

Ecocide on Trial: Redefining International Criminal Law in the face of Planetary Crisis

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Abstract—The proposal to recognize ecocide as the fifth core crime under the Rome Statute of the International Criminal Court (ICC) marks a transformative moment in the evolution of international criminal law. In September 2024, Pacific Island states including Vanuatu, Fiji, and Samoa formally advanced an amendment to Article 5, alongside a proposed Article 8(1)(k), defining ecocide as the intentional or reckless large-scale or systematic destruction of ecosystems resulting in severe and widespread or long-term harm. As of early 2026, the amendment remains under consideration within the Assembly of States Parties (ASP), facing significant procedural and political hurdles under Article 121 ratification requirements.

This paper examines the legal viability, normative foundations, and geopolitical implications of codifying ecocide as a standalone international crime. It analyses the proposed definitional thresholds severity, scale, intent and evaluates concerns regarding vagueness, jurisdictional overreach, and selective enforcement, particularly in relation to major non-States Parties. The study further considers the ICC Prosecutor’s interim strategy of prosecuting environmental destruction under existing crimes, including war crimes provisions addressing excessive environmental damage. Ultimately, the paper assesses whether formal recognition of ecocide would meaningfully advance climate accountability and planetary justice, or whether it risks symbolic expansion without enforceable impact within the current international legal order.

Index Terms—Ecocide, International Criminal Court (ICC) Rome Statute Amendment Climate Accountability International Criminal Law

I. INTRODUCTION

International law has seen varied phases of change and acceptance through the course of its existence and implementation. Countries around the world have sought a better understanding amongst one another. Especially after the second world war which gave rise to the United Nations which sought to unite the countries as one and be responsible to each other. Several Countries adopted these resolutions into their own laws and paved the way to accommodate the international model law. Although, today in these trying times we can see the shift in the dynamics between the very same countries that agreed to remain in peace and resolve conflict amicably. Each country’s need for more has only led to the greed for power, carnage and devastation that arises from the loss of this stability which international law had sought to amend. Therefore, it is very essential to review and reamend the laws that were in place to prevent such heinous crimes - the Rome Statute 1998.

As per the Rome Statute¹ it has effectively laid down its universal jurisdiction over the primary crimes that is inclusive of:

- a. The crime of Genocide
- b. Crimes against Humanity
- c. War Crimes
- d. Crime of Aggression.²

Although these crimes are subject to interpretation and have a wide ambiguity within them, the law seems lacking on several accounts, especially in the light of the ongoing global conflicts across the Middle East affecting the world at large. In order to curb these atrocities committed, heads of State must be held accountable for it under the primary four crimes listed

¹ Rome Statute of the International Criminal Court, 1998.

² Ibid. Art.5.

above. To bring forth the key perpetrators of these crimes there must be a significant impact on States across the world for it to be even tried by the International Criminal Court (ICC) but due to the law being so ambiguous in nature these perpetrators escape scott free due to the legal fallacy within these crimes. Law makers and authors across the globe made several attempts at defining a new Crime as the core crime under international law to bring about further responsibility but have fallen short in a manner of speaking. This new crime that is being spoken of is the concept of Ecocide.

II. ECOCIDE

1. Meaning:

In general parlance the term Ecocide refers to the destruction of the natural environment by deliberate or negligent human action.³ Over time several authors and practitioners have realized the need to conceptualise a new crime for the deliberate and reckless acts that aim to destroy ecosystems which was encapsulated in the term Ecocide.⁴ The term Ecocide is a neologism that has been derived as a combination of a Greek and Latin term. The Prefix 'Eco' derived from the term 'oikos' which means "house" and the suffix 'cide' derived from the Latin term "caedere" which etymologically means "killing our home".⁵ This term right from its inception has taken on a varied set of definitions and interpretations given by the various scholars and authors⁶ but the common denomination between all these definitions involve the aspect of

³ Oxford English Dictionary, "ecocide (n.)", December 2025, <http://doi.org/10.1093/OED/2443006619>.

⁴ Nasty Marian Vlodoiu & Amandalin Maria, The Ecocide between the Ethical Ideal and the Legal Reality, 2025 *Int'l J. Legal & Soc. Ord.* 479 (2025).

