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## The British Petroleum Oil Spill...Ecocide? What Is It? What Is It Not? And So What?

Breaking Story

### ***A News Report and GPN Editorial Note***

The British Petroleum (BP) Oil Spill from a rig in the Gulf of Mexico on April 22 is now considered to be the worst environmental disaster in US history, with massive ecotoxic effects on sea life and human habitat. So far, there have been 11 deaths, (during the explosion itself) and episodes of illness from exposures to toxics among oil workers, but information on health impacts among others is so far not available. The long term destructive impacts to the economies of shore communities with millions of people supported by fishing and tourism have been massive. Also, the suspension of all other offshore oil drilling has left thousands unemployed. The sluggish response of both BP and the US government reportedly resulted in delays in measures to stop spread of the oil around the tip of Florida, and up the Atlantic Coast, and via the Gulf Stream perhaps even to European shores. For example, the Federal Government reportedly did not accept an offer of the Dutch Government to send skimmers at the very outset of the disaster. Presently more than 60,000 barrels of oil are escaping daily.

The following sequence appears to emerge:

First, the Bush administration released all regulatory measures on oil drilling. The results of the oil drilling by BP happened to fall on the Obama Administration. But one must go back and see what regulatory measures were in place when the license was issued. EU regulations for deep sea drilling were not in place and this allowed for the consequences.

Second, there is a need to ascertain if BP covered up, from the very beginning, by the data they supplied to the government and the information they distributed to the public. From Congressional testimony, BP, among all the oil multinationals,

has a uniquely poor record of safety violations in many of its operations. It cut many corners and took dangerous short cuts to save money in drilling and operating the rig which burst. A culture of shortcuts took precedence over a culture of safety.

Third, the Obama administration was caught with a situation that it has been unable to handle because the technological knowhow for drilling and capping the well, is now in the hands of industry. The US government no longer has the manpower to even understand what needs to be done to stop the leak. Furthermore, according to the *San Francisco Examiner*, the Minerals Management Service, driven by a strongly ideological commitment to green energy sources such as wind and solar power, chose to stress "renewables" while de-emphasizing the tough and dirty work of managing the nation's existing offshore oil wells. <sup>(1)</sup>

At the time of writing, President Obama has announced the establishment of a 20 billion dollar fund to set up by British Petroleum to cover emergency compensation, risk abatement, and emergency cleanup in the short term future. The definitive solution is supposed to be a substitute rig for oil extraction, thereby reducing the hydrostatic pressure in the burst rig.

Several years ago, several of us posed the question Should ecocide be defined as a crime against humanity? <sup>(2)</sup> We examined the case for regarding toxic negligence resulting in toxic health risks from contamination or depletion of air, food and water as a crime against humanity, ("ecocide"), especially in marginalized communities. Since the presentation of this paper, there have been other disasters which environmentalists considered to be examples of ecologic crimes against humanity, a term currently lacking formal legal definition and recognition. An advocacy group has called for International Criminal Court prosecution of individuals for Crime Against Peace. <sup>(3)</sup> This latter definition is much broader and less restrictive. This group defines Ecocide as the extensive destruction, damage to 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 notion that destruction of populations and their health and habitat from intentional or reckless ecotoxic damage is a crime against humanity is relatively new. *It is also a term subject to abuse, misuse and overuse---a danger inherent in the more inclusive definition (see 1).* When Lemkin invented the term "genocide," these problems were present, but had not reached today's dimensions. Israel Charny proposed recognition of ecological crimes against humanity in an address at a Lemkin Symposium at the Yale University Law School in 1991. <sup>(4)</sup>

There is a need to recognize that there are large and fundamental gradations in levels of human activities leading to ecocide, in terms of intent, willful ignorance

or wanton neglect. The term, to be useful, requires careful inclusion and exclusion criteria and definitions of gradients of severity in terms of degree of intent, negligence and damage.

Saddam Hussein's deliberate destruction of the marshlands in Iraq was a case study in intentional ecocide.<sup>(5)</sup> A multinational oil company collaborating with the Sudanese government was prosecuted for driving out civilians from lands destined for drilling. In both cases, the perpetrators have been held liable under international law for crimes against humanity. Other cases involved multi-generational effects on health and fertility from effluents to air, land and water contaminated as a result of negligent recovery and waste control processes, cyanide dumping from goldmines, and health effects of effluents from hydropower plants on native populations, and governmental promotion of the export of chrysotile asbestos. But it can be argued that disasters with ecocidal consequences can occur without any evil intent, willful neglect or wanton abuse.<sup>(6) (7)</sup>

Is the Gulf Stream disaster a crime against humanity, and should the officers of BP - the company which built and operates the oil rig, be held accountable for a criminal act? Or is this episode one example of the case for applying traditional legal measures in torts and criminal negligence?

