



ECOCIDE LAW
ALLIANCE

BRIEF

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WHY AN ECOCIDE LAW

Making Ecocide an International Crime

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Background

In order to reach the UN global sustainable development goals (SDGs), society needs to respect and protect our ecosystems. This requires effective international legislation, legislation which is currently lacking.

The present set of rules consists of a patchwork of international agreements, each regulating a specific area. These agreements mainly consist of framework conventions (Henriksen, International Law, 2019), which leave implementation of environmental protection to the individual signatory states.

There are some instances of international criminal legislation to protect the environment, but they are rare. Instead, enforcing environmental law generally involves resorting to civil law. As a result, corporations may simply opt to ignore environmental protection as long as they have sufficient funds to pay the fines that might be imposed by civil justice (Stenkvis, Ekocid – det bortglömda brottet, Lund University, 2020). Those who knowingly commit Ecocide profit from it and thereby out-compete others, who limit their operation to environmentally acceptable behaviour. This creates an extremely non-level playing field which has resulted, and will continue to result, in the success of unscrupulous actors and the financial failure of their environmentally sustainable competitors.

Since large-scale environmental destruction requires large-scale operations, the actors involved tend to be well capitalized. Consequently, the very operations in most urgent need of stopping can in fact carry on uninterrupted (Greene, Fordham Environmental Law Review, 2019).

This realization has led to ever more calls for international criminal legislation in the environmental sphere. At present, only a single article in international criminal law even mentions the environment, and that is only in passing as a part of war crimes (Art. 8(2)(b)(iv) of the Rome Statute of the International Criminal Court).

As Eleanor Sharpston, a former Advocate General at the Court of Justice of the European Union, puts it, a tool is missing in the environmental law practitioner's tool kit. "If you have a screw that you need to undo, you need a screwdriver of the right size. ... Nothing else will do." When it comes to environmental offences: "we have in our toolbox a lot of small and medium-sized screwdrivers, but we don't have a big screwdriver, we don't have the biggest screwdriver, which is the Crime against Peace".¹ "Crimes against Peace" signifies the crimes set out in the Rome Statute.

"If you have a screw that you need to undo, you need a screwdriver of the right size. ... Nothing else will do"

–Eleanor Sharpston, a former Advocate General at the Court of Justice of the European Union

1. Webinar video: <https://www.youtube.com/watch?v=N2gxyIGHsD8>

Purpose

Our purpose is actively to support the introduction of ecocide as a fifth crime under the jurisdiction of the International Criminal Court (ICC) in The Hague, in addition to the existing four crimes of genocide, crimes against humanity, war crimes and the crime of aggression.

The wording must be sufficiently potent to effect real change, more powerful than that concerning ecocide in wartime, which is so weak that, in practice, it is impossible to prosecute.

The law needs to be powerful enough to protect vital ecosystems, and specific enough to provide a predictable legal framework for economic activities.

When large-scale pollution and environmental degradation become a crime under the Rome Statute, it establishes a legal framework and binding rules to contain human activities within the outer limits of what global ecological systems are capable of carrying.

If large-scale pollution and destruction of the environment were an international crime today, those responsible for deforestation in the Amazon, oil sands extraction in Canada and oil spills in the Niger delta could, in all likelihood, be brought to trial before a criminal court, or, perhaps more likely and far better, decision-makers would have refrained from the projects, redirecting activities towards environmentally less hazardous ventures.



Deforestation in the Amazon.

Proposed definition

In late 2020, following a request from two Swedish parliamentarians, Rebecka Le Moine (MP) and Magnus Manhammar (S), the Stop Ecocide Foundation² convened a panel of experts in international law from around the world, and in June 2021 the panel presented a carefully crafted definition of ecocide as a criminal offence. Since it is based on legal precedent, including concepts and definitions already in use in international law, it is ready to slide into place.

