



*Final Project for the Environmental Studies Certificate Program*

**The Monsanto Tribunal and Ecocide**

Alexander Gorski

Dear Members of the Environmental Studies Final Project Review Committee,

I hereby submit my final project on *'The Monsanto Tribunal and Ecocide'* for the Environmental Studies Certificate Program of the Rachel Carson Center, Munich.

Working on this subject over the past weeks has been an enriching and challenging experience, as has been my time in general at the Rachel Carson Center. The interdisciplinary nature of the project and of the Center itself has allowed me to move beyond the restrictions and limitations of my own discipline, getting in touch and building friendships with students and academics from a wide variety of fields and entering an academic world where innovation, curiosity and cooperation serve as the guiding principles. This experience has been one of the defining features and highlights of my university career.

In the following letter I want to introduce myself and share my motivation for selecting the Monsanto Tribunal as the topic for my final project. I will elaborate how this choice corresponds with my personal and professional development and activism and has been inspired by the interdisciplinary focus of the Environmental Studies Program. Furthermore, I want to briefly outline the approach taken for the two posts for RCC's blog *'Seeing the woods'*.

In January of this year I graduated from the law faculty of LMU Munich after successfully completing my first legal state examination. I started my academic career at the University of Passau in the fall of 2011, and my interest in International Law, Human Rights, Migration and the Environment led me to study in Mexico City for a year at the Instituto Tecnológico Autónomo de

México (ITAM). Subsequently I transferred to LMU Munich, where in addition to my regular legal studies I worked at the Criminal Law Chair of Prof. Dr. Helmut Satzger and took part in the RCC's Environmental Studies Certificate Program. Throughout this time I have been active in political and social contexts, mostly in issues related to migration.

Therefore, when the time came to choose a topic for my final project, it was clear to me that I wanted to work on an issue at the intersection of interdisciplinary research and activism. By coincidence it was at that moment which I first heard about the *Monsanto Tribunal*. A group of lawyers, activists and scientists had gathered in The Hague to review the business model of American Multinational Monsanto based on International Human Rights and Humanitarian Law.

I was intrigued. I had found a subject that would allow me to engage with critical legal thinking, environmental studies, activism and a timely and relevant issue. Additionally, over the last months I have become an active member of a Berlin-based group called *Interbrigadas*, which is involved in transnational solidarity work with migrant farm workers in Southern Spain. As a result I have been deeply involved in activities and research concerning the politics of food production in the agroindustrial sector and its social and environmental costs. Therefore, by working on the Monsanto Tribunal I hoped to expand my knowledge on modern agriculture and expose myself to innovative and creative means of resistance.

However, when I started investigating the topic, I had to ask myself over and over again: what form could this project take? How do I address a legal issue for a wider audience? How can I break free from formalistic burdens and create an interdisciplinary and open narrative that tells the story of the Monsanto Tribunal and the concept of ecocide in an understandable, relatable, and still academically sound manner?

Finally, I decided to channel my research into two blog posts for RCC's 'Seeing the Woods'.

While the first post is an objective and sober assessment of the validity of the approach taken by the Monsanto Tribunal by engaging with its opponents' arguments, the second post tells the curious story of the emergence, disappearance and rebirth of the legal concept of *ecocide*.

I have deeply enjoyed working on this topic and I am happy to submit these two posts as my final project.

Lastly, I want to thank Jens Kersten for supervising this project and Ursula Münster for her kind and patient readiness to help, support and advise me.

Sincerely,

Alexander Gorski

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## **Post I**

### **The Monsanto Tribunal – 'Kangaroo Court' or Creative Protest?**

#### **1. Introduction**

When word spread that a civil society initiative called the *Monsanto Tribunal* would meet in The Hague to review the human rights impact of the business model of American Multinational Monsanto, the reaction by conservative media ranged from annoyed to hostile.

