



Ecocide Law
Alliance

Questions & Answers

Q&A on Ecocide Law

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ECOCIDE LAW ALLIANCE

We promote the establishment of an ecocide law – To make
mass environmental damage an international crime.

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What is ecocide?

Ecocide is generally understood to mean mass damage and destruction of nature. The legal definition of ecocide proposed in June 2021 by a global panel of experts in international and environmental law as an amendment to the Rome Statute is: “... unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.

‘Eco’ derives from the Greek oikos meaning house or home and ‘cide’ - from the Latin caedere meaning strike down, demolish, kill. It literally translates as “killing our home”.

“... unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.

■ In what framework should ecocide as a crime sit?

The Rome Statute of the International Criminal Court (ICC) in The Hague is where the most serious crimes, of concern to the whole international community, are being addressed. It has been in operation since 2002 and currently lists four crimes: genocide, crimes against humanity, war crimes, and the crimes of aggression (recently added). The Statute can be amended to add a fifth crime: ecocide.

■ What counts as ecocide?

The expert panel proposes that ecocide be defined as:

“... unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.

The expert drafting panel further detailed the legal definition as follows:

- a. “Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
- b. “Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave

impacts on human life or natural, cultural or economic resources;

- c. “Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
- d. “Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;
- e. “Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

■ Why should ecocide be an international crime?

Such a law is needed for many reasons. Despite decades of conferences and hundreds of conventions and treaties, ecosystems and the climate are systematically impacted on a scale which threatens life as we know it.

Criminalizing ecocide is likely to reduce the incidence of ecocide. From the would be perpetrator's point of view, it is one thing to risk a fine for harming the environment; it is a completely different thing to lose public regard, be seen as a criminal, and risk going to jail.

There is need for an umbrella law that lays out binding rules. Current international environmental governance and legislation are fragmented, lack coherence and are spread over a wide range of sectors, each with their own framework. Many environmental

principles are unclear both in terms of content and status (UN, 2018). International courts and tribunals often stress the lack of international consensus concerning environmental principles (UN, 2018).

Access to justice is limited. It is currently difficult and often prohibitively expensive for citizens and NGOs to gain access to the judicial system to bring to court those who destroy nature on a large scale.

■ Isn't ecocide covered under other laws?

There is some provision for environmental damage in law on war crimes and there may be some, as yet untested, potential to include some aspects of ecocide under crimes against humanity, but most ecosystem destruction happens in peacetime and does not always affect humans directly. Therefore, a law specifically addressing ecocide is needed.

■ Why criminal law?

Criminal law has a strong relationship with our values and norms, society's sense of right and wrong. Making ecocide a crime creates a new moral baseline whereby anything causing mass damage or destruction of natural ecosystems will become visible and thus unacceptable.

By criminalizing ecocide, we acknowledge the intrinsic value of ecosystems and our responsibility towards them. Which countries would be covered by the law?

Once 2/3 of the States Parties have agreed to add the crime of ecocide to the Rome Statute, it becomes enforceable for ratifying states one year after they submit their ratification.

Furthermore, making ecocide a crime within the Rome Statute will have global effects, reaching far beyond the nations that have signed the Rome Statute and/or the principles of universal jurisdiction, as all trade and capital involved in ecocide crime that involve any of these nations would be affected by the law.

■ What about countries (e.g. USA, China) who are not members of the ICC?

As the economy is increasingly global, there is a powerful effect even in countries that are not ICC members or haven't ratified. Importantly, transnational corporations would not be able to operate ecocidal practices in any jurisdiction signed up to the law.

■ **Ecocide law addresses the causes of many environmental issues directly.**

- It will end the most extreme forms of environmental destruction.
- It will give business and government organisations a clear and long-term framework to act within.
- It will impact public views on right and wrong regarding mass damage and destruction of nature.
- It will support rapid transition to a green, circular economy by making reuse of materials a better option than extraction of new materials.
- It will reduce risks of armed conflicts related to ecological degradation, both within and between nation states.
- It will create more jobs, and jobs will be healthier.

■ **How do the principles of universal jurisdiction apply when ecocide is part of the Rome Statute?**

Any countries subscribing to the principles of universal jurisdiction may also prosecute non-nationals if a perpetrator sets foot in their territory, or in another country that has signed the principles of universal jurisdiction

■ **Who will be prosecutable?**

In international crime, the principle of 'superior responsibility' takes those who are in a position of superior responsibility to task. It imposes a duty of care on people who make decisions that affect humanity

as a whole. Ecocide law is intended for the prosecution of persons of superior responsibility, the directing minds in a given situation where the crime of ecocide has been committed. These persons may be public officials, officers of corporations or other bodies responsible for ecocide. The vast majority of business and government leaders are already moving away from these destructive practices, but the few remaining serious offenders are causing grave damage to us all. The main purpose of ecocide law is not to prosecute offenders, but to stop ecocide from occurring in the first place.

■ **How will the law be enforced?**

Once a country ratifies ecocide as a crime at the international level, it must incorporate it into domestic legislation. The International Criminal Court is a court of last resort, it comes into play only if nation states cannot or will not prosecute.

■ Is ecocide as an international crime a new idea?

No. The term 'ecocide' has been discussed since the 1970s as a potential international crime against peace. It was first recorded at the Conference on War and National Responsibility in Washington in February 1970. The crime of ecocide was mentioned by Swedish Prime Minister Olof Palme in 1972, at the first UN conference on the environment, in commenting on the environmental damages caused by the use of Agent Orange by United States forces in the Vietnam War. From the 1970s onwards, many academics and legal scholars argued for the criminalisation of ecocide and debated the elements required for such an international crime.

