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Episode 171: In the name of the planet: Armed intervention to protect the environment

VOICEOVER

Welcome to Up Close, the research talk show from the University of Melbourne, Australia.

JENNIFER COOK

I'm Jennifer Cook, thanks for joining us. On this episode of Up Close, we're asking to what extremes the global community should go to protect the environment.

Indeed if one of the legacies of the holocaust was acceptance of the new notion of crimes against humanity, then shouldn't the wilful or reckless perpetration of mass species extinctions and catastrophic ecosystem destruction be regarded as crimes against nature, or ecocide?

Today's guess plunges us into the murky waters of environmental ideals and social and political reality and poses the question of whether crimes against the planet should be met with military force. Robyn Eckersley is a professor in the School of Social and Political Sciences at the University of Melbourne where she researches and teaches in the areas of environmental politics, political theory and global politics. Her suggestion of a framework for the use, in certain cases, of military intervention in the protection of the environment has caused controversy in an already highly-charged debate. For as she'll explain, the use of arms, while finding moral support in environmental philosophy, clashes with deeply entrenched international, legal and political norms surrounding state and territorial rights. Robyn, thank you for joining us.

ROBYN ECKERSLEY

Thank you Jennifer.

JENNIFER COOK

I'd like to begin by asking you to define for us this term ecocide.

ROBYN ECKERSLEY

Ecocide refers to widespread, grave environmental destruction that is irreversible.

JENNIFER COOK

How does that differ from crimes against nature?

ROBYN ECKERSLEY

Crimes against nature basically involves the wilful, deliberate extermination of non-human species, which is also an irreversible act.

JENNIFER COOK

So your work is deeply concerned, isn't it, with the morality, the legality and the legitimacy of humanitarian intervention in relation to the environment. Your discussion of military intervention has caused quite a stir. Why did you feel it was important to take the argument here?

ROBYN ECKERSLEY

Well I accept this is a very daring move by a green political theorist and most folk interested in environmental politics and philosophy are doves and not hawks. So a lot of people were perplexed as to why I should take this on. But I think it's good to have a principled debate about the circumstances when military intervention to defend the environment might be justifiable, so when the time comes, we've thought it through.

JENNIFER COOK

So you extend the debate about the rights and the wrongs of international humanitarian intervention to cover ecological intervention as well as ecological defence. Can you explain just briefly for us the difference between those two?

ROBYN ECKERSLEY

Well ecological intervention I've developed as an analogy with humanitarian intervention, following the 'responsibility to protect' doctrine. Ecological defence is an analogy with the basic principle of self-defence which is upheld by the UN Charter under section 51. Every state has a right to self-defence and I'm just extending the idea to include not just defending the people, the territory, but also the ecosystems and species inside the territory.

JENNIFER COOK

This means using force against a state, this ecological defence, without its consent to prevent grave environmental damage, doesn't it?

ROBYN ECKERSLEY

Well that's mixing the defence with the intervention. Ecological intervention involves the use of force in a state without its consent, so that actually interferes with the doctrine of non-intervention, which is a sacrosanct principle. The defence is a kind of pre-emptive act where there might be some threatened incursion into your territory and you take pre-emptive action to prevent that in the name of ecological defence.

JENNIFER COOK

So you consider three grounds for military ecological intervention. Could you take us

through those?

ROBYN ECKERSLEY

Well yes, there are really three types of scenarios that helps to concentrate our thinking here and I think it needs to be said at the outset that I'm only talking about emergencies, because the vast bulk of environmental problems don't involve imminent, irreversible emergency-type damage. So this is a narrow band of ecological problems we're talking about.

So the three scenarios, the first is where you've got some event that's likely to unfold that will involve significantly trans-boundary damage to neighbouring states and peoples and environments and I use the example of say a Chernobyl-type nuclear meltdown.

The second case involves a combination of genocide and ecocide where the case there is that environmental rights should be broadly understood to include a right to bodily integrity and safety and so in that case, we could think of, say, Saddam Hussein's destruction of the Marsh Arabs. That was a genocide combined with an ecocide. They destroyed that rich marsh area and they persecuted this particular Shiite minority. So it was a kind of combination of genocide and ecocide.

The third and most daring example is intervention inside the state or the territory of a state to protect a major wave of extinction that's absolutely imminent. So there's no trans-boundary effect here. This is a deliberate intervention inside the state.

JENNIFER COOK

Now Robyn, what is the likelihood of a country taking up arms to protect the environment and if, as you outline, it is unlikely, then why do you consider it so important to write about?

