

Norm-Building in Advocacy to Establish Ecocide as an International Crime

MELISSA SCHNYDER

A growing body of research has documented the important role of deliberate norm change in prompting institutional reform, including via international courts and advocacy networks. This paper examines advocacy to criminalise ecocide at the international level via an amendment to the Rome Statute of the International Criminal Court. It analyses how advocates are developing and diffusing the content of an emerging norm against ecocide. The analysis shows how their actions depend on three key processes: foregrounding (putting a spotlight on harmful existing norms), innovation (developing a new normative framework), and grafting (linking the innovation to more established norms), and highlights how these processes are embedded in a broader tactic of information politics to persuade publics of the need of a legal solution to effectively address ecocide as an intractable problem. Examining these processes can help solidify our understanding of how norms play a role in efforts to bring about significant change on issues related to environmental conservation and sustainability.

KEY WORDS: Norms, International Criminal Court, advocacy networks, ecocide, environmental advocacy.

Introduction

Since 2017, an international network of human rights activists, NGOs, lawyers, and environmentalists has advocated to amend the Rome Statute of the International Criminal Court (ICC) to include ecocide. As part of this effort, an international panel of legal experts came together in June 2021 to draft a formal definition of ecocide: 'For the purpose of this Statute, "ecocide" means 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 being caused by those acts' (Stop Ecocide Foundation 2021: 5). In expressing their rationale, the panel stated:

It is our hope that ecocide will become a watershed fifth international crime in the Rome Statute of the International Criminal Court, sitting alongside Genocide, War Crimes, Crimes Against Humanity and Aggression. Beyond that however, our broader goal is to see global shifts in attitudes to the environment' (UCLA Law 2023: n.p.).

This reference to *global shifts* in attitudes suggests a role for advocacy strategies to stop ecocide focused on intentional norm change.

A growing body of research examines the role of social norms, which are commonly thought of as 'collective

expectations for the proper behavior of actors with a given identity' (Katzenstein 1996: 5), in shaping a broad range of behaviours and practices. When it comes to difficult problems such as large-scale environmental destruction, norms can impede efforts for policy action and reform, but they can also facilitate those efforts by, for example, promoting solidarity and coordination. In addition, norms undergird institutions, or the 'rules and procedures (both formal and informal) that structure social interaction by constraining and enabling actors' behavior' (Helmke and Levitsky 2004: 727). As formal institutions, international courts have come to be viewed as important sites of norm development, particularly given the increasing judicialisation of international relations (Sandholtz 2017). Alongside courts, transnational activists play a critical role as norm innovators and entrepreneurs (Keck and Sikkink 1998), yet much remains to be discovered about the ways that transnational judicial activists focused on large-scale environmental destruction are engaging in new norm development vis-à-vis international courts.

This paper examines how such an international advocacy network contributes to developing and diffusing the content of an emerging norm against ecocide and shows how their actions depend on three key processes: foregrounding (putting a spotlight on harmful status-quo norms), innovation (developing a new normative framework), and grafting (linking the innovation to more established norms). I argue that these processes are

embedded in a broader tactic of 'information politics' (Sikkink 2002: 45) to persuade publics of the need of a legal solution to effectively address ecocide as an intractable problem.

Norm Entrepreneurs

Norm entrepreneurs are actors who mobilise support to create alternative ideas (Sunstein 1996); they can create and perpetuate an innovative idea that takes hold as a new or alternative international norm that eventually diffuses into a far-reaching principle, becoming institutionalised throughout the international system. International courts such as the ICC are important sites for the development and expansion of norms (Sandholtz 2017: 156). Courts engage in different modes of norm development, from incremental norm development via narrow, tailored judgments to entrepreneur courts that can produce significant norm development by 'clearly defin[ing] the direction of the norm's development and set[ting] standards applicable to future cases' (2020: 78), which is what activists involved in the movement to criminalise ecocide are seeking to accomplish via amending the Rome Statute.

In addition, scholars have emphasised the importance of transnational professional networks, both specific to and beyond the courts (Slaughter 1995: 517), to global governance. Judicial networks and NGOs help develop and diffuse global environmental norms (Angstadt 2022: 222), advocating for new environmental standards, rules, and institutions that contribute to shaping international criminal law norms (Simmons and Jo 2019: 18-19). Additionally, judicial networks initiate normative dialogue, 'intentionally facilitating exchanges among domestic judges and actors' (Angstadt 2022: 222) to prompt court-based action.