⁵ Jonatan Rigo Garcia, Ecocide: From a War Crime to an International Crime, 23 *Opole Stud. Admin. & L.* 97 (June 2025).

⁶ For the most contemporary and authoritative legal definitions see, e.g., the definitions proposed by the European Law Institute (Bray et al. 2023); the Independent Expert Panel for the Legal Definition of Ecocide (Independent Expert Panel hereinafter) (Mehta et al. 2021); the UCLA Promise Institute for Human Rights Group of Experts (Aparac et al. 2021);

environmental damage from a criminal stand point emphasising on the irreversible harm that is done. Amongst all these definitions trouble arose while trying to interpret the concept through the element of severity and the concept of a natural environment.

2. History & Origin:

The term ecocide was first coined by Professor Arthur W. Galston, a plant biologist at Yale University. He had coined the term during a congressional conference on War and National Responsibility, held in Washington in 1970 urging States to denounce the use of biological warfare leading to ecocidal destruction especially pertaining to the herbicidal warfare carried out by the U.S. forces in the Operation Ranch Hand conducted in Vietnam.⁷ Seeing the extent of destruction caused in Vietnam he characterized ecocide as "the Wilful and permanent destruction of (the) environment in which people can live in a manner of their own choosing."⁸

Ecocide, which originated in the U.S. anti-war and emerging environmental movements, swiftly gained international attention and sparked legal developments. Hungary used the 1925 Geneva Gas Protocol⁹ to denounce herbicides as ecocide in 1966, sparking UN discussions on chemical and biological weapons (CBW). This led to resolutions like UNGA 2162 B (XXI) (1966) and the crucial UNGA 2603 A (XXIV) (1969)¹⁰, which confirmed the Protocol's binding nature against agents harming humans, animals, or plants. Olof Palme accused the United States of ecocide at the 1972 UN Conference on the

or the Working Group directed by Laurent Neyret (Neyret 2015), English version by C-EENRG available at <https://www.ceenrg.landecon.cam.ac.uk/report-files/report-002>.

⁷ Supra, note 3 at p.11.

⁸ Zierler, *The Invention of Ecocide: Agent orange, Vietnam and the Scietnists who changed the way we think*, 2011, p.9-19.

⁹ Geneva Protocol, Protocol for the prohibition of the Use in War of Asphyxiating, Poisonous or Other gases and of Bacteriological Methods of Warfare, signed on June 17, 1925, adopted on February 8, 1928.

¹⁰ UN secretary General (UNSG), Report on Chemical and Bacteriological (Biological) Weapons and the Effects of their Possible Use, Adopted by the General Assembly on 16th December, 1969.

Human Environment¹¹, and Professor John Fried called it a serious violation of the 1949 Geneva Conventions, a war crime upsetting ecological balance.¹²

The legal conceptualization was advanced further by scholars. Richard Falk's 1973 draft International Convention on the Crime of Ecocide defined it as deliberate disruption of human ecosystems through the use of weapons, herbicides, bombing, bulldozing, weather modification, or forced removals.¹³ This definition foreshadowed the bans on widespread, long-term environmental harm in the Convention on the Prohibition of Military and Any Other Hostile Use of Environment Modification Techniques [ENMOD (1976)] and Additional Protocol to the Geneva Convention relating to the Protection of Victims of International Armed Conflicts [Additional Protocol I (1977)]. In 1974, Arthur Westing defined ecocide as "widespread and serious ecological debilitations," calling for its outlawing under international humanitarian law (IHL) while casting doubt on the applicability of military acts and intent.¹⁴ These initiatives, which shifted toward eco-centrism, protected ecosystems in different ways Galston concentrated on human health, Falk on environments independent of humans, and Fried on interdependent life forms

Following several interpretations in 1998, the Rome Statute finally adopted the concept of an Ecocide through the Article 8 (2)(b)(iv) which was largely drawn from the ENMOD Convention in relation with the Additional Protocol 1. Despite being inserted as a crime under the Rome Statute this was not inserted as a core crime and the concept of Ecocide is a mere derivation from the wordings of the article and there lacks an explicit mention of the Crime of Ecocide. It is based on this that several authors have further tried giving it a wide but inclusive definition.