In an article called 'The myth of the poisoning of the world' for the *Frankfurter Allgemeine Zeitung*,<sup>1</sup> Jan Grossarth accused the initiative of staging a 'show trial' that would verbally escalate the debate on the use of pesticides and reflect a dangerous radicalization of the environmental movement. He even went so far to compare the rhetoric of the environmental activists to antisemitic conspiracy theories of the middle ages that accused Jews of poisoning wells.

A less polemic, but similar conclusion was reached by Sergio Aiolfi in the *Neue Züricher Zeitung* of October 14<sup>th</sup> 2016.<sup>2</sup> He also identified the Monsanto Tribunal as a 'show trial' and concluded that the food-related challenges ahead required openness to technology and not a 'self-appointed tribunal' engaging in a witch hunt.

A more moderate tone was struck by Michael Heussen for the public German information portal *tagesschau.de*.<sup>3</sup> But while acknowledging the need for a debate given the complexity of the topic, Mr. Heussen also held that such 'charges' of crimes against humanity and ecocide would impair the chance for a fair trial and indicate a premature judgment and inherent outcome.

And at first glance the critics of the Tribunal were proven right, when the legal opinion was presented on April 18<sup>th</sup> 2017.

Six questions were posed to the five judges of the Tribunal asking for an assessment of the business practices of Monsanto based on International Human Rights and Humanitarian Law in relation to:

- (1) the right to a safe, clean, healthy and sustainable environment;
- (2) the right to food;
- (3) the right to the highest attainable standard of health;
- (4) the freedom indispensable for scientific research and the freedoms of thought and expression;
- (5) complicity in the commission of war crimes in the context of the use of *Agent Orange* during the Vietnam War;
- (6) the crime of ecocide.

1 <http://www.faz.net/aktuell/wirtschaft/aktivisten-monsanto-und-die-maer-vom-oeko-14435524.html>

2 <https://www.nzz.ch/meinung/m Monsanto-tribunal-in-den-haag-wenig-hilfreiches-kesseltreiben-ld.122143>

3 <https://www.tagesschau.de/wirtschaft/m Monsanto-123.html>

And in fact, on all six points the findings of the Tribunal were unfavorable to Monsanto.

But what does that imply? Can a judicial proceeding (even an unofficial one) be proven to be nothing but a ‘show trial’ just by its disadvantageous outcome for one of the involved parties? Can critics cry prejudice simply because of the seriousness of the charges? Or conversely, does the process and the result of the Monsanto Tribunal demonstrate that the reaction of conservative and business-friendly media- as well as Monsanto itself- is in fact prejudiced?

What is necessary and missing in the debate is a straightforward and informed analysis of how the tribunal functions, in order to determine the validity and the weight of its judgment, not only amidst opposition and defamation, but also in light of blind and uninformed support. Therefore, this post will analyze the Monsanto Tribunal and its advisory opinion through the lens of the critique brought forward by its opponents.

## **2. Legitimacy: The Monsanto Tribunal in the History of Opinion Tribunals**

First of all, however, it should be noted that the notion of Peoples' Tribunals (also called Civil Society or Opinion Tribunals) long precedes the Monsanto Tribunal. There exists a long and rich history of civil society groups who, when faced with the impossibility of bringing legal actions to existing judicial bodies, have created such tribunals. The first major such tribunal occurred in 1966, when British philosopher Bertrand Russell, French philosopher Jean-Paul Satre and other anti-war activists initiated the ‘Vietnam War Crimes Tribunal’, which investigated and evaluated the American military actions in Vietnam. In the following years similar Opinion Tribunals were held on a wide variety of issues, inter alia: the policies of the IMF and the World Bank (1988/1994), the right to asylum in Europe (1994) or the human rights impact of agrochemical transnational corporations (2011). This form of activism was institutionalized in 1979 through the founding of the Permanent Peoples' Tribunal,<sup>4</sup> which today is located in Rome and has held more than forty sessions dealing with numerous human rights situations. The Tribunal has both used and contributed to the development of international law.

Therefore, when the Monsanto Tribunal was established in June of 2015, it was clear that it could build on a strong and vibrant civil society tradition that spanning half a century. It must be noted that, due to the controversial and highly emotional debate about Monsanto’s operations, the Tribunal received a remarkable amount of publicity, thus achieving one of its main goals even before delivering its advisory opinion.

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4 <http://www.permanentpeopletribunal.org/>

### **3. 'Who's behind all this?' - Origin and Composition of the Tribunal**

Secondly, we have to explore the Tribunal's genesis and its composition, thus answering the key question of 'who's behind all this?'.

The Monsanto Tribunal was initiated by a steering committee composed of activists, scholars and scientists with a long history of environmentalism, among them alter-globalization veteran Vandana Shiva, former UN Special Rapporteur on the Right to Food and respected legal professor Olivier de Schutter, and Gilles-Éric Séralini, professor of molecular biology and an expert on GMOs.

This steering committee drafted the Terms of Reference consisting of the six points outlined above, which were presented to the panel of five judges. The Tribunal's judge's bench assembled an impressive mix of backgrounds, biographies and expertise, most notably Françoise Tulkens, who from 1998 to 2012 was judge at the European Court of Human Rights in Strasbourg and is currently vice-chair of the Scientific Committee of the European Union Fundamental Rights' Agency (FRA), and Dior Fall Sow from Senegal, a consultant to the International Criminal Court, former Advocate General at the International Criminal Tribunal for Rwanda, and founding member and honorary chairwoman of the Senegalese Lawyers Association (AJS).

The lawyers presenting the legal arguments to the judges were also renowned personalities, such as William Bourdon, founder of the French NGO Sherpa and long time human rights lawyer, activist and former legal officer at the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia and former defense Counsel before the United Nations Special for East Timor, Dr. Gwynn MacCarrick.

The Tribunal was financed and sustained through a Crowdfunding Campaign and support from numerous civil society organizations.

Therefore, it can be said that while its opponents tried to undermine the legitimacy of the Tribunal by pointing to its dilettantish approach, the Tribunal actually assembles an impressive and interdisciplinary group of specialists, who are known for their professionalism and dedication. Furthermore, due to its broad and decentralized financial support the Tribunal can be described as economically independent.

However, it is true that all the participants in the Tribunal in on way or another, have throughout their lives been deeply tied to the human rights and the environmental justice movement. Hence, its fair to say that while the Tribunal cannot be accused of a lack of expertise or dependence on some higher entity, there are certainly grounds for assuming a strong *personal and structural* bias against Monsanto and agroindustrial agriculture in general.

#### **4. ‘Kangaroo Court’? - Procedures and Legal Methodology**

In the October 13<sup>th</sup> 2016 issue of Forbes Magazine, Kavin Senapathy called the Monsanto Tribunal a “Kangaroo Court.” According to the Merriam-Webster Dictionary, this expression refers either to a “mock court in which the principles of law and justice are disregarded or perverted” or a “court characterized by irresponsible, unauthorized, or irregular status or procedures.”<sup>5</sup> But does such language apply here? Does the Monsanto Tribunal, through its actual setup, procedure or behavior, provide merit to such accusations?

As discussed above, the Tribunal never claimed to be an official judicial body. In fact, it explicitly acknowledges that its advisory opinion has no binding effect and aligns itself with former Opinion Tribunals. Therefore, it is unfair to accuse the Tribunal of pretending to be an official body. Throughout the advisory opinion the judges reflect on the the character of the Tribunal and emphasize the limitations of the proceedings, while underlining that its purpose lies in bringing public attention the the topic and fomenting the progressive development of international law.

The same can be said concerning the procedural set-up of the court. The Tribunal followed the procedural rules of the International Court of Justice, based its analysis on existing international law or existing scholarly disputes about the concepts (such as the crime of ecocide), and engaged in a complex and elaborate process, including the preparation and realization of a hearing and the drafting of an advisory opinion.

However, a closer look reveals that *structural bias*, identified above, played a major role during each step of the Tribunal’s proceedings, including the formulation of the terms of reference, the selection of witnesses and experts, the legal methodology, and the fact that the ‘trial’ was conducted ‘in absentia’ of a representative of Monsanto.

The six questions composing the Terms of Reference were put forward in the form of leading questions, thus already implying a strong preference for a certain answer, especially when considering to whom those questions were referred.

This impression is reinforced when looking at the selection of the witnesses and experts who provided the Tribunal with the necessary material to answer the Terms of Reference. Neither the 29 witnesses called before the Tribunal, neither the four legal experts who appeared at the hearings, can be described as impartial. The entire spectrum of the environmental movement was present: small scale and organic farmers who have a long history of struggle with Monsanto, environmental and anti-GMO activists, as well human rights advocates and scientists with a longstanding critique of industrial agriculture. Again the Tribunal revealed its biased approach by exclusively engaging

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5 <https://www.forbes.com/sites/kavinsenapathy/2016/10/13/monsanto-to-go-on-fake-trial-in-kangaroo-court-but-not-without-opposition/#4a7ef715550e>



with witnesses and experts who were very likely to express views and present findings unfavorable to Monsanto. Additionally, the Tribunal admits in its advisory opinion that due to its incapacity of taking statements under oath and cross examining witnesses and experts ‘the Tribunal will assume that the facts and circumstances described by the witnesses would be proven’. That is far from the impartial standard of consideration of evidence applied by a court acting according to the rule of law.

Relatedly, the Tribunal has been criticized for not ensuring the representation of Monsanto at the hearing and thereby conducting a ‘trial in absentia’. However, it has to be noted that the multinational company was invited by letter to present written submissions beforehand and encouraged to send a representative to the public hearing in October. But Monsanto chose not to respond and remained absent by its own choice. Therefore the advisory opinion was drafted without any kind of intervention on behalf of Monsanto. From a legalistic point of view this doesn’t necessarily lead to violation of the rule of law, when taking into account that in several legal systems, such as that of Italy, *absentia* is a recognized and accepted defensive strategy and doesn’t impair the court to go ahead with the proceedings or even pass a verdict. In the context of the Monsanto Tribunal however, the non-engagement of Monsanto has severely diminished the power and force of the advisory opinion by providing critics with an obvious point of attack. The non-participation of the accused is of course a recurring theme in the history of Opinion Tribunals.

After looking at the procedures and the framework conditions of the Tribunal, it lastly must be analyzed whether the Tribunal lived up to its self-pronounced standard of using a sound legal methodology based on International Human Rights and Humanitarian Law. Concerning all six questions of the Terms of Reference the Tribunal proceeded in the following manner: first, it established the applicable law; then it gave an overview over the testimonies received and heard by to the Tribunal and lastly it came to a conclusion. While referring to existing international law or ongoing legal debates (e.g. the inclusion of corporate liability in the Statute of the International Criminal Court or on ecocide), the advisory opinion contents itself with a superficial consideration of the legal implications of the Monsanto’s conduct as described by the witnesses and experts and at no point goes into legalistic depth like an authoritative human rights court as would the Inter-American or the European Court of Human Rights.

However, this cursory review lays the foundation for Chapter III of the advisory opinion which is entitled ‘The growing gap between international human rights law and corporate accountability’ and which can be rightfully called the main contribution of the Tribunal to the heated debate on the human rights obligations of transnational companies. Based on its observations the judges describe the discrepancy between the rights and possibilities of multinationals and their obligations under

international human rights, humanitarian and environmental law. In its last sentence the advisory opinion reflects on its limited agency and ‘strongly encourages authoritative bodies to address the legal and practical limitations that currently confine the scope, content and ultimately the effectiveness of international human rights law’.

In summary, the preceding analysis reveals the strong personal and structural bias of the Monsanto Tribunal because of its origins the environmentalist community and lays bare its cursory and superficial analysis of the legal issues. Such an analysis and methodology cannot be described as sloppy, but neither does it live up to the methodological standards of international justice. Due to all this it is fair to say that the outcome of the proceedings was enshrined in the organization and execution of the Tribunal itself.

### **5. Conclusion: The Right to Creative Protest in a Uneven Fight**

This means that the critics of the Monsanto Tribunal were correct: the negative outcome for Monsanto was not only predictable, but the intended result of the proceedings. Nonetheless, the question remains, does this render the Tribunal a malicious witch hunt or uninformed defamation campaign?

To answer this question, we have to remember what the Monsanto Tribunal was set up to do: alert ‘public opinion, stakeholders and policy-makers to acts considered as unacceptable and unjustifiable under legal standards’ and ‘to contribute to the progressive development of international human rights law by proposing new legal avenues for corporate accountability and new legal concepts such as the international crime of ecocide’.

In the tradition of Opinion Tribunals it opted for the theatrical orchestration of a partial, but informed analysis accompanied by a gathering of civil society.

And in the context of the unequal struggle between a grassroots movement and a transnational company with revenues of more than 13 billion dollars, which continues to multiply its power and dominance as evidenced by the recent takeover by German pharmaceutical company *Bayer*, it would be cynical and dangerous to deny the environmental activists their right to voice their opposition in a creative and unconventional way. Rachel Carson’s words still hold true: ‘when the public protests, confronted with some obvious evidence of damaging results of pesticide applications, it is fed little tranquilizers pills of half truth.’

The Tribunal never pretended to be anything it wasn’t. It said what it would do – and it did what it had said.

And after reflecting upon the public attention and the ongoing and intensifying debate about corporate human rights liability and ecocide, the Tribunal can be called a success.

## **Post II**

### **Lemkin's Legacy and Ecocide – The Unlikely Story of the 5<sup>th</sup> International Crime against Peace**

#### **1. From Raphael Lemkin to the Monsanto Tribunal**

From the spring of 1946 until December 1948 a ghost haunted the hallways of the United Nations Building in New York. It would follow delegates, arrange meetings with diplomats and journalists and use every chance it could get to talk about the one issue that had become the mission of its life. The ghost's name was Raphael Lemkin. And its mission was the codification of the crime of *genocide*.

Lemkin was a Jewish law professor from Poland. Born in 1900, he became increasingly interested in the topic of violence against groups of people because of the mass murder of Armenians and pogroms against the Jewish population in Ukraine while studying law with a special interest in criminal affairs.

After the Nazis occupied Poland, he fled to the United States, where he found a position as a professor at Duke University and Yale and worked as an advisor to the US-government. His family stayed behind and 49 of his relatives would be murdered in the Holocaust.

Struck by the atrocities committed in Nazi Germany and building upon his long engagement with the topic, Lemkin presented the term genocide formally for the first time in his 1944 book "Axis Rule in Occupied Europe", defining it as "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves."

After the war ended in 1945, he focused his anger, his grief, his intellectual brilliance and all his strength on the mission of convincing the nations of the world that they must make it a crime to plan or carry out the eradication of a people.

His tireless and stubborn efforts succeeded: the UN Convention on the Prevention and Punishment of the Crime of Genocide was born in Paris on December 9<sup>th</sup> 1948.

Nearly 68 years later, another generation of activists gathered in The Hague to hold a Opinion Tribunal on the human rights impact of the business model of the American multinational company *Monsanto*. One of their main causes was to reopen the discussion on the legal concept of *ecocide*, which they understood as "causing serious damage or destroying the environment, so as to

significantly and durably alter the global commons or significantly and durably alter the global commons or ecosystem services upon which certain human groups rely.”

