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Ecocide: The Opportunity to be Included Globally, but also in National Laws

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Abstract: Humanity is facing major existential challenges, climate change and armed conflict are amplifying these pressures. The recognition of ecocide as a global crime is an important and current discussion. There is growing confidence in scientific evidence suggesting that the Earth has reached a “tipping point” (University of California – Berkeley, 2012) and is approaching “planetary limits” (Stockholm Resilience Centre, 2009) and the changes that are happening (climate change, population growth, destruction of natural ecosystems, warming of the oceans and melting of ice caps, massive increase in carbon pollution) they can be irreversible if we do not stop this decline (which began with the industrial revolution) before we reach the abyss. And we can stop it by certain measures that require large-scale international cooperation and the creation of the crime of ecocide is an important part of this sum of measures. The recognition of ecocide in national legislation is an important opportunity to combat environmental destruction and promote sustainability and can be a powerful tool for environmental protection, but its effectiveness depends on clarity of definition and uniform application. A unitary international framework, possibly through the International Criminal Court, would ensure consistency and efficiency in combating the worst environmental crimes.

Keywords: ecocide; environmental crime; sustainability; ecosystems

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1. What is the Ecocide?

Ecocide refers to actions that cause serious and sustainable damage to the environment (massive deforestation, industrial pollution, excessive exploitation of natural resources and other practices that destroy ecosystems) and is defined as the widespread destruction of ecosystems and the natural environment. It has become an increasingly important topic of discussion in the context of the climate crisis and the continuous degradation of the environment. It has also been proposed as an international crime alongside genocide, war crimes and crimes against humanity. While the concept of ecocide has been traditionally discussed within the framework of international law, there is an increasing interest in its inclusion in national laws.

In its broadest definition, ecocide—derived from the Greek word “oikos” (home) and the Latin word “caedere” (destroy, kill)—refers to the annihilation of the natural world. Following World War II, and particularly following the Vietnam War, the word gained popularity.

When Arthur Galston¹ proposed a new international accord to specifically forbid ecocide, the term “ecocide” was first formally recognized at the 1970 Washington, DC, Conference on War and National Responsibility.

Olaf Palme, the prime minister of Sweden, participated in the opening remarks of the first United Nations Conference on the Human Environment (Björk, 1996), which took place in Stockholm, Sweden, in June 1972 and brought together officials from 113 countries.

He referred to the Vietnam War² as “ecocide” and stated that “the severe devastation caused by indiscriminate bombing, the extensive use. Using pesticides and bulldozers is occasionally a scandal referred to as ecocide, which calls for international attention (The Ecologist, 2013).

In parallel with the 1972 UN Environment Conference, a public demonstration in favor of the recognition of ecocides attracted 7,000 participants, and the following year a draft Convention on Ecocide called for the recognition of ecocides as an intentional crime of war and peace (Falk, 1973).

In the draft Code of crimes against Peace and Security of mankind, which precedes the Rome Statute establishing the ICC, 3 options were discussed to incorporate

¹ The scientist whose research led to the invention of Agent Orange.

² The U.S. Army, in the Vietnam War (1961-1971), used the substance known as “Agent Orange”, which is considered a powerful defoliating herbicide. See https://en.wikipedia.org/wiki/Agent_Orange.

ecocide as a stand-alone crime included in crimes against humanity or warcrimes (Gauger et al., 2012).

Finally, it was decided to eliminate the crime of ecocide from the Rome Statute Projecture, leaving only the inclusion of a war crime (Art. 8.2.b.iv)¹ which generated a weakness so great that no one could ever be traced in the meme of this article.

Mark Allan Gray considered the concept of ecocide under international law. He argued, mainly from a tort perspective, that there appears to be a duty of care owed to humanity to prevent causing or allowing environmental damage on a massive scale for which states and perhaps individuals could be responsible for the ecocide. He further analyzed the concept of ecocide to the extent that it can be considered an international crime which would therefore raise the need for regulation.

From a criminal standpoint, particularly on the global stage, he maintained that ecocide as such was not recognized as an international crime. However, he acknowledged that environmental destruction categories that met the criteria for ecocide were beginning to receive this recognition, and that ecocide itself might eventually be given that status (Gray, 1996, pp. 215-272).