■ Why is ecocide referred to as a crime against peace?

The crimes prosecutable by the ICC are often referred to as the crimes against peace. Damage, destruction or loss of ecosystems leads to resource depletion, which in turn leads to conflict and ultimately war. Sir David King, ex-chief scientific advisor to the UK government, warns that the 21st century could be a century of resource wars, where we will be fighting for the last remaining resources, in particular water and oil.

■ What is the connection between genocide and ecocide?

Genocide is a crime that protects the human right to life and ecocide is a crime that protects the Earth and all inhabitants' right to life. Tragically, millions of people have lost their lives because of genocide. What is less well understood is that damage and destruction of nature (ecocide) brings not only death to ecosystems, biodiversity and species habitat, but is ultimately also a threat to human life. Humans are a part of nature and totally dependent on nature for survival. Large-scale destruction of nature causes large-scale death among humans.

■ Is ecocide a climate change law?

By putting a stop to manmade ecocide which is destroying the living systems, which are also carbon sinks, we can prevent parts of runaway climate change at source. The legal text recently completed by the expert drafting panel also does include the atmosphere under its definition of environment.

Why is ecocide not already part of the Rome Statute?

During the 1970s, 80s and 90s making ecocide an international crime was considered by the United Nations International Law Commission (ILC) for inclusion in the Code of Crimes Against the Peace and Security of Mankind, which later became the Rome Statute (ICC, 1998), and by the Sub-Commission on Prevention of Discrimination and Protection of Minorities for inclusion in the extension of the Convention on Genocide (UN, 1951). A number of questions kept arising: Should ecocide be a crime in peacetime and wartime?

Does the offender's intent to commit the crime matter or are the consequences of extensive destruction of ecosystems severe enough to warrant ecocide being a crime of strict liability regardless of the offender's intent? Ecocide as a concept was familiar and supported by many as one that should be enshrined in international law, however it was dropped by the ILC in 1996 (Gauger et al., 2012). An international crime of ecocide was included into the drafting of the Rome Statute and had the support of many countries, but was removed at a late stage, despite objections.

■ What is the International Criminal Court?

The International Criminal Court (ICC) is a permanent institution established by Article 1 of the Rome Statute. It is based in The Hague in the Netherlands, and can prosecute people for the crimes set out under Article 5 of the Rome Statute.

■ What is the connection between the International Criminal Court (ICC) and the UN?

The ICC is an independent institution but there are some links with the UN. For example, the UN Security Council can refer cases to the ICC, and when an amendment to the Rome Statute is proposed, it must in the first instance be notified to the UN Secretary General who then notifies the ICC member states.

■ The International Criminal Court has its flaws and prosecutions are slow, could this undermine the law of ecocide?

Though the system is not perfect, there have been many prosecutions by the International Criminal Court. Similarly, murder is a crime and many murderers are prosecuted, but that does not mean that all murderers are prosecuted and convicted. We do not have a perfect system in place. However, making something a crime does three things: it acts to prevent, prohibit and restore the damage caused.

Furthermore, the International Criminal Court was intended to be a court of last resort, to come into play when national courts could not or would not prosecute.

When it comes to war crimes and genocide, very often national courts are unwilling or unable to prosecute, but this is much less likely to be true for ecocide, because it is largely a corporate crime and can generally be prosecuted in national courts. Adding ecocide to the Rome Statute will open up for the ICC to resume the role it was intended for: a court of last resort. This will add relevance and strength to the Rome Statute and the ICC.

■ Why should industry spearhead ecocide law?

The question is not whether the world will change to a greener and more sustainable economy, but simply how soon and how this transition is achieved. Companies that are at the forefront of this change, taking initiatives to manage the change, are more likely to succeed in the future.

By spearheading ecocide law you show that sustainability matters to you and your organisation. It is a statement that goes beyond simply abiding by existing laws or targets.

The young people of today will live with the consequences of our present-day decisions. By supporting ecocide legislation, you will help to create a legacy for future generations.

Standing up for and promoting ecocide law is an ethical choice but also logical for leaders.

■ **What is the legal process for making ecocide an international atrocity crime?**

A head of state (or more than one) must propose an ecocide amendment to the Rome Statute, which is the governing document of the International Criminal Court. This amendment must be submitted at least three months before a meeting of the states parties to the Rome Statute (usually the assembly, held every December in The Hague, Netherlands). A simple majority at that meeting enables the amendment to enter into consideration. A Crime Review Conference is then likely to be convened.

With the agreement of 2/3 of member states (currently 82 out of 123) the amendment is adopted into the Statute and ratification and enforcement can proceed. Any country ratifying must enforce the law in its own domestic legislation after one year.

■ **Can ecocide law come into effect immediately?**

No. A transition period is necessary in part because the adoption procedure takes time, and importantly, because corporations and states need time to change practices in order to reduce risk of growth collapse and human suffering. However, such transitions can be effected in a limited time when required and our current global ecological crisis is rapidly creating a time limit for us.

The proposal of an ecocide amendment of the Rome Statute is the key moment which makes it visible on the horizon, enabling change to begin. But before a single state even ratifies this amendment to international law, it will begin to change the entire global conversation.

Can the law be applied retroactively?

No. It will apply to acts committed after the law is introduced.



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