ROBYN ECKERSLEY

Well in many ways this is a really interesting exercise that enables us to take a temperature reading of where we're going in international thinking about the norms of sovereignty and the strength of our commitment to the environment and to what extent we might say there's been a greening of sovereignty. So it's an intellectual exercise, first and foremost, so people should not be construing this as a call to arms, but rather a considered reflective discussion of where the international community has moved in the last three or four decades or since the end of the Cold War period.

JENNIFER COOK

Robyn you talk quite a bit about the tension between the territorial rights of states. Could we explore that a bit further?

ROBYN ECKERSLEY

Well there is a principle of permanent sovereignty over natural resources which was pretty much instigated towards the end of the colonial period to enable post-colonial states to have control over their resources. But that has now become a bit of a barrier to dictating any environmental conditions for developing countries and they, understandably, see this as another verse in the old colonial song. So they have the

right to look after their own resources. So biodiversity and the environment is considered part of state territory.

But there are customary law principles that enable states - that put an obligation on states not to cause trans-boundary harm. But the problem is, you actually have to cause the harm, suffer the damage and get compensation. You can't actually get injunctive relief. The best case is the French nuclear test case where New Zealand and Australia took the French to the International Court seeking such relief. The Court said, well until they actually do this above the ground testing and the radiation flows into your country and you all suffer radiation sickness, then we'll give you some compensation. But in the meantime, we can't stop you.

JENNIFER COOK

So hence your argument?

ROBYN ECKERSLEY

Well I think that shows the limitations of customary international law.

JENNIFER COOK

Could we talk a bit about this imbalance of power which I think is integral to this argument? Post World War II the military interventions on humanitarian grounds have been led and carried out by wealthy Western democracies against what usually are actors in developing economies. Would you agree with that?

ROBYN ECKERSLEY

Absolutely.

JENNIFER COOK

How do you think it impacts on your argument?

ROBYN ECKERSLEY

Well of course in the general debates about responsibility to protect and humanitarian intervention using the military, this is probably the biggest bone of contention. We have a world of states that are juridically equal, but there's huge asymmetry in the distribution of military capability, which means it's the big super powers and military might that intervene, by and large - there are exceptions like the African Union - and failed or weak states that are intervened in, as it were. Exactly the same arguments would apply in the case of military intervention for environmental protection and this would be a strong cause of objection by developing countries because you can see the rise of, I guess, Superman in green tights, big action heroes like the US who have a shocking environmental record, claiming this as a ruse or a basis for intervening in particular states, so all sorts of mischief could be made here.

JENNIFER COOK

I'd like to discuss with you the argument of Simon Dalby, your colleague. He has read your paper and he suggests that what is needed is to take a wider view on intervention, so we're looking now at non state actors. Could you take us through his

really interesting scenario?

ROBYN ECKERSLEY

Yes, well he rightly makes the point and I totally agree with him, it's just in this paper I was confining my focus to military intervention. He says we need to think about intervention in much broader terms and he makes up an interesting scenario of a group of vulnerable Pacific islands getting together, hiring a boat, floating over to Canada, getting off in Vancouver, getting on a bridge and occupying it, stopping traffic and saying, we're not moving until Canada stops its tar sand exploitation because that's going to accelerate greenhouse gas emissions and hasten the demise of their territory. It's hard to think of a bigger security threat than the total obliteration of your territory where you say, come and see my state through a glass bottom boat.

JENNIFER COOK

I'm Jennifer Cook and on Up Close this episode we're speaking with Professor Robyn Eckersley about military responses to ecocide.

Now Robyn given the thirst for energy and other resources, is it most likely that developed economies and perhaps the rising economic powers like China and India and Brazil will be the source of future ecological disasters? And if we take that, who's going to mount an intervention? I mean China's a permanent member of the Security Council.

ROBYN ECKERSLEY

Well I explicitly say in my paper that climate change is not a problem that lends itself to the sorts of military interventions that I'm looking at here, but let's play around with a scenario here. Imagine that climate change was caused by one single rogue state, that it was producing some unique type of emission, the scientists told us it would produce all the sorts of problems we're facing, I'll bet your bottom dollar that the US would be a leader. It would rush to lead - or if it was caused by aliens, that would even lead more concerted international cooperation. But climate change is not of that type. It is a diffuse trans-boundary problem that's a by-product of doing a whole lot of things that we normally consider to be normal. So it's not the sort of issue that leads to the sorts of imminent disasters that I have in mind in writing this paper.

JENNIFER COOK

Right then, so let's consider an ecological disaster caused by offshore oil drilling near Alaska in US waters, or in the Gulf of Mexico, as in the case of the Deep Horizon oil spill in April 2010 in US controlled waters. Who then will mount a military intervention against the US and will the US allow the invasion of its sovereign territory?

ROBYN ECKERSLEY

Well in developing the principles of military intervention, first we need a disaster which requires a military or paramilitary style response and a chain of command where you need expertise. Then you follow all the principles of just war. Military intervention is of course a last resort, the force used is proportional, it shouldn't make

things worse and so forth. In that situation, provided all those tests are met, then in a disaster of an extreme kind, then anyone with the technical expertise to stop that sort of major intervention needs to go in and act quickly such as plugging, as it were metaphorically, a nuclear power plant preventing a meltdown or preventing a major spill of the kind we saw with the Deep Horizon rig.

Now in the case of the US, you would imagine that if anyone had the expertise it would be them, so it's a fairly far-fetched scenario and it would be done in cooperation, rather than against the wishes of the relevant state. So I'm only thinking of those situations where the relevant state lacks the technical capability and there's no other way of stopping it and requires technical expertise.

JENNIFER COOK

In an online symposium, Robyn, that was held by the Carnegie Council, your colleague Mathew Humphrey challenged your argument. He said, on the view of those who take this problem seriously, the grave danger of granting moral justification to unilateral or multilateral humanitarian interventions that take place outside of the auspices of the UN is that states will use this *prima facie* justifiability in order to pursue the more classical goals of increasing wealth and power.

ROBYN ECKERSLEY

That appears to be a powerful argument, but anyone who reads my paper closely should agree that the circumstances in which this type of intervention would happen is extremely narrow, extremely narrow. Improper purpose is one of the natural or traditions about just war that will prevent an intervention. So if environmental protection is merely a ruse for some of other geopolitical purpose, then military intervention would not be warranted.

JENNIFER COOK

Humphrey also pushes your argument, doesn't he, to its limits and asks how would we measure the protection of biodiversity against the potential loss of life that would accompany military intervention? Which species is worth how many human sacrifices? As I said, he's pushing it to the nth degree. What does proportionality mean if we are talking about the forcible preservation of rainforest through military action, as an example?

ROBYN ECKERSLEY

Well proportionality, as I said, is part of the just war tradition. It would apply equally to this type of military intervention as it would any type of military intervention. These are always contextual. As my paper makes clear, I try and look at the legality, legitimacy and morality of intervention. It's only when they coalesce that I think we have a strong case. So in the case of military intervention to protect biodiversity inside the boundaries of the state, we're not there yet. Because most of the richest biodiverse areas are in some of the poorest countries in the world, it would have a terrible colonial flavour. I don't imagine it would be a wise decision in those sorts of incidences.

JENNIFER COOK

So Robyn, you talk about this idea of intervention being deeply embedded in environmental philosophy. Could you explain that to us?

ROBYN ECKERSLEY

Well certainly the moral component of the argument in relation to intervening to protect threatened species is definitely grounded in environmental philosophy and environmental philosophy that rejects the idea of a 'Great Chain of Being' and instead supports what Arne Naess referred to as biospherical egalitarianism. Here the simply maxim is live simply that others shall simply live.

But in this instance, we're looking at vulnerable species that aren't in a position to protect themselves. So just like with military intervention to protect folk who are suffering genocide and who are especially vulnerable and not in a position to protect themselves, by a parity of reasoning, we're arguing here for military intervention to protect vulnerable species, who without that protection would go extinct. So this is the use of power, I think, for legitimate purposes, to protect the vulnerable from those that are abusing their power and effectively acting in ways that will exterminate an entire species.

JENNIFER COOK

But you have said that environmentalists, you describe them, they're more like doves than hawks.

ROBYN ECKERSLEY

Absolutely, yes.

JENNIFER COOK

So how does this sit within this environmental community?

ROBYN ECKERSLEY

Well the environmental movement has a history of non-violent civil disobedience and that is generally the preferred method. There are some groups that involve themselves in environmental sabotage or who take it upon themselves to enforce the law or use force, like Greenpeace, putting themselves between the harpoon and the whale. I think that is, by far, the preferred method. As I said, this is a very narrowly focused discussion where I'm trying to think of an in principle reason when it might be justified. I use the example of say the last breeding population of gorillas in an African nation. If they're being shot to extinction through poachers and the relevant host government is doing nothing to protect that, we need force to stand between the poachers and the gorillas to prevent that. It's that type of extreme situation where I think military intervention might be warranted to protect the vulnerable.

JENNIFER COOK

Can I take you back to that issue of non state actors, people like Greenpeace and environmental activists at that extreme end of the scale where they are actually sabotaging, they are, as you say, stepping between the harpoon and the whale. There can be some complicity with the states, sort of turning a blind eye?