Building New International Norms

A central focus of research on international norms is on norm creation by norm entrepreneurs (Finnemore and Sikkink 1998: 893; Keck and Sikkink 1998: 35-37, 211), which is a key tactic that networks and NGOs employ to influence international law (Sikkink 2002: 41). For example, human rights networks were key in perpetuating new norms on torture reflected in human rights treaties, and women's rights networks did the same in addressing violence against women (VAW) (Sikkink 2002: 44, 48).

'Information politics', which involves promoting change through the strategic use of information, is a critical tactic of networks (Keck and Sikkink 1998: 18-22). This includes both facts and testimony, including research and personal stories, which are interpreted by advocates.

Foregrounding

Discursive scrutiny or 'foregrounding' (Raymond et al. 2014: 198) can weaken an existing norm. Because of their taken-for-granted quality, norms tend to guide behaviour in unconscious ways that follow a 'logic of appropriateness' (Sikkink 2011: 11-12). Focusing explicit attention on norms and subjecting them to scrutiny can thus make individuals more aware of the implicit or unconscious behaviours they govern. As a result, norms can be explicitly questioned, which plays an important role in the process of behaviour change (Raymond 2016: 171-172).

When foregrounding a problematic existing norm, advocates engage in a process of being 'norm-critical' whereby norms that contribute to destructive actions are challenged (Nilsson and Jahnke 2018: 376). Using information politics, advocates work to raise awareness about and highlight the ways in which the norm results in harmful behaviour or impacts. This, in turn, prompts individuals to reflect on and rethink the norm by undermining its appeal.

Advocates tend to frame issues straightforwardly, 'in terms of right and wrong, because their purpose is to persuade people and stimulate them to act' (Keck and Sikkink 1998: 19). The end goal is to affect change to 'beliefs, positions, or courses of action' that reflect a new normative framework (Sikkink 2002: 46). This is necessary to demonstrate the extent of a particular problem and the lack of official response, and that the problem is so prevalent and intractable that a legal solution is needed to remedy it (Sikkink 2002: 45-46; Magrath 2015: 666). In attempting to establish a new normative framework, advocates use information politics in three key steps that are discussed in turn: foregrounding, innovation, and grafting.

Norm innovation

Advocacy networks engage in norm innovation to replace a weakened norm with one that can support desired behavioural and institutional changes (Raymond et al. 2014: 201-202). They develop new norms to counteract the content of norms upholding the status quo, which are rejected as fundamentally illegitimate. This work involves being 'norm-creative' through considering 'what might be' (Nilsson and Jahnke 2018: 376) and by engaging in information politics to showcase a new 'standard of appropriate behavior' (Finnemore and Sikkink 1998: 891). The building of a new norm in an issue space thus sets the stage for social and political change.

Furthermore, new norm development entails the creation of new categories and concepts (Raymond et al. 2014:

202; Shawki 2015: 59). For example, transnational women's rights activists deliberated and created the concept of 'violence against women' – which did not exist previously – by linking together disparate acts such as domestic violence, sexual assault, female genital mutilation, etc. to create an overarching category (Sikkink 2018: 29). Thus, the creation of new categories and concepts is a fundamental part of new norm building (Sikkink 2002: 44-45).

Grafting

The concept of grafting from the literature on norm localisation can be a relevant component of norm innovation. Grafting, which has also been called incremental norm transplantation (Farrell 2001: 65), 'is a tactic norm entrepreneurs employ to institutionalise a new norm by associating it with a preexisting norm in the same issue area, which makes a similar prohibition or injunction' (Acharya 2004: 244), and ensures that a new (global) norm will resonate with a pre-existing (domestic) normative framework (Carpenter 2007).

To illustrate how grafting and normative innovation can work together, the advocacy effort to produce a new norm against chemical weapons was greatly assisted by associating these weapons with preexisting norms against poison (Price 1997). Additionally, the campaign to produce an international norm against antipersonnel (AP) landmines utilised information politics to associate them with delegitimised practices of warfare, including biological and chemical weapons (Price 1998). As a result, a ban on AP landmines was made possible by placing these weapons in the same normative category as other 'taboo' weapons.

International Advocacy Addressing Ecocide

The global movement to criminalise ecocide is primarily coordinated by the Stop Ecocide International (SEI) organisation and its national and regional branches and associate groups. In addition, there are several international networks that support the work of SEI within specific functions and areas, including the Ecocide Advice Centre, End Ecocide on Earth, and the Faith for Ecocide Law network, among others.

