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Ecocide: The Missing Convention

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ABSTRACT

Through centuries of continuous exploitation and damage to the environment, humans have degraded the resources for their own survival. Climate change and the extinction of several species are the outcomes of the long-term destruction of the environment. Still, big corporations and many states are ignoring this fact and damaging the environment for their own profit. For decades, various legal experts, environmentalists, and philanthropists have been working on criminalising "ecocide" and adding it as the fifth international crime to the Rome Statute. For the better implementation of this right, we need a law that criminalises that crime against the environment at a global level. Many countries have included crimes against the environment in their national penal codes. But we need a convention that harmonises the laws in the area of criminalising ecocide at a global level. This research paper is divided into four parts. The first part focuses on the evolution and conceptual understanding of the term "ecocide." The second part will deal with the legislative framework at the domestic and international stage. The third part will include the implication of ecocide in various states and case studies related to it. The last part will conclude with an analysis of the situation based on the criminalisation of ecocide and why there is a need for the convention on ecocide.

I. INTRODUCTION

The continuous destruction of environment done by the corporates and states shows the incompetency of the present environmental laws. Due to this many environment activists and law expert has come together in a movement to add ecocide as the 5th crime against peace in the Rome Statue. They are trying to change the perspective of the people to see nature as the partner in building a sustainable society. The discouraging diplomatic support and lack of enforcement in policies function as a barrier, but the spirit of youth leaders and changing environmental goals, may be able to promote the prevention of crimes against nature to an internationally recognised standard.²

Humanity is at a crucial stage in its evolution. Until recently, vested interests would have widely condemned and ridiculed such a viewpoint. According to a research study of scientific

¹ Author is a Student at Lovely Professional University, India.

² Femke Wijdekop, *Against Ecocide: Legal Protection for Earth*, G.T.I, 1 (2016), <http://www.greattransition.org/publication/against-ecocide>.

information, earth has reached its limit and we are crossing the natural boundaries. As a result of climate change many species of plants and animals are getting extinct as carbon emission is rising continuously. The world is undergoing catastrophic changes because of population increase, extensive loss of natural habitat, and climate change. Not only for humanity, but for much of life on Earth, these changes are likely to be devastating. Even now we might have time to stop the deterioration before we reach the edge, but time is running out. A range of drastic efforts are necessary to slow and reverse the harm that originated with the industrialization but has escalated during last 50 years. Cooperation between the nations and a vision for the same will be required to achieve the envisioned goals which is lacking in the world leaders. The concept of convention on law of ecocide is an important part of the change that require necessary measures.³

II. MEANING, CONCEPT AND EVOLUTION OF “ECOCIDE”

Agent Orange and Ecocide

The term "ecocide" was coined in the 1970s and was most associated with the Vietnam War. The US military was employing chemical warfare and wreaking havoc on the environment, prompting questions about whether America was committing "ecocide" in Vietnam.⁴ In 1970 at the Conference on War and National Responsibility Prof. Arthur W. Galston suggested a new international treaty to ban ecocide

Galston was constantly opposing in Vietnam against the deployment of the hazardous defoliant Agent Orange by the US military. Galston, a scientist, realised that his Ph.D. findings had been used to assist manufacture Agent Orange by the US military.⁵ Although the US stated that herbicides such as Agent Orange were not chemical weapons, Galston claimed that their deployment violated a UN resolution prohibiting the usage of dangerous gases in combat. He visited Vietnam to interview victims of the dangerous gases and lobby the American administration to stop employing the material. Agent Orange caused birth deformities in rats, according to a Department of Defense investigation. In 1971, President Nixon was obliged to stop the use of Agent Orange because of this report.⁶

Galston was a biologist, not a lawyer, and he was running for office on a specific topic rather

³ Sailesh Mehta and Prisca Merz, *Ecocide – a new crime against peace?*, Vol. 17(1) 3–7 *Env. L. Rev.*, 3-4 (2015), <http://arquivos.integrawebsites.com.br/91917/cf5d97b7dd83113ef317f964fecccbbc.pdf>

⁴ DAMIEN SHORT, *REDEFINING GENOCIDE, SETTLER COLONIALISM, SOCIAL DEATH, AND ECOCIDE* 40 (2016).

⁵ *Id* at 17.

⁶ Jeremy Pearce, *Arthur Galston, Agent Orange Researcher, Is Dead at 88*, *NY TIMES*, June 23, 2008, <https://www.nytimes.com/2008/06/23/us/23galston.html>.

than crafting a legal provision.⁷ He resisted the use of herbicides in battle, but he did not consider resource exploitation to be "ecocide" in a subsequent interview.⁸ Nonetheless, this is an example of a new legal concept spreading quickly. The phrase "ecocide" started to be seen in news reports about Agent Orange⁹, and another works regarding the Vietnam War after Galston invented the term. Of adopting a more expansive term that includes activities during peacetime, most authors mentioned to 'ecocide' as an act of war.