The possible justifications for eliminating this crime have been clarified by Christian Tomuschat, rapporteur of the UN working group on environmental crimes. It is impossible to avoid the perception that nuclear weapons were a major factor in the decisions of many who chose the last resort (Tomuschat, 1996).

The concept of ecocide was brought back to life in 2010 by British lawyer Polly Higgins (2010), who quit her practice to advocate for the environment, who called for the Rome Statute to be changed to include the crime of ecocide. “Extensive damage, destruction, or loss of ecosystems of a given territory, either by human action or by any other cause, to such an extent that the peaceful joy of the inhabitants of that territory has been severely diminished” is the definition of environmentally caused devastation.

In 2013, the end Ecocide citizens’ movement organized a European citizens’ Initiative² to demand that the European Union (EU) adapt the legislation to prohibit

¹ For more information on the history of ecocide and the positions of individual countries see Tomuschat, 1996.

² The European citizens wanted to get three simple questions:

1. Criminalising Ecocide and ensuring that natural and legal persons can be held accountable for committing Ecocide in accordance with the principle of superior responsibility under criminal law. Ecocide would become a crime in three cases: When the Ecocide takes place within the EU (including maritime territories), when European companies are involved, when European citizens are involved;

the ECC. This initiative did not obtain the required one million signatures to force the European Commission to deal with the proposal, although the European Parliament discussed the substance of the proposal in committee. More than 175,000 EU citizens (out of one million) supported this proposal by their signature (Ecocide Directive, 2012).

In June 2021, the Independent Expert Group of 12 lawyers specialized in international criminal and environmental law developed a draft legal definition of ecocide that considers ecocide to be “illegal and arbitrary acts committed with knowledge of a substantial likelihood of serious environmental deterioration,” which is the first draft law to be adopted. “Either large-scale or long-term as a result of such acts” (Independent Expert Panel, 2021).

At European level, action began on 8 February 2022¹, where Member States are encouraged to promote the recognition of ecocides in international crime under the Rome Statute of the International Criminal Court (1998), and the new Directive² opens a new page in Europe’s history, in the sense that it protects against those who harm ecosystems and, through them, human health. Proponents of this idea³ argue that the directive effectively criminalizes the crime of ecocide even if it refers to “cases comparable to ecocides” not including the word directly.

They are identified as environmental activities in the new Directive, for example ship recycling and pollution, water abstraction, ozone destruction, introduction and spread of invasive alien species with no reference to the export of toxic waste to developing countries fishing or carbon market fraud.

2. The prohibition and prevention of any ecocide on European or maritime territories covered by EU law, as well as those committed outside the EU by legal persons registered in the EU or EU citizens;

3. Provide a transitional period to facilitate a sustainable economy.

¹ On 8 February 2022, the European Parliament’s recommendation to the Council on the 75th and 76th session of the United Nations General Assembly (2022/C 67/20) was published in Official Journal C No 67/2022, stating, in item 1(ae), that “Parliament encourages, to this end, the EU and the Member States should promote the recognition of ecocides in international crime, under the Rome Statute of the International Criminal Court” and “considers that the EU should implement specific measures to place resilience at the heart of recovery efforts and to integrate disaster risk reduction into EU policies, in cooperation with the UN, in line with the objectives set out in the Sendai Framework for disaster risk reduction, 2015-2030.” See https://www.europarl.europa.eu/doceo/document/A-9-2021-0173_RO.html.

² Environmental claims Directive-COM (2023), retrieved from <https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=COM:2023:0166:FIN> and <https://www.consilium.europa.eu/ro/press/press-releases/2024/06/17/green-claims-directive-council-ready-to-start-talks-with-the-european-parliament/>.

³ To make the ecocide a fifth international crime at the International Criminal Court.

Also, for individuals (such as board members and executive directors), penalties are provided for committing environmental offenses as a prison of up to eight years and if they cause a person's death, they can reach ten years.

2. Why is the Recognition of the Ecocide Necessary? Arguments in Favor of the Recognition of Ecocides in National Legislation

Many advocates of acknowledging the crime believe that enacting legislation against it would require altering the tenets and presumptions that underpin the current legal system, ultimately leading to the creation of a new crime against humanity, in the sense that it would represent a "radical" attempt to fix a system that hasn't been able to stop environmental degradation.