2. Stop Ecocide Foundation is the main fundraising and commissioning vehicle of Stop Ecocide International, which works globally at the intersection of legal development, political traction and public narrative.

The proposed amendment to the Rome Statute to include a crime of ecocide reads as follows:

1. For the purpose of this statute, “ecocide” means 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.
2. For the purpose of paragraph 1:
 - 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.

More information on the reasoning behind this proposed definition can be found on www.ecocidelawalliance.org/expert-panel-ecocide-definition.

Progress

After many years' work, the proposal to add ecocide to the Rome Statute has started to gain traction and has received public interest and support from, among many others, the following.

- The Maldives and Vanuatu (Dec. 2019).
- President Macron (June 2020).
- The Belgian Government (October 2020).
- The Finnish Minister for Foreign Affairs (December 2020).
- The Swedish Trade Union Confederation and the Olof Palme International Center (March 2020).
- The European Parliament (January 2021 ff).
- The foreign affairs committee of the Spanish Parliament (December 2020).
- The International Parliamentary Union, representing 179 parliaments around the world (May 2021).
- UN Secretary General (July 2021).
- Chile, Parliamentary members' bill (Aug. 2021).
- The International Corporate Governance Network, ICGN (Oct. 2021 & 2022.)
- Triodos Bank (Dec. 2022).
- The Council of Europe Assembly (Jan. 2023).
- Exponential Roadmap Initiative (Sept. 2023).
- EU Environmental Crimes Directive to criminalise ecocide level crimes (Nov. 2023).

More comprehensive and continuously updated information on public support for international ecocide law can be found on the [Ecocide Law Alliance](https://www.ecocidealliance.org) website.

In addition to the above, religious³ and political⁴ leaders across the world support the proposal. So do numerous and diverse other groups, from human rights lawyers to trade union leaders and grassroots activists, each with their own rationale for supporting the law.

This law is needed for many reasons.

3. <https://www.faithforecodelaw.earth>

4. <https://www.ecocidealliance.org>

Ecocide and the UN Sustainable Development Goals (SDG)

An ecocide law within the Rome Statute would affect the transgressions of four of nine planetary boundaries which threaten both advanced life on Earth and the basis of our civilisations: biodiversity loss, climate change, increased land exploitation and changed global phosphorus and nitrogen cycles.

An ecocide law would contribute to reducing greenhouse gas emissions, slowing biodiversity loss and overexploitation of land and resources, and decreasing nitrogen and phosphorus leakage.

As stated by the ICGN in its paper to COP 26 parties,⁵ “the UNSDGs define global priorities for public and private institutions. They provide a strategic vision for the future and can help guide how investors, companies, and other capital market actors to adapt long-term strategy, enhance risk management practices and innovate for a just transition towards net zero carbon emissions.”

Analyses of the correlations of the various SDGs clearly indicate that SDG 12, sustainable production and consumption patterns, is the SDG with the strongest positive effects on the attainability of the other SDGs, indirectly affecting no less than 14 of the 16 other SDGs.

Attaining sustainable production and consumption requires global rules: mandatory international law superordinate to national corporate law and international trade agreements, and capable of bringing those responsible to justice when national legal systems fail to do so.

An ecocide law would also have direct and indirect positive impact on a number of other SDGs, notably:

6. Clean water and sanitation

13. Climate action

14. Life below water

15. Life on land



“SDG 12, sustainable production and consumption patterns, is the SDG with the strongest positive effects on the attainability of the other SDGs”

5. The ICGN is a global organisation led by investors responsible for assets of \$59 trillion.



How can ecocide law affect our future trajectory?

Sustainable development. The Rome Statute, a piece of legislation already in existence, is amended in order to deal with the greatest challenge of our era: the transition to sustainable development. Making ecocide a crime contributes to reaching the SDGs.

An ecocide law will contribute to reducing pollution and environmental degradation, protect biodiversity and contribute to a reduction of climate change by protecting important carbon sinks, and impeding further investment in fossil fuel infrastructure.