¹¹ On top of that, Vietnam's ecocide was denounced by Swedish Prime Minister Olof Palme (1972) at the Conference itself, one of the founding cornerstones of international environmental law (IEL).

¹² LG.Minkova, Ecocide, Sustainable Development and Critical Environmental Law Insights, Journal of International Criminal Justice, Vol.22, Issue 1, March 2024, p.81-97.

III. ANALYSIS

1. Legal Definition

As discussed above the concept of Ecocide was not given any strict definition to be applied but of the lot the most predominant definition used is the definition laid down by the British Barrister and ecocide law Expert Polly Higgins in 2010. Her definition of Ecocide includes "the extensive damage, destruction or loss of ecosystem(s) of a given territory, whether by human agency or other causes, to the extent that peaceful enjoyment by the inhabitants of that territory has been significantly diminished."¹⁵ Through her definition she has conceptualised Ecocide into two primary facets namely:

- a. Ecocide Caused by humans
- b. Ecocide that occurs naturally¹⁶

When she referred to the Ecocide caused by humans, she referred to those acts of humans which led to the loss of environmental life as well as the standard of living of the people within that particular region. The natural occurrence of ecocide refers to that which occurs in nature, for example the tsunamis, earthquakes, flooding etc. Despite being two various forms of ecocide, they are both classified under the same category as there is loss of the natural environment, destruction of livelihood and loss of life in both cases which form the common denominators to constitute an Ecocide going by Higgin's definition. To further reiterate her stance Higgins had formed the 'Independent Expert Panel' and co-founded the concept of "Stop Ecocide International". This was co-founded by Jojo Mehta and is carried forward by him. According to them they defined ecocide as unlawful and wanton acts committed with the knowledge that there is a substantial likelihood of severe and either

¹³ Johnstone, Ecocide and the Geneva Protocol, Foreign Affairs, Vol.49, June 1,1971, p.711-720.

¹⁴ RA Falk, Environmental Warfare and Ecocide, Bulletin of Peace Proposals, Vol.4, No.1 (1973), p.80-96, published by Oxford University Press.

¹⁵ Higgins, P, Eradicating Ecocide, Shepard-Walwyn (IPG) (2016).

¹⁶ TEDx Talks., "Ecocide, the 5th Crime Against Peace: Polly Higgins at TEDxExeter." (2012).

widespread or long-term damage to the environment being caused by those acts.¹⁷

Several authors, though adopting the definition laid down by Higgins, criticised the definition based on its very broad and non-exhaustive nature which included both human and natural intervention.¹⁸ Peter Stoett, being one of the key critics to her definition stated that the concept of Ecocide should have a minimalist definition and not a maximalist approach.¹⁹

2. ICC Adoption of the term

Currently, to incorporate the definition of a 5th Crime under Article 5, it is the duty of the member states to make an amendment to that effect under Article 121. For this crime to come into force there must be at least a two third majority of votes for a proposed amendment. We see a tremendous shift in the opinions of the various jurists in the development of the concept of Ecocide under the Rome Statute. Especially in the office of the Prosecutor under the ICC, wherein in the 2016 the office had proposed and stated that they will prioritise 'environmental crimes' that resulted in environmental destruction and natural resource exploitation although till date no such crime has been prosecuted for.²⁰

Later, in the year 2024 based on the policy document released by the office of the prosecutor they reiterated on another article within the statute, that is Article 7(1)(d), which criminalizes the deportation or forcible transfer of population reiterating the point that causing pollution or destroying homes could be an environmental crime and has the potential to fall under the category of a crime of ecocide.²¹ The prime contention among these debates predominantly stem from the concept of intent or otherwise known as mens

rea where in for the four primary crimes there should have been the intent to commit those particular crimes. Where in the case of ecocide, going by the definition, especially with ecocide caused by human agency, the intent of the military will be to gain profit or territory not climate destruction and thus without actual intent the entire ambit of Ecocide cannot be tried as a primary crime but rather a very restrictive criminal act. We can thereby see the fallacy in the definition of Ecocide laid down by Higgins as it seems to be an all-encompassing environmental crime which according to the author is a wrong way of looking at Ecocide. Like Galston defined Ecocide, he made the connection through the genocide in Vietnam occurring on account of the US operation to mean, wilful or permanent destruction. If we were to conceptualise ecocide in connection solely to the crimes committed through human agency and have a more objective outlook of the same with the intent being to cause willful and permanent destruction the Crime of Ecocide can be better suited to fall within the ICC statute as one of the Core crimes under Article 5.