Higgins lists some of the guiding ideas of the concept in "Eradicating Ecocide," including "prohibition, not compromise," "the imposition of a duty of care for the environment," and "moral imperative."

a) The Protection of the Environment and Human Rights

Ecocide is closely linked to human rights violations because environmental destruction affects access to essential resources such as clean water, air and fertile soil. Recognizing ecocide as a crime would provide a legal framework to protect both the environment and the rights of affected communities.

The group rights (of indigenous peoples) are fundamentally protected (Committee on Foreign Affairs, 2018), and there is currently a growing effort to recognize the rights of future generations. Some writers examine the connection between environmental preservation and human rights, including the potential to classify ecocide as a violation of those rights (Boer, 2015).

b) Accountability of Corporations and Governments

The inclusion of ecocide in national laws would allow corporations and governments that contribute to environmental destruction to be held accountable. This would discourage harmful practices and promote sustainability. Examples: In the US, BP was fined billions of dollars after the 2010 Gulf of Mexico environmental disaster, but no official was convicted (Neagu, 2015).

c) Harmonization with International Law

Although the ECC is not yet recognized as a crime in international law, there is pressure from non-governmental organizations and law experts to include it in the Rome Statute of the International Criminal Court. Its adoption in national laws would represent an important step toward its global recognition and support international efforts to combat great environmental damage.

A general process of rethinking international criminal environmental law should be initiated to transform it into one for environmental and climate protection, having an appropriate judicial framework for enforcement, but also with a full criminal device in order to ensure the absolute necessity to ensure the conditions for the persistence of the present formula of life on our planet and the manifestation of human civilization.

d) Combating Serious Environmental Destruction

The Ecocide would allow sanctions for acts with irreversible impacts on ecosystems, such as massive deforestation, toxic spills or extreme pollution, as many environmental crimes remain unpunished due to weak administrative sanctions or ineffective legislation.

e) Increase Public Awareness

In recent years, public awareness of the impact of human activities on the environment has played a key role in creating an environment conducive to the adoption of laws to combat ecocides and other forms of environmental degradation. As people become more aware of the long-term consequences of pollution, deforestation, climate change and other harmful practices, the pressure on governments and international institutions to act has increased significantly. Greta Thunberg has inspired millions of young people to fight climate change (Thunberg, 2019). The United Nations Development Program (UNDP) has published a report outlining how public perception of climate change is influencing policy priorities globally (United Nations Development Programme, 2021). Meadowcroft in his research explores the role of civil society and public awareness in shaping environmental policy (Meadowcroft, 2009), and Dryzek (2021) in the “Politics of the Earth” examines how environmental discourse and movements influence public policy and legislation.

f) International Pressure

International organizations, such as the Stop Ecocide Foundation¹, are campaigning for the recognition of ecocide as a crime. This pressure can encourage countries to adopt national laws that address the problem. Citizens and interest groups also demand accountability and transparency, prompting governments to adopt stricter environmental laws².

g) Examples of Success

Some countries already have laws addressing issues of ecocide, initiatives that can serve as models for other countries.

Some nations, like Vietnam (1990)³, the Russian Federation (1996)⁴, and other former Soviet nations⁵ adopted Ecocide into their national laws even though it was removed from the ICC mission. Furthermore, some states have started to acknowledge the rights of ecosystems, animals, and nature (United Nations Development Programme, 2021). New Zealand (New Zealand Parliament, 2017) has given some forests⁶, rivers⁷, and even a mountain⁸ legal personality.

¹ <https://www.stopecocide.earth/>.

² Initiatives such as “Fridays for future” or “Extinction Rebellion” have shown that there is a strong demand for greener policies and environmental movements, non-governmental organizations (NGOs) and activists have brought environmental issues to the forefront, educating the public and calling for legislative action.

³ Article 342 of the Vietnam Penal Code: Crimes against mankind states that “Those who, in peace time or war time, commit acts of annihilating en-masse population in an area, destroying the source of their livelihood, undermining the cultural and spiritual life of a country, upsetting the foundation of a society with a view to undermining such society, as well as other acts of genocide or acts of ecocide or destroying the natural environment, shall be sentenced to between ten years and twenty years of imprisonment, life imprisonment or capital punishment.”