These advocates argue that 'severe harm to nature which is widespread or long-term' is a primary cause of the climate and ecological crises currently facing humanity (SEI n.d.a: n.p.). In practice, environmental destruction of this magnitude occurs as the result of certain industrial activities that advocates argue could potentially be addressed by an ecocide law, and include the following categories: ocean damage, deforestation, land and water contamination, and air pollution (SEI n.d.a: n.p.).

The movement is advocating for a formal institutional change at the international level via an amendment to the Rome Statute of the ICC, as it is 'the only global mechanism which directly accesses the existing criminal justice systems of its 123 member states' (SEI n.d.b: n.p.). To accomplish the addition of ecocide as a fifth crime would involve a four-stage process whereby:

- (1) a (group of) state(s) that has ratified the Rome Statute must propose an amendment,
- (2) a majority of states at the annual assembly of the ICC must decide the amendment can be considered,
- (3) adoption of the change into the Statute requires a minimum of 2/3 majority, and (4) states, then ratification of the crime and, after one year, begin enforcing the law in their own country (SEI n.d.c: n.p.).

To gather momentum for this proposed institutional change, advocates engage with citizens, diplomats, business leaders, lawyers, politicians, faith-based groups, indigenous groups, academic experts, and NGOs (SEI n.d.b: n.p.).

Materials and Methods

Norms 'leave an extensive trail of communication among actors that we can study' (Finnemore and Sikkink 1998: 892). Accordingly, a directed content analysis, which relies on theory to identify key themes (Potter and Levine-Donnerstein 1999), was conducted of hundreds of pages of publicly available documents and campaign content produced by stakeholders involved in the international movement, which primarily include SEI, but also the Ecocide Advice Centre, Ecocide Alliance, End Ecocide on Earth, Ecocide Law Alliance, Faith for Ecocide Law, and Youth for Ecocide Law.

In total, 14 different source types were analysed: website material; newsletters; news articles; position papers; international petitions; open letters; organisation documents; campaign materials, flyers, and graphics; slideshow presentations; speaker notes; legal documents; online webinars; blogs; and international and country-specific manifestos. The focus was on the following areas:

- (1) critique of a preexisting norm (foregrounding),
- (2) promotion of specific new standards of behaviour (norm innovation) and
- (3) how new standards are justified in relation to other norms (grafting). The results are presented in the following section.

Norm Innovation in Advocacy to Criminalise Ecocide

Foregrounding harmful status quo norms

There are two sets of harmful status quo norms that advocates foreground in relation to ecocide. The first involves norms that undergird corporate immunity (or, more generally, the lack of responsibility and accountability around the environment). Discourse that highlights the failure of accountability and responsibility is evident in movement advocacy. For example, a business and finance open letter to governments describes how:

Mass damage and destruction of nature and vital ecosystems has been taking place for decades as a grievous consequence of rapid economic development. For the most part, no-one has been held responsible for this serious harm, increasingly known as ecocide (SEI n.d.d: n.p., n.d.e: n.p.);

It also emphasises that:

By acting together now to hold those responsible for unlawful or wanton destructive practices to account, we can create better and fairer ways of doing business that are firmly supported by international legal frameworks (SEI n.d.d: n.p.).

In this discourse, responsibility and accountability are connected to norms supporting corporate immunity, highlighting standards that allow for 'harmful practices' to occur. Even though 'most of the risks have been known for decades by the companies choosing to continue these practices,' (SEI n.d.a: n.p.), activists argue that:

No CEO or financier wants to be seen in the same way as a war criminal. A law of ECOCIDE on the horizon will therefore signal the end of corporate immunity – and begin to redirect business and finance away from seriously harmful practices' (SEI n.d.c: n.p.).

Such a redirection is needed because, they argue, the existing normative framework allows for harmful practices on a large scale without sufficient accountability.

A second set of foregrounded norms involves humans' relationship with nature. Here, a failure of protection is often discussed, highlighting norms that undergird the perception of nature as a 'bank of resources'. As some activists put it, 'It is essential to address ... the mechanisms that encourage an extractive use of resources and a destructive relationship with nature' (Stegeman 2023: n.p.). Movement discourse often reinforces this aspect of foregrounding, noting that 'our

economic system treats nature as a bank of resources, rather than a web of life we are all part of' (SEI n.d.f: n.p.). Moreover, this failure to protect the environment is in part due to a normative perception that environmental crimes are not taken seriously compared to other types of criminal offences and, as a result, are often ignored by mainstream criminal justice systems (Nurse 2017: 2). Activists call attention to this, emphasising 'the fact that many environmental crimes are not deemed "serious" and [consequently] that law enforcement agencies are often inadequately trained to investigate and prosecute these crimes' (Stop Ecocide Foundation n.d.: 1; Commission on Crime Prevention and Criminal Justice 2022).