3. Concept Adoption in Domestic Regimes

It is interesting to see how various countries have adopted the concept of Ecocide without there actually being a proper definition of the term Ecocide. Several countries like Vanuatu, the Maldives, Samoa and Bangladesh have already endorsed the proposal to criminalize ecocide, likely influenced by their vulnerability to climate change impacts like rising sea levels.²² These countries have also simultaneously raised their proposal for its adoption in the 2024 policy that was made out amongst which the Democratic Republic of Congo was also set to join in.

Reports from the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, April 12, 2001 (c), May 22, 2002 (S/2002/565), October 16, 2002 (S/2002/1146), October 23, 2003 (S/2003/1027).²¹ The office of the Prosecutor, Draft Policy on Environmental Crimes under the Rome Statute, 18th December, 2024.

²²A. Meera, The rise of Ecocide laws: A global Shift towards Environmental Justice, International Journal of Law Management and Humanities, Vol.8, Iss.4, 2025, p.1433-1452.

¹⁷ 'Independent Expert Panel for the Legal Definition of Ecocide,' commentary and core text, Stop Ecocide Foundation, <https://www.stopecocide.earth/legal-definition>.

¹⁸ Stoett, P.J., The evolution of and Future Prospects for Transnational Environmental Crime Prevention, 2015.

¹⁹ Ibid, note 17.

²⁰ UNEP-INTERPOL, Strategic Report: Environment, Peace and Security A Convergence of Threats, 2016; UNEP-INTERPOL, The Rise of Environmental Crime: A Growing Threat to Natural Resources, Peace, Development and Security, 2016. See also,

The adoption of laws in the domestic regime pertaining to ecocide could be seen since the early 1990s several countries had taken legislative steps to criminalize ecocide realising its destructive impact on the environment and human life. One of the first countries to adopt such a provision was Vietnam through their penal code under Article 342 under the chapter undermining peace against humanity and war crimes wherein they have explicitly mentioned the term Ecocide but have not defined it further.²³ This was followed by its adoption in the Criminal Code of Uzbekistan under Article 196 and 198 which spoke of environmental harm caused by climate change and the other based on destructive elements like fire or other grave consequences.²⁴ Further, it was adopted in the laws of Tajikistan in the year 1998 under the Criminal Code of the Russian Federation under Article 400 where they spoke of ecocide as the mass destruction of flora and fauna which may lead to ecological disasters.²⁵ Under the same law Russia has adopted the same in 1996, but under Article 358 but herein referred to for preliminary acts done with the intent to cause massive destruction leading to ecological catastrophe. Kyrgyzstan followed suit in 1997 under the Criminal Code of the Krygyz Republic under Article 409 which spoke of mass destruction causing environmental disasters²⁶.

Other countries that have adopted the same include the Republic of Moldova in 2002 under the Criminal Code of the Republic of Moldova under Article 136²⁷ referring to the crime of causing ecological disasters. This was further followed by Armenia in 2003 under the Criminal Code of the Republic of Armenia under Article 154²⁸ referencing the same concept of mass destruction of flora and fauna leading to ecological catastrophe. Later, in the year 2008, a significant

change was brought forth in the legislation of Ecuador wherein the Constitution assigned legal rights to its natural environment under Article 71²⁹ permitting it to sue or be sued within the country. The articles provided that “Nature, or Pacha mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.” This significantly impacted the international community at large as it set a precedent to the environmental legislation to prevent any harm caused due to the harmful activities to be carried out. They had further introduced the specific penal codes and sanctions on ecocide that were enacted in the year 2014.³⁰

India is another such country to give primary importance to the environment. Although it has not adopted the term ecocide, India has enacted several legislations³¹ to the effect of protecting the integrity of the environment which has been imbibed into the Constitution of India under Article 21 through judicial interpretations laid down by the Supreme Court of India³². Under its Constitution Article 48A lays down the duty of each State to protect the environment. Further, just like in the case of Ecuador, India has assigned legal personalities to the rivers Ganga and Yamuna being significant in the Indian Culture.³³

²³ Vietnam Penal Code, Art.342, Chapter XXIV Crimes of Undermining peace against humanity and war crimes.