⁴ Criminal Code of the Russian Federation 1996, Art. 358. “Ecocide: Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of 12 to 20 years.”

⁵ Criminal Code of the Republic of Armenia 2003, Art. 394; Criminal Code of Ukraine 2001, Art. 441, Criminal Code Belarus 1999, Art. 131; Criminal Code Kyrgyzstan 1997, Art. 374; Penal Code Republic of Moldova 2002, Art. 136; Criminal Code of Georgia 1999, Art. 409; Criminal Code Tajikistan 1998, Art. 400; Penal Code Kazakhstan 1997, Art.161; Criminal Code Tajikistan 1998, Art. 400.

⁶ The TeUrewera Forest became the first natural area in the world to have legal status in 2014 (Pro TV, 2015).

⁷ In 2017, the Whanganui River, sacred to local tribes, was given the same status, providing protection against exploitation and pollution (Pro TV, 2015).

⁸ On 1 February 2025, a mountain in New Zealand was legally recognized as a person with rights, powers, duties and responsibilities. The law freed the mountain from the “shackles of injustice, ignorance, hatred.” Taranaki Maunga, a dormant volcano on the North Island, received by law the same rights and responsibilities as a human being (Pro TV, 2015).

Additionally, significant efforts are being made in the United States (Our Children's Trust, 2014) and the Netherlands (Cox, 2012) to use litigation to compel governments to act on climate change.

Bolivia enacted the Bill of Rights of Mother Earth in 2010, which gives nature the rights to clean air, water, life, biodiversity, balance, restoration, and pollution-free living (Instituto Nacional de Estadística, 2010).

Oil drilling and hydraulic fracturing, or "fracking," for shale gas (Mora County Board of County Commissioners, 2013) are two examples of operations that are prohibited by New Mexico's 2013 ordinance, which approved the Declaration of Rights, which includes the Rights of Nature.

The Aarhus Convention is one example of a law that recognizes the public's representation (*locus standi*¹) to start legal action in the public interest, even if it is done directly in the name of nature (The United Nations Economic Commission for Europe, 2005).

As demanded in Rio 20 (UN Report of the Secretary-General, 2013), another step might be the UN's appointment of a High Commissioner for future generations. At least six nations have made provisions for future generations in their constitutions², and five nations³ and one area currently have or have had offices for this purpose. In 1993, France organized a Council for Future Generations, and in the United States, Germany established a Parliamentary Advisory Council for Sustainable Development⁴. A notable instance of legal reasoning to stop irreversible ecological damage (deforestation) for the benefit of present and future generations is the *Opposa v. Factoran* case from the Philippines in 1993 (Allen, 1994, pp. 713-741).

There are also global (New Frontiers In Environmental Constitutionalism, 2017) initiatives to enhance environmental protection through the implementation of constitutional, international, and regional rights-based approaches.

¹ Expresses the right to be heard by the court.

² Bolivia, Ecuador, Germany, Kenya, Norway and South Africa; see UN Report of the Secretary-General.

³ Canada, Finland, Hungary, Israel, New Zealand and Wales; see UN Report of the Secretary-General.

⁴ Hawaii and Montana refer to future generations in their constitutions. Indiana underlines the purpose of environmental policy being "to preserve, protect, and enhance the quality of the environment so that, to the extent possible, future generations will be ensured clean air, clean water, and a healthful environment."

3. Challenges and Obstacles. Arguments Against the Recognition of Ecocides in National Laws

a) Defining the Ecocide

One of the biggest challenges is the precise definition of ecocides within the legal framework. It is necessary to establish clear criteria to distinguish between normal activities and those that cause serious and lasting damage to the environment. Attention is also drawn to the need to clarify the legal classification of “ecocide” as “crime” (where intentional action is taken). It is difficult to establish what level of destruction would justify the accusation of ecocide¹. Ex: Is intensive mining ecocide? What about an accidental spillage?

b) Application of the Law

The implementation and enforcement of laws that address ecocide and its monitoring can be difficult, especially in countries where corruption and lack of resources are major problems, especially in regions with political instability. Effective monitoring and enforcement mechanisms are needed. I believe that a special category of environmental international crimes should be criminalized, with the autonomy of the crime of ecocide at its core, but also the establishment of an appropriate institutional judicial framework for the investigation, instrumentation and trial of high environmental and climate crime (expertise, prosecutor and jurisdiction in highly specialized forms).

c) Resistance from Industry

Industries benefiting from environmentally harmful practices such as oil and mining can resist laws limiting their activities and companies in sectors such as energy, agriculture and chemicals could be discouraged from investing, fearing criminal charges.