Norm innovation: proposing a new framework

After attempting to weaken undesirable existing norms, advocates then engage in the work of creating and diffusing a new normative framework. This process entails the strategy of information politics to perpetuate a new norm that positions severe and either widespread or long-term damage to the environment as so serious an offence as to be intolerable, akin to threatening peace and humanity. Currently, although many countries recognise a range of environmental crimes such as pollution, there is a gap when it comes to specifically addressing severe, widespread, and long-term environmental destruction. This has been dubbed both a 'legal and moral gap with regard to the worst harms' (Stop Ecocide Foundation n.d.: 4), signalling the need to construct and disseminate a new norm, as existing treaties, agreements and civil lawsuits have not been able to stop this type of destruction (SEI n.d.g: n.p.).

The new, alternative norm is based upon the belief that 'all things are bound together, all things connect. Whatever befalls the earth, befalls also the children of the earth' (SEI n.d.f: n.p.), and upon the premise of a right to a liveable environment. It thus aims to create a moral standard of behaviour based on an intense respect for nature and a deep reverence for its protection, similar to the norm of respect for human life and sanctioning murder. Fashioning a standard of appropriate behaviour that does not permit the type of environmental destruction characterised as ecocide 'can make a difference by changing consciousness' (Gigova 2023: n.p.). In fact, the proposed normative framework explicitly likens intense harm to the environment to intense harm to human beings, drawing a moral parallel. As an advocate explained:

The fact that there is not a crime that says you shouldn't destroy the environment to this degree means that there is implicit permission around it. I mean, you can imagine what will happen if we suddenly decriminalise murder? (Gigova 2023: n.p.).

When the new norm diffuses and begins to take hold, 'harming nature will begin to feel the same as harming human beings. This will help us to grasp the fact of our connection with the natural living world' (SEI n.d.c: n.p.). In addition, diffusion of the new norm will be marked by a change in how individuals view existing policies and practices, weighing them within the context of the new normative standard. As one activist stated, 'We will begin to recontextualise economic policy, investment and innovation in light of what our ecosystems can readily support' (Mehta 2023: n.p.). In this way, the new framework is explicitly positioned against the tolerance of widespread destruction of the environment and has telltale signs of diffusion. It entails assigning responsibility, moral judgment, establishing accountability via the threat of criminalisation, and 'changing the rules'.

International criminal law is the instrument norm entrepreneurs are seeking to formalise legally enforceable standards of behaviour based on their proposed alternative normative framework. Because international criminal law 'sets the boundaries marking what is globally unacceptable' (Mehta 2023: n.p.), it 'has a crucial part to play in drawing and enforcing the legal and moral red lines...' (Stop Ecocide Foundation n.d.: 2). Thus, criminalising ecocide is a vital step in reinforcing new norms relating to large scale environmental destruction, and is itself closely tied to the process of new norm creation because when 'the crime exists, [it] gives it immediate moral power in people's minds' (SEI n.d.c: n.p.). This 'moral power' is based on norm entrepreneurs' alternative norm, and can potentially function as a powerful force for deterrence. As advocates have stated, the aim of criminal liability is prevention as opposed to punishment (Gigova 2023: n.p.).

Deliberation helps to foster agreement about the content of the new norm, and supports its early adopters while drawing upon their actions to expand the norm's influence (Raymond et al. 2014: 202). In the case of ecocide, the early deliberative process took place in the context of the independent expert panel that came together to draft a formal definition of ecocide. The process of deliberation has continued over time through formal assemblies of international lawyers and scholars to discuss ecocide and 'to examine the significance of shifting to an eco-centric framework' (Echeverria et al. 2022: n.p.). This can be viewed as a specific form of collective action that is vital for norm creation.

New concepts and categories

Developing a new normative framework entails the creation of new categories and concepts. The concept of *conscientious protectors* is one example, based on the notion of conscientious objectors of the 20th century,

describing those who objected to the harm of war and their involvement in it, and who peacefully campaigned for the right to conscientiously object. Taking this as their starting point, advocates emphasise individuals' right to freedom of conscience: 'We all have the human right to act according to our conscience and deeply held beliefs, as long as we are not harming or endangering others by doing so...' (SEI n.d.h: n.p.). Conscientious protectors thus not only refuse to be part of the harm being caused to the planet but are also compelled to engage in action to prevent it (SEI n.d.h). Conscientious protectors can sign the Earth Protectors Trustee legal document, which stipulates that the signee believes destruction to the planet and its inhabitants should be a crime and receive a supporting document that can be used in court in the event that an individual is arrested for their work against ecocide as evidence to demonstrate that the individual is not acting to cause harm, but rather to prevent it.

