent and knowledge (*adopting the mens rea standard of Article 30 and likely prosecuting acts perpetrated with dolus indirectus*)
- 2) **Second Degree (Reckless) Ecocide-** Severe and either widespread or long-term damage caused to the environment by an individual who consciously disregards a substantial and unjustifiable risk that the damage would result from his/her acts or omissions.
- 3) **Third-Degree (Criminally Negligent) Ecocide-** Severe and either widespread or long-term damage caused to the environment by an individual who shows an unconscious but culpable disregard to the risk of serious damage being caused by his/her acts or omissions.

Justification for a hierarchical ecocide model

Through a hierarchy of ecocide crimes, First-Degree ecocide should be prosecuted within the ICC, with the principles of the Rome Statute utilised in the process. Third-Degree ecocide on the other hand should be adopted into national law. By focusing on the mindset and culpability of the perpetrators, a fair solution would be invoked as unintended but nonetheless culpable acts of destruction such as the Callao Oil Spill would still be punished, but not under a legal system that would hold the perpetrators in the same regard as the most infamous international criminals. The lower mental culpability for Third-Degree ecocide would mean the level of stigma is not as high as when committed in the First-Degree, meanwhile intentional ecocide would be favoured within the political arena as it would be consistent with the stringent mens rea standards of the Core crimes.

The offence which has perplexed me the most is ecocide of the Second-Degree. At the time of writing I am not entirely convinced about whether reckless ecocide has a place within ICL or whether it would be more aptly suited under national law alongside criminally-negligent ecocide. On the one hand, Bustami and Hecken observe that 'the existing crimes suggest the accumulation of objective criteria and a special misanthropic intent' qualifies these crimes as the 'most serious crimes of concern to the international community.'⁷⁸ As criminally negligent ecocide would only consider the consequence and not the intentions of the perpetrator (though it would consider the perpetrator's failure to foresee the risks), this would likely be too much of a deviation from Article 30 to be taken seriously by the ASP. Ecocide of the Second-Degree however does not entirely relinquish a volitional element, and so there is certainly scope for recklessness to be 'otherwise provided' within the crime's definition. The more sceptical ecocide proponents will argue that this standard will likely face political obstruction for being too easily satisfied. Meanwhile, the more optimistic supporters will argue that First-Degree ecocide alone will exclude the majority of conduct which the ecocide campaign hopes to prohibit from being prosecutable, and that a deviation from Article 30 is not only necessary but inevitable when conceptualising the limits of the crime. However, it is worth noting that strong national criminal systems could still play a significant role in all three degrees of ecocide protection.

I would therefore be inclined to argue that my stance in regard to Second-Degree ecocide is this: although politically unfavourable, if the ASP can be convinced that ecocide committed with *dolus eventualis*/ recklessness is justified, then it should be adopted into ICL alongside First-Degree Ecocide, though reserved for the most environmentally destructive acts of significant gravity and impact. I'd be confident in suggesting that certain acts of reckless ecocide could 'shock the conscience of humanity' more than certain acts of ecocide committed in the First-Degree, depending on the level of damage caused to the environment. Either way, this model will ensure that whether prosecuted under international or national criminal law, all three degrees of ecocide committed with some level of culpability will be outlawed. The other benefits of this model will now be discussed:

i) Failure of current legal framework

Some may also question why lesser standards of culpability are warranted within the environmental criminal arena at all, when an array of treaties are already extant for dealing with certain acts of destruction. However, a review of these treaties reveals that they are not adequate to providing sufficient punishment and redress to the environmental damage caused. Using oil spills as an example, the Lugano Convention imposes civil liability on individuals

who are in control of dangerous activities and who cause damage as a result of that conduct.⁷⁹ Similarly, the Bunker Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil.⁸⁰ However, these Conventions have been criticised for not covering damage to the environment exclusively, but merely clean-up costs and profit losses of victims such as fisherman and local businesses reliant on ocean resources.⁸¹ Accordingly, environmental harm caused on the high seas will not always reveal an identifiable victim with standing to bring an action.⁸²

Thus, it has been argued that private compensation to victims is insufficient, and public denunciation through criminal conviction is required.⁸³ This deviation from anthropocentrism and step towards ecocentrism will put non-human victims at the forefront and will therefore rectify current gaps in international and domestic environmental law, which due to a lack of an overarching institution and primary use of voluntary and non-binding obligations has been deemed fragmented, piecemeal, unclear and reactive.⁸⁴

ii) Culpability, Causality and Deterrence

Moreover, it is argued that a step away from civil liability and towards criminality is justified because of the deterrent effect it will likely result.⁸⁵ Already, several existing international agreements call for penal sanctions which are strong enough to deter violations.⁸⁶ For example, the Basel Convention requires contracting parties to implement criminal sanctions which will prevent and punish conduct in contravention of those provisions.⁸⁷ In relation to oil spills, Uhlmann contests that a criminal prosecution will deter future spills better than civil penalties alone and will also express social condemnation more efficiently.⁸⁸ Moreover, Faure refers to the Erika Oil Spill which showed that even when judges apply the maximum statutory penalty, this does not necessarily provide sufficient deterrence as 'the optimal monetary sanction required for deterrence so frequently exceeds the offenders' assets', favouring an increase in non-monetary sanctions.⁸⁹