Mass environmental degradation is a root cause of poverty, starvation, war and migration. An ecocide law slows further destruction and contributes to a more peaceful and stable world.

The objective is not primarily to punish perpetrators, but to act preventively, by providing a forceful legal incentive for decision makers (including investors, financial institutions and insurers) to make carefully considered decisions in matters concerning environmentally potentially dangerous activities.

Laws and values mutually affect each other. Making pollution and environmental degradation a crime affects the relationship between humans and nature, since criminal behaviour is also perceived as morally reprehensible. Thus, an ecocide law promotes values fundamental to a sustainable society. From the moment ecocide legislation is taken into serious consideration it will affect the public's sense of right and wrong and change the discourse in the public sphere and among decision makers. The public's awareness of the fundamental importance of the biosphere to human development and to the goals of Agenda 2030 will increase.

Actions have greater or lesser leverage to effect change. It goes without saying that ecocide legislation directly affects what is legal. This is in itself a powerful driver for change. At the same time, it contributes indirectly to changing our values, which has even greater effect. Taken altogether, ecocide law holds powerful leverage for transition to sustainability.

Procedure for adding ecocide to the Rome Statute

The Rome Statute currently lists four crimes: crimes against human-ity, genocide, war crimes and crime of aggression. The proposal is to amend it to include a fifth crime: ecocide.

The procedure for amending the Rome Statute is set out in the Statute and has already been put to use when crimes of aggression was added. There are four steps to include an additional crime.

1. Proposal

Any state which has ratified (officially agreed to) the Rome Statute of the International Criminal Court (ICC) may propose an amendment. There are currently 123 of these "States Parties".

2. Admissibility

A majority of those present and voting at the next annual assembly of the ICC agree that the amendment can be considered. One state, one vote.

3. Adoption into the Statute

At least a 2/3 majority of States Parties (currently 82/123) need to be in favour of the amendment. It is likely that the final text of the amendment will be discussed and agreed amongst States Parties.

4. Ratification

States Parties can then ratify (officially submit their agreement). One year after ratification, activities covered by the new crime of ecocide committed by that State Party's nationals or on its territory will be within the jurisdiction of the ICC.

The vital role of business

Open, strong, and active support from businesses and their leaders is crucial to encourage politicians to vote for inclusion of a new crime of ecocide in the Rome Statute.

In the short term, powerful special interests stand to lose if the law comes into force, and wide support from the business community is therefore essential.

Taking a stand for ecocide law is a powerful way to show leadership for human rights and biodiversity protection.

Business leaders can:

- Sign the Statement on Ecocide Law
- Publish their support
- Talk to their government/other leading politicians (including from currently non-governing parties)
- Promote ecocide law with their networks/industry associations

Businesses can also showcase the practices that will make their industry sustainable.

For a wider range of things businesses and other organisations can do, from acts requiring little effort to those based on greater engagement, please check our website, www.ecocidelawalliance.org.

As mentioned above, the International Corporate Governance Network (ICGN), a global organisation led by investors responsible for assets of \$70 trillion, has recommended governments to collaborate internationally to criminalize ecocide. The full statement can be found on www.icgn.org.

More voices, from all industries and all continents, will speed the advent of this necessary law.

Ecocide Law Alliance activities

The Ecocide Law Alliance coordinates and assists business support for an ecocide law through the following activities.

RESEARCH

Writing and publishing reports on how ecocide law supports a healthy global economy, boosts sustainable businesses, promotes human rights, helps bring us back to within planetary boundaries, and makes it possible to achieve the global goals for sustainable development.

COMMUNICATION

Spreading the word and connecting stakeholders via webinars, videos and news items in traditional and social media etc.

NETWORKING

Conferences bringing together leaders from different sectors to deepen understanding of the effects and value of ecocide law, and inspire action to get it into place.



www.ecocidelawalliance.org