²⁴ Criminal Code of Uzbekistan, Art. 196 & 198.

²⁵ Criminal Code of the Russian Federation, Art.400.

²⁶ Criminal Code of the Krygyz Republic, Art.409.

²⁷ Criminal Code of the Republic of Moldova, Art. 136.

²⁸ Criminal Code of the Republic of Armenia, Article 154.

²⁹ Ecuadorian Constitution, Art.71.

³⁰ Supra, note 21.

³¹ The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981, The Environment (Protection) Act, 1986, The Wildlife (Protection) Act, 1972, The Forest (Conservation) Act, 1980 and the National Green Tribunal Act, 2010.

³² M.K. Ranjitsinh & Ors. v. Union of India & ors. 2024 INSC 280. See also, Subhash Kumar v. State of Bihar (1991) SC 420, Ratlam Municipal Council v. Vardhichand (1980) SC 1622, M.C. Mehta v. Union of India (1987) SCR (1) 819.

³³ Salim v. State of Uttarakhand, W.P No. 126 of 2014.

Later, major countries like Bolivia³⁴, Belarus³⁵, Ukraine³⁶, Armenia³⁷, France³⁸, Belgium³⁹, European Union⁴⁰, Azerbaijan, Peru and Turkey are some of the few countries that have adopted the concept of Ecocide in some manner which is being regulated in the domestic legislations but the evident differentiation between the countries, are divided into two namely the requirement of mens rea and its lack thereof. These disparities are the very essence of the debate as to what exactly can be constituted to be an Ecocide. The incorporation of the term intention makes it a very restrictive scope but at the same time does not leave any ambiguity in the mind of the legal jurists and practitioners.

IV CONCLUSION

Analyzing the above circumstances, varied laws and the judicial decisions interpreted by domestic courts, despite not using the explicit term ecocide, each of these countries have in some manner adopted the need to criminalise any action done against the environment leading to destruction or harm. This entire chain of amendments we see is due to the rising environmental harm and destruction caused due to man as well as nature. The Rome Statute not listing the Crime of Ecocide due to the subjective interpretation is not assisting any situation nor is it criminalizing any such acts that fall within its purview. Therefore, it is very essential to come up with a restrictive but also focused definition of the term ecocide.

According to this author, ecocide must be narrowly construed only to the extent of harm caused by a man with the intent to destroy the peace and tranquility enjoyed by all living within that region. Accordingly, the author would like to redefine the entire concept of Ecocide to be defined as those acts committed by one

State against another, with the aim of causing willful disturbance and destruction leading to the loss of livelihood, displacement of living beings and the loss of ecological balance.

Conforming to this ideology the author believes that the concept of Ecocide must be read as a subset to the entire aspect of Environmental Crimes and should be tried independently as a Core Crime under the Rome Statute. Without these attributes there will be no end to bloodshed and no accountability for the ecological destruction caused during warfare or any other calamity. In an era where the survival of humanity is inseparable from the survival of the planet, international law must move beyond protecting humanity from itself to protecting the Earth that sustains it.

³⁴ Law of the Rights of Mother Earth (Ley de Derechos de la Madre Tierra), 2010, recognised earth as a legal entity with rights.

³⁵ Criminal Code of the Republic of Belarus, Article 131. Refers to the intentional mass destruction leading to ecological catastrophe. The concept of intention was a preliminary act based on which one could be convicted.

³⁶ Criminal Code of Ukraine, Article 441.

³⁷ Criminal Code of the Republic of Armenia, Article 154.

³⁸ French Environmental Code, Article L231-1.

³⁹ Belgian Penal Code, Article 94. This law also reiterates the concept of intention by using the term “deliberately committing” which explains how intention plays a very key role for the purpose of conviction.

⁴⁰ European Union directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing directives 2008/99/EC and 2009/123/EC. This directive compared the