The Gulf Oil rig disaster did not involve intent to cause harm to human populations or habitat. But more and more information suggests there were cover-ups and wanton neglect producing a disastrous catastrophe. The occurrence, scale, and persistence of the disaster was the result of an array of failures in both industry and government before, during, and in the aftermath of the disaster going back many years.

It is an axiom of disaster prevention that industrial disasters, even when rare, are not random, and there are usually sentinel prodromal warning signs indicating potential for increased risk. In short, industrial disasters with ecocidal consequences are predictable, and therefore preventable - an axiom demonstrated over and over again since the Seveso and Bhopal disasters.<sup>(7)</sup>

So the burden of proof will be on those who believe there was no cause effect relationship between the disaster and the prior prolonged wanton neglect. As more and more evidence emerges, it is hard to claim that the rig burst occurred as a consequence of an unforeseen collapse of the rig.

Here are just a few of the questions prompted by this disaster and lessons from past industrial disasters.

- Were there potentially dangerous warning signs of trouble and, if there were, why were they overlooked? What lessons can be learnt about these warning signs?

- If the safety record of British Petroleum compared to other multinational oil companies in drilling in land and in sea was uniquely poor, why was there no emergency intervention to stop its operations until the faults were corrected?
- How rigorous was its emergency disaster response plan? Is it true that the company lacked a back up contingency plan for immediate rapid drilling of a new rig, capping or other mitigating measures? And what was the quality of governmental review and examination of these plans?

***But all these questions are not of immediate concern right now.*** They are dwarfed by the need to implement an emergency response program to expedite sealing the source, to carry out risk abatement and to deliver compensation. It is imperative to mobilize all the resources of Federal and State governments, the populations of the Gulf region, and the entire international oil and shipping industry, as well as other countries with resources and expertise in skimming, recovery and decontamination. The response requires wartime footing and the use of the fullest emergency powers to stop the continued release of tens of thousands of barrels of oil per day and drift to imperiled shorelines.

**The long term question remains: What will be the risks from offshore drilling for oil compared to alternative energy supplies for a nation ever thirstier for more and cheaper energy?**

For genocide scholars, the BP disaster reawakens beginning discussion and proposals to define "ecological genocide."

-- Yael Stein, Alex Barnea, Elihu D Richter

#### *Sources*

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<http://www.treehugger.com/files/2010/05/bp-gulf-oil-spill-timeline.php>

The following sites three among others containing an ongoing discussion of the Disaster.

[www.llm.uoregon.edu](http://www.llm.uoregon.edu)

[www.enr.uoregon.edu/](http://www.enr.uoregon.edu/)

and <http://www.law.berkeley.edu/library/dynamic/disasters/category.php?id=14>

Please click here for Timeline of BP Oil Spill

Please click here for an earlier paper on ecocide at the Collegium Ramazzini

#### Reference Notes:

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3. <http://www.thisisecocide.com/thesolution/>
4. Charny, Israel W. (1994) Towards a generic definition of genocide. In Adreopolus, George J. (Ed.), *Genocide*. Philadelphia: University of Pennsylvania Press, pp. 64-94. See section "Genocide as a Result of Ecological Destruction and Abuse," pp. 65-66 and p. 89.
5. <http://jeffweintraub.blogspot.com/2005/02/environmental-crime-of-century-saddams.html>
6. [Deutsch PV](#), [Adler J](#), [Richter ED](#). Sentinel markers for industrial disasters [Isr J Med Sci](#). 1992 Aug-Sep;28(8-9):526-33.
7. The authors note that recognizing deliberate, reckless or wanton toxicologic abuse from ecotoxic damage as a crime against humanity presupposes defining an ethical code for consultant epidemiologists who are drawn into the assessment of these situations. Furthermore, outside professional organizations cannot remain indifferent to their responsibility to protect whistleblowers subject to harassment when calling attention to ecocidal scenarios.