The Lugano Convention as discussed above places those in control of dangerous activities strictly liable for damages caused by those dangerous activities. This is a culpability standard supported by Higgins in her justification for an ecocide crime, arguing that should perpetrators have to prove intent, then they would be able to hide behind the loophole of having not intended the outcomes.⁹⁰ Accordingly, she advocated a no-fault ecocide crime in order to catch all cases of environmental destruction, which some have also suggested could offer a stronger deterrent effect.⁹¹

However, others point to the notion that criminal punishment should be reserved for the worst transgressions committed with significant fault.⁹² For example, DeGroff refers to Justice Holmes who argued that whilst deterrence is the chief purpose of punishment, some degree of culpability was essential to make penal sanctions effective.⁹³ This seems logical because for an actor to be deterred from a specific conduct, it would require a change in behaviour. In the context of oil spills, this may include ensuring that all equipment is properly functional, that all personnel are competent, and that other mitigation measures are executed sufficiently to ensure the prevention of a spill.

Therefore, as it has been argued that 'to deny criminal liability is founded on blameworthiness would shock the moral sense of any civilised community,'⁹⁴ this legislative model was careful not to incorporate a culpability standard that would criminalise conduct that was unpreventable.⁹⁵ Thus, damages caused through a lack of fault and culpability should remain within the civil arena. The issue of causality is evidently central to this model and for the justification of criminalisation. It will be the conduct (whether intentional, reckless, or criminally negligent) that causes the environmental destruction which forms the basis for imposing criminal penalties.

Furthermore, an advantage of utilising national law is that corporations can also be held criminally responsible as well as individuals, which relinquishes one of the most commonly cited drawbacks of exclusively prosecuting ecocide as an international crime in that it would be limited to individuals alone rather than corporations.⁹⁶ The issue of causality when there are potentially numerous contributors to the damage can be resolved by enforcing joint responsibility and by placing the burden on the those who were in control of the activities to prove they were not responsible. Moreover, whilst corporations can be held criminally liable when the 'offense-related-conduct involves instructions of a directing mind,'⁹⁷ this does not automatically exclude individual liability and it is advocated that an effective legislative model seeks to hold both the corporation and individuals criminally liable when necessary.⁹⁸

Applying the hierarchical ecocide model to the Callao Oil Spill

As discussed above, in order for Respol and individuals inside the company to be found guilty of ecocide under this model, it must be established that the conduct caused the damage, whilst the culpability of the perpetrators will indicate which degree of the ecocide hierarchy they will be prosecuted under. Upon a review of the facts, it is likely this particular oil spill was caused by criminally negligent conduct on behalf of the company and therefore Third-Degree ecocide would be the probable charge.

The probable cause of the ecological damage was the negligent conduct both before and after the spill. The failure to take preventative measures, combined with faulty equipment such as the leak detection system and rusted pipelines, as well as poorly trained personnel, all suggest this catalogue of human errors is ultimately what led to the ecocidal destruction. Moreover, the slow response will have exacerbated the environmental impacts. Accordingly, it appears these mistakes lie within the directorial decision-making, which falls significantly below a standard of care of the company expected to the natural environment on behalf of individuals and corporations conducting such dangerous activities. It could therefore be reasonably argued that under the hierarchical ecocide model, Respol and perhaps the directors or management in charge of both the equipment and response may be charged as jointly liable for the crime of Third-Degree ecocide, as they appear to have been the negligent, and therefore culpable perpetrators of the damage.

Conclusion

This article has discussed oil spills in order to show that ecocide is often the result of varying degrees of mens rea and culpability. This reveals a danger that the principles of the ICC may be distorted if a culpability standard was incorporated into the definition that would be so unrestrictive that any form of environmental destruction could be prosecuted. It could mean that instances such as the Callao Oil Spill are prosecutable, and that Respol executives would be held in the same level of infamy as individuals that have been found guilty of Genocide or War Crimes. Further, there is a chance that as the drafters of the Rome Statute opted to avoid the *dolus eventualis* standard, political opposition to a less restrictive mental and culpability element would be considerable. However, environmental harms are seldom committed with direct intent and the nature of environmental crime is therefore in itself diverse from current international crimes. Thus, there is a potentially higher likelihood of a less restrictive mens rea being accepted by State Parties and therefore the Stop Ecocide campaign and other proponents of the IEP definition should continue to advocate for the criminalisation of ecocide as it is currently understood. The model suggested in this article is offered as an alternative solution to the issues highlighted throughout, especially in regard to the lowest forms of culpability.

Ultimately, ecocide proponents are united in their belief that culpable acts crossing a certain damage threshold warrants criminalisation. Therefore, whilst Respol or their executives do not deserve to be held accountable within the ICC, national legal systems could be developed and utilised in order to apply less restrictive mental standards and to prosecute acts of environmental destruction which do not meet the cognitive reprehensibility of the other core crimes.

By separating acts of ecocide into three degrees, with First-Degree (and potentially Second-Degree) ecocide falling under the jurisdiction of the ICC and prosecuting ecocide committed with *dolus (in)directus*, this would maintain the integrity, principles and stigma attached to ICL, ultimately making the crime more politically viable. Holding perpetrators of Third-Degree ecocide to account within national law whereby less severe penalties can be imposed and the disgrace of being an international criminal will be avoided, appears to be a more politically achievable and logical solution. The deterrent effect of the crime would still be present, which would force corporations such as Respol to take more precaution and to eliminate any negligence which may contribute towards ecological disasters.

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