Another example involves the umbrella term *ecocide* itself. Advocates are pushing for a *new category* of criminal offence by arguing that the Rome Statute should be amended to include ecocide. The creation of this new category would bring 'the notion of ecocide into legal question,' which would in turn change the way we think of the destruction of ecosystems and landscapes (SEI n.d.c: n.p.). The term ecocide can also be considered a novel concept, as it redefines practices such as overfishing, industrial livestock farming, and chemical disasters as unjust violations, and thus brings various forms of environmental destruction including ocean damage, deforestation, land contamination, and air pollution together under an overarching concept, similar to the concept of VAW discussed earlier. Advocates use information politics to showcase how influential supporters of ecocide law have commented on this concept. For example, Dr. Jane Goodall has emphasised that, 'The concept of Ecocide is long overdue. It could lead to an important change in the way people perceive – and respond to – the current environmental crisis' (SEI n.d.i: n.p.). The category and concept of ecocide draws connections between diverse forms of environmental destruction and in doing so can lay the foundations for advocates to create innovative norms. Such connections can precede formal institutional reform (Raymond et al. 2014: 199).

Strengthening new norms through grafting

In the campaign to amend the Rome Statute, advocates are making an explicit association between pervasive destruction of the environment (crimes against the environment) and pervasive destruction of human life (genocide, war crimes and crimes against humanity), which the Rome Statute already lists as crimes. In this way, via grafting, they are placing ecocide in the same

category of offence as the other four international crimes, similar to how activists associated chemical weapons with existing norms against poison discussed earlier. Advocates engage in information politics to establish this linkage:

It is important to acknowledge that, historically, new crimes have come into being in response to situations of sufficient gravity, extending proscribed behaviour and criminal sanctions into new areas. The international crimes of genocide and crimes against humanity were born of just such circumstances in the 1940s in the face of atrocities that were witnessed and condemned with horror by the international community. Today we face a similar urgency with respect to destruction of the natural living world upon which we, as a species along with many millions of others, completely depend. With ecocide, the evil intent involved may not be that defined under genocide, but the consequences are at least as damaging and dangerous, not only to a people but to human civilisation as we know it, as well as many of the Earth's vital ecosystems. (Stop Ecocide Foundation n.d.: 2-3).

Similarly, the following discourse reflects the connection advocates draw to the destruction of human life: 'When you put ecocide alongside genocide, it's also about saying that actually, when we destroy ecosystems upon which we essentially depend for our existence, then that is just as bad, wrong, dangerous, serious as destroying people' (Gigova 2023: n.p.). Grafting is evident in the explicit association of ecocide with preexisting norms against genocide. This adaptive act helps to build congruence between the newly proposed normative framework and established beliefs and practices. Congruence-building can be an important step in securing broad acceptance of a new norm (Acharya 2004: 241) and in enabling norm diffusion.

Conclusion

Focusing on intentional norm change sets the stage for norm-based advocacy strategies aimed at securing institutional reforms to address longstanding social, political, and, in this case, environmental issues. This analysis has described how the development of a new norm can lead to change in existing institutions. Norm entrepreneurs apply a strategy of norm innovation to construct and disseminate new norms. In disseminating new norms, advocates use information politics to spread novel ways of viewing difficult issues and prompt new behaviours in the context of those issues, which can weaken institutions supported by problematic norms.

There are many other global environmental issues to which one might apply the strategy of norm innovation.

For example, it could be used to foster new ways of thinking that could potentially bring about institutional change related to food waste, the global food system, plastic pollution, fast fashion and textile waste, and more, potentially influencing the transformation of global regimes and systems of governance in these areas. Although norm innovation is not a successful strategy in every situation, it can nonetheless offer a unique prospect for challenging existing institutional arrangements that may be highly resistant to change and deepen our understanding of the role of norms in efforts to bring about significant international level change.

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Author

Dr. Melissa Schnyder is Professor of Global Security and International Relations at American Public University. A former Fulbright Fellow to the European Union, her research examines the role of civil society advocates in creating norm-driven institutional change with a focus on sustainable food systems, environmental protection, and forced displacement in the European Union, North American, and international contexts.

CAN THIS TREE

turn over a new leaf

may all apples

except the forbidden apple fall

smile in their sleep

LIDIJA ŠIMKUTĖ