ROBYN ECKERSLEY

I think that's a good way of putting it because I think there's a lot of states around the world that stand back and applaud Greenpeace's actions. These are anti-whaling states. They're doing the work that would be diplomatically too difficult for states to do, vis-a-vis their relations with, say, Japanese whalers; so they're doing this work and they're examples where you see action which is strictly illegal, but more in keeping with people's moral sensibility. So NATO's intervention in Kosovo was against the UN Charter's rules of force, but the opposition was muted. It was seen as a case of exceptional illegality in the service of upholding human rights. It's the slippage between equality, morality and legitimacy that enables norms to evolve. I'm trying to look at these relationships and explore them and see how they might be exploited or not. So in my article, I was really only to conclude that trans-boundary harm is the only kind where you might have a basis for intervention and the other two cases, I don't think there is a basis yet for intervention.

JENNIFER COOK

But you're saying let's talk about?

ROBYN ECKERSLEY

We might get there, we might get there one day.

JENNIFER COOK

You talk about the situation we have where you can be prosecuted for environmental crimes during the time of war, but if the same thing happens in peacetime, we have no framework. Can you talk us through this?

ROBYN ECKERSLEY

Well this strange situation was one of the reasons that prompted me to write this paper. If you think of the use of Agent Orange by the US in Vietnam, caused massive environmental damage and health problems; or Saddam Hussein's efforts in setting alight oil wells in the first Gulf War, again causing massive ecocide, it seems strange that these things are technically war crimes, but what you do find is that there's been no prosecution. But I was perplexed by the fact that the international community is prepared to accept these as war crimes, but there would be nothing to stop exactly the same type of damage happening during peace.

It was this very thing that made me think, well okay, let's try and catalogue the sorts of things that might warrant the elevation of this type of activity to what international lawyers call jus cogens, which is a non-derogable norm that is something that would apply to every state, whether they agreed with it or not, so that it was serious enough possibly to justify military intervention in extreme situations.

JENNIFER COOK

So part of your motivation for exploring this issue was to throw a spotlight on this anomaly that you found.

ROBYN ECKERSLEY

A huge anomaly, an absolute anomaly, yes.

JENNIFER COOK

Finally Robyn, I'd like to ask you if you think the international community might one day be ready to condemn ecocide with the same conviction it does genocide and then I'd like you to consider what is the next stage of the debate, considering how far you've taken us.

ROBYN ECKERSLEY

Well in most of my work I'm not focusing on military intervention, but I am defending the rights of nature, as it were. I used the case of Simian Sovereignty as an interesting case study because there is a Great Apes project that says that they actually should be treated like any tribe, a human tribe. They have authority structures and should be considered to have a right of self determination and helpful states could play a trustee role in protecting their external interests. This is not a fanciful idea.

But the problem with that is it's limited; we can only extend this type of projection to those species that are most like us, which leaves the rest of the living world in a state of thinghood, as it were. A lot of my work has been critiquing the idea of human chauvinism, that we're the only species that matter on this Earth and the rest of the world is simply there for our exploitation and seeing ourselves as part of a rich web of life. That type of thinking, of course, doesn't lend itself to military intervention. This paper's just about extreme situations.

The problem is, as we discussed earlier, the principles of permanent sovereignty over natural resources and territorial rights makes it very difficult for an environmentalist to be telling these poorer countries with rich biodiversity how to use that and how to protect that biodiversity. So we have a long way to go, but nonetheless, the more we start to lose this, the more we start to value it and also start to reconsider our own place in the scheme of things so that we're just fellow passengers and travellers, rather than lords and masters.

JENNIFER COOK

Well with that thought, Robyn, I think that's a perfect place for us to end this fascinating discussion about ecocide and if and when military intervention is a possibility. Thank you so much for joining us.

ROBYN ECKERSLEY

Thank you Jennifer.

JENNIFER COOK

That was professor Robyn Eckersley from the University of Melbourne's School of Political Science, Sociology and Criminology. Robyn was speaking with us about crimes against the environment and just when does a military response become necessary?

Relevant links including one to Robyn's ecological interventions paper on this topic, a full transcript and more info on this episode can be found at our website at upclose.unimelb.edu.au. Up Close is a production of the University of Melbourne, Australia. This episode was recorded on November 15, 2011 and our producers were Kelvin Param and Eric van Bommel, audio engineering by Gavin Nebauer. Up

Close is created by Eric van Bemmelen and Kelvin Param. I'm Jennifer Cook, until next time, goodbye.

VOICEOVER

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