They didn't come up with the concept of ecocide. Actually, the term- a neologism derived from the Greek *oikos*, meaning 'house or home', and the Latin *caedere*, meaning 'to demolish or kill', thus literally meaning 'killing our home'- was first used in 1970 and was widely discussed in the international legal community in the following two decades. But when the Cold War ended and efforts for the set-up of the International Criminal Court (ICC) entered its final phase, ecocide disappeared from the discussion. When we observe Article 5 of the Rome Statute of the ICC today, we find Lemkin's *genocide* along with *crimes against humanity*, *war crimes* and the *crime of aggression* as the four 'most serious crimes of concern to the international community as a whole'. By tracing the birth, death and rebirth of the concept of ecocide, this post seeks explain why the concept of ecocide has yet to become the 5<sup>th</sup> international crime against peace, and what Raphael Lemkin's selfless and dedicated struggle can teach us about the struggle ahead.

## **2. Birth: The Vietnam War and the Emergence of Ecocide**

The term ecocide was coined in 1970 by the American biologist Arthur Galston. It is not only the early emergence of the notion which comes as a surprise, but also its originator's background. In the 1950's Galston had worked in a laboratory helping to develop a chemical component of the herbicide and defoliant chemical Agent Orange, infamously used in the Vietnam War to destroy vegetation and poison communities on a massive scale. Appalled by the use of his creation, Galston became an antiwar activist and the first person to label the massive damage and destruction of ecosystems as ecocide.

In the ensuing years the notion of ecocide was used more and more in the international community and was discussed as a possible amendment to the Genocide Convention of 1948. Swedish Prime Minister Olof Palme called America's war in Vietnam an ecocide in 1972.

In 1986 ecocide was even included in the draft Code of Offences Against the Peace and Security of Mankind, the document which 12 years later would become the Rome Statute of the ICC and one year later the International Law Commission (ILC), the UN-body responsible for the codification and progressive development of international law, recommended qualifying ecocide as an international crime in 1987. In 1991, Article 26 of the draft Code read as follows: "An individual who willfully causes or orders the causing of widespread, long-term, and severe damage to the natural environment shall, on conviction thereof, be sentenced." While the ILC still chose to set-up a working group on ecocide in 1995, it had become clear that several key players in the

international community were not happy about conceptualizing willful and severe damage to the environment as an international crime.

### **3. Death: Excluded overnight**

In discussion on whether ecocide should be included in the Statute of the ICC, only three countries have ever gone on record stating their opposition: the United States of America, Great Britain and the Netherlands. Despite a clear majority of states supporting the inclusion of ecocide, the term and the entire idea behind it were excluded overnight in 1996.

In an article later that year, German law professor Christian Tomuschat, member of the ILC from 1985 to 1996 and member of the working group on the topic, wrote the following: “one cannot escape the impression that nuclear arms played a decisive role in the minds of many of those who opted for the final text which now has been emasculated to such an extent that its conditions of applicability will almost never be met even after humankind would have gone through disasters of the most atrocious kind as a consequence of conscious action by persons who were completely aware of the fatal consequences their decisions would entail.”

Another insightful comment on why ecocide was taken off the agenda, was given by Special Rapporteur of the Draft Code of Offence against the Peace and Security of Mankind, Senegalese lawyer Mr. Thiam, who in 1995 indicated that the term's removal was due to the comments of a few states.

In recent years legal scholars have started to shine a light on this topic, and while it is unlikely that the whole truth about how and under which pressures ecocide disappeared from the international discussion, it is evident that especially relevant was a strong reluctance by the United States, which was in general skeptical of the idea of a permanent international criminal tribunal.

What was left in the 1998 Rome Statute was Article 8(2)(b), defining ‘intentionally launching an attack in the knowledge that such attack will cause... widespread, long-term and severe damage to the natural environment...’ as a war crime. This watered-down and narrow approach comes nowhere near to what the inclusion of ecocide would have represented and in practice has shown to be of little relevance to the court’s work.