UN Stockholm Conference 1972

It was first instances in the history where the term ecocide was heard at an international stage. Representatives from 113 countries assembled in Stockholm, Sweden, in June 1972 for the United Nations Conference on the Human Environment.¹⁰ In his inaugural address, Prime Minister of Sweden, referred to the act of ecocide done during Viet Nam war and suggested the that atrocities done by America needs global attention as it is an act of ecocide as it destroyed forests and fields by using chemical bombs.¹¹ More envoys, including Indian Prime Minister Indira Gandhi, criticised the war as an environmental threat. "Almost every popular movement and non-governmental organisation" (NGO) addressed the issue, according to one observer.¹² The Conference, however, did not solely focus on war, but also on other topics such as international pollution and environmental deterioration.¹³

Draft International convention on the crime of ecocide

Professor Richard A. Falk recommended an International Convention on the Crime of Ecocide in 1973. The proposed ecocide regulation was completely dissected, characterized, and outlined in this draught that the Contracting States affirm that ecocide, whether conducted in the times of harmony or in the times of war, is a wrongdoing under global regulation that they attempt to anticipate and rebuff.¹⁴

A required deliberation "to upset or annihilate, in entire or to some degree, a human

⁷ SHORT, *supra* note 3, at page 41.

⁸ DAVID ZIERLER, THE INVENTION OF ECOCIDE: AGENT ORANGE, VIETNAM, AND THE SCIENTISTS WHO CHANGED THE WAY WE THINK ABOUT THE ENVIRONMENT 18 (2011).

⁹ Arthur H. Westing, Herbicides as Agents of Chemical Warfare: Their Impact in Relation to the Geneva Protocol of 1925, 1 ENVTL. AFF. 578, 583 (1971), <https://core.ac.uk/download/pdf/71459256.pdf>.

¹⁰ Tord Björk, The emergence of popular participation in world politics: United Nations Conference on Human Environment 1972 (Fall 1996), https://www.academia.edu/7852241/Human_Environment_1972.

¹¹ *Id.* at 19.

¹² *Id.* at 20.

¹³ SHORT, *supra* note 3, at 41.

¹⁴ Richard A. Falk, Environmental Warfare and Ecocide: Facts, Appraisal and Proposals, 9 *Belgian Rev. Int'l L.* 1, 21-24 (1973), <http://rbdi.bruylant.be/public/modele/rbdi/content/files/RBDI%201973/RBDI%201973-1/RBDI%201973.1%20-%20pp.%201%20%C3%83%C2%A0%2027%20-%20Richard%20Falk.pdf>.

environment" is remembered for the Suggested Convention.¹⁵ It doesn't include a broad classification of ecocide, but a collection of activities that can be considered ecocide.

UN sub-commission on Prevention of Discrimination and Protection of Minorities

UN Sub-Commission on Genocide was tasked with reviewing the efficiency of the Convention on genocide and making recommendations for revisions.¹⁶ A published study looked into the idea of drafting additional conventions to make actions of genocide punishable that were not covered by the original 1948 Convention.

The revision to the Research, ecocide was cited once more in 1985. Some members anticipated that the definition of genocide be expanded to include "ecocide," which is defined as "hostile changes, habitually irreversible, to the climate - for instance, through atomic blasts, biochemical weapons, genuine contamination and corrosive downpour, or obliteration of the tropical jungle - that risked the presence of whole masses, whether intentionally or unintentionally."¹⁷ Native peoples are frequent targets of such atrocities, according to the report, and the UN is paying more attention to their rights. Others, on the other hand, contended that ecocide must be classified as crime against peace rather than in wartime.¹⁸

The suggested law of ecocide has broadened its reach beyond war particularly to industrial and business activities such as atomic blasts, contamination of nature, and rain forest annihilation; and the motive has been broadened to encompass both deliberate and criminal carelessness. The proposal to add "ecocide" in the Genocide Convention, on the other hand, never gained traction.¹⁹

III. LEGISLATIVE FRAMEWORK AT THE INTERNATIONAL LEVEL

National laws on law of ecocide

In spite of the way that the ILC excluded Article 26, a few nations used the first draft articles to foster their particular offense of ecocide. During peacetime, 10 nations have passed regulation making law against ecocide.

The wordings of ILC Article 26 were strictly followed by the phrasing of these ecocide

¹⁵ *Id.*

¹⁶ U.N. Human Rights Comm., Sub-comm. On Prevention of Discrimination and Protection of Minorities, Study of the Question of the Prevention and Punishment of the Crime of Genocide, U.N. Doc. E/CN.4/Sub.2/416 (July 4, 1978), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G78/070/47/PDF/G7807047.pdf?OpenElement>.

¹⁷ Benjamin Whitaker, Special Rapporteur on the Economