



Ecocide Law  
Alliance

# Questions & Answers

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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.

The world today lacks an international law that clearly designates manmade mass destruction of planetary resources as a punishable crime. Several jurisdictions have weak legal frameworks to prevent systematic depletion of natural resources and others simply do not have the resources to ensure that their natural wealth is protected against the most harmful activities.

Criminalizing ecocide is a means of signaling that certain forms of behavior are so outrageously bad that the individual who engages in them will incur a criminal liability. It is a way of signaling that some things are so horrifying that if you decide to cause them, you will face sanctions anywhere in the world. Ecocide law is a powerful instrument for changing consciousness and a tool to prevent and punish certain forms of horrible behavior.

### ■ 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, the amendment is adopted. State Parties can then ratify the amendment and it will enter into force for those States Parties one year after their ratification.

From that date activities amounting to ecocide that take place on that state's territory or involving that state's nationals will be outlawed under international 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 that haven't ratified. Depending on how universal jurisdiction is applied in ratifying States Parties, non-nationals may be subject to prosecution for ecocide committed elsewhere. So even nationals of countries which are not States Parties (for example the US and China) could be affected.

■ **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 organizations 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.

■ **Who will be prosecutable?**

Any persons who provide essential contributions, by acts or decisions, to activities that most likely could inflict severe and either widespread or long-term damage to the environment could be subject to criminal prosecution. These persons may be public officials or officers of corporations or other bodies and most likely are they of higher rank. Subordinates can probably not contribute in the same essential way.

The Rome Statute also includes secondary modes of liability. Aiding and abetting requires that an individual carries out acts or omissions for the purpose of facilitating the crime, that encourage or support the principal crime. The act of assistance must affect the crime, and the accomplice must intend their own underlying act to help or influence.

It remains to be seen how ecocide is implemented in the Rome Statute and how practice develops in the ICC and other courts that will try liability for ecocide.

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?**

If a ratifying country has incorporated ecocide crime into domestic legislation, the crime may be prosecuted in national courts. If deemed more effective, a ratifying state can refer the matter to the Prosecutor of the International Criminal Court.

The International Criminal Court may exercise jurisdiction in a situation where a crime was committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the International Criminal Court, or the crime was referred to the ICC Prosecutor by the United Nations Security Council.



### ■ 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 criminalization 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.

### 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 organization. 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?**

Any State Party may 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 the General Assembly of the States Parties, 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.

The amendment enters into force for those States Parties which have accepted the amendment one year after their ratification.

■ **When can ecocide law come into effect?**

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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