### **4. Rebirth: From Polly Higgins to the Monsanto Tribunal**

While some states such as Vietnam, Belarus and Armenia have included ecocide in their national criminal codes, it took 15 years for ecocide to resurface at the international level. Similar to the case of genocide and its fierce advocate Lemkin, it again took the idealistic engagement of an individual to bring the topic back to the universal arena. In 2010 British lawyer Polly Higgins submitted a

proposal to the ILC suggesting the inclusion of the crime of ecocide as a crime against peace and substantiating its content. Higgins defined ecocide as “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.”

The following years have seen the renaissance of the concept of ecocide. Civil society activism, legal scholarship and intensive lobbying efforts have aimed at restarting the discussion on ecocide, in a new context where public awareness of the devastating effects of environmental degradation and climate change has significantly increased, but the reluctance of key state and non-state actors to act has remained.

These efforts culminated in October 2016, when environmental activists, human rights advocates and critical scientists from all over the world gathered in The Hague for the Monsanto Tribunal, an Opinion Tribunal operating by the procedures of the International Court of Justice and delivering an advisory opinion on the human rights impact of the business practices of American agrochemical company Monsanto.

In its Terms of Reference, the Tribunal’s Steering Committee put the following question up for consideration by the five judges: ‘Could the past and present activities of Monsanto constitute a crime of ecocide, understood as causing serious damage or destroying the environment, so as to significantly and durably alter the global commons or ecosystem services upon which certain human groups rely?’, thereby following Higgin’s Definition and applying it to the case of Monsanto’s activities.

In its legal reflection on the concept of ecocide the Tribunal expresses the view that ‘the time is ripe for proposing to set up the new legal concept of ecocide and to integrate it in a future amended version of the Rome Statute’. Furthermore, it calls for such an amendment to also include corporate responsibility in the sense of ‘civil responsibility of corporations for the crime of ecocide, including the obligation to restore the environment and the integrity of ecosystems, and the obligation to compensate for the damage caused’. Conclusively, the Tribunal states that if ecocide existed as an international crime, the conduct of Monsanto, as described by experts and witnesses heard by the Tribunal, could possibly amount to the crime of ecocide.

## **5. Lemkin’s Legacy: “Building the law”**

When the UN Convention on the Prevention and Punishment of the Crime of Genocide was signed in Paris on December 9<sup>th</sup> of 1948, Lemkin was found by friends and colleagues in a darkened assembly hall, weeping in solitude. Until his death in 1959 he restlessly campaigned for more countries to sign and ratify the Convention and to implement national legislation criminalizing

genocide. He died weary and penniless in New York. Only seven people attended the funeral of this tragic hero of humanity.

His legacy however, lives on. And while the Genocide Convention could sadly not prevent further genocidal atrocities such as those in Rwanda and the former Yugoslavia from happening, due to Lemkin's effort genocide is now universally accepted as one of the worst possible crimes and there are ways and means of prosecuting and punishing these crimes. Additionally, since the 1990's more and more emphasis is put on ways to prevent such horrors from happening, for example in the debate about the *Responsibility to Protect*.

In comparison ecocide still has a long way to go and has met a significantly more persistent resistance by powerful actors. However, as we have seen, dedicated activists and scholars have fought and are fighting for the recognition of the rights of nature and humankind's dependency on a healthy and sustainable environment.

Of course, this struggle isn't limited to the legal sphere and its most powerful expressions indeed have been in other fields.

However, when reflecting on the importance of an adequate and progressive legal regime, we have to recall the words of Raphael Lemkin when he was asked whether all his efforts, all the sacrifices he made, and all the exhausting struggles had been worth it: "Only man has law. Law must be built, do you understand me? You must build the law!"

Therein, lays a task, a challenge and a hope for lawyers and activists in the 21<sup>st</sup> century. Building and applying the law that will protect our livelihoods and the rights of future generations.

And while there exists many grounds for pessimism, there are also concrete reasons to be hopeful: In 2016, the Prosecutor of the ICC stated that the court will 'give particular consideration to prosecuting [...] crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land'.