There is a risk of a relocation of polluting industries to countries with more permissive legislation.

¹ Such is the case of for leaks and infiltration of oil and other polluting oils in the Niger Delta (Nigeria). See <https://uleiuri-lubrifianti.com.ro/eliminarea-solului-contaminat-cu-petrol-din-delta-nigerului-preocupare-de-top-pentru-cercetatori/>; the Chernobyl nuclear accident <https://www.greenpeace.org/romania/articol/6643/cernobil-35-de-ani-mai-tarziu>, and Fukushima-Daiichi <https://www.iaea.org/topics/response/fukushima-daiichi-nuclear-accident>.

d) The Need for a Global Approach

Because environmental crime has become the third-largest in the world in terms of profit, the efficiency of the ecocide would be higher if it were recognized internationally, not only nationally because, as I said before, if only certain states recognize the ecocide, it is not the only one that has been recognized by the European Union. Large corporations could avoid responsibility by moving their operations to other countries.

Efforts are being made in this regard, because on 7 February 2024, the Prosecutor of the International Criminal Court, Karim A. A. Khan announced the publication of a future general policy draft which is at stake to prevail the principle of responsibility for environmental crimes under the Rome Statute of the ICC and to increase the transparency and predictability of the court's action in order to reach the development and publication of a very detailed document on environmental crimes, which would allow it to adopt a systematic approach, through its conclusions, to fight crimes involving or causing environmental damage, falling within the competence of the Court.

At present, we are witnessing a constant and upward movement of “penalizing” the environmental and fairly United attacks that are manifested at the level of international law, regional international law (especially European Union law), but also in the level of national rights of states. In the context of the accelerated and fundamental readjustment of the international order, the reemergence of major military conflicts (such as the war in Ukraine), with a particular impact on the environment and the manifestation of geopolitical disputes of climate change, the environmental and climate component becomes an absolutely necessary aspect of any global problem and requires appropriate solutions to solve it.

e) Sovereignty of States

The introduction of the concept of global ecocide could be perceived by some states as a violation of sovereignty, especially if it involves external regulations or sanctions on natural resources or economic practices within a state.

State sovereignty requires control over territory and own resources, and some countries may consider that global rules on ecocides limit their right to manage their own resources or develop their economies independently. This is particularly sensitive for countries that rely on extractive industries or agricultural practices that could be considered harmful to the environment.

To avoid the perception of a violation of sovereignty, it is important that discussions and implementations related to ecocide be inclusive, respecting the needs and prospects of all the states involved. Priority should also be given to international cooperation and to support States in the transition to sustainable practices.

The Stop Ecocide Foundation promotes the recognition of ecocide as an international crime and provides resources and analysis of its impact on global sovereignty and cooperation (ELI Report on Ecocide, 2021).

4. Conclusions

Environmental issues become a priority of the world community, including from the legal, regulatory and actional point of view, and therefore a global emergency, it is of vital interest, and the themes of climate and global pollution are prone to international cooperation and regulation as they are among the few that meet a consensus of approach.

The recognition of ecocide in national legislation is an important opportunity to combat environmental destruction and promote sustainability and can be a powerful tool for environmental protection, but its effectiveness depends on clarity of definition and uniform application. A unitary international framework, possibly through the International Criminal Court, would ensure consistency and efficiency in combating the worst environmental crimes.

Therefore, real efforts are being made to achieve an international pact aimed at preventing and restoring the damage caused to the environment not only during the war period, but also in peacetime, and the materialization of this agreement should provide a guarantee for legitimate and effective intervention in order to sanction all acts of sometimes irreversibly and often serious destruction of the environment, so it is appropriate to introduce ecocide in national legislation, but this should be accompanied by clear enforcement mechanisms and international coordination.

The recognition of ecocides globally would be a significant step in balancing global regulation with national flexibility to effectively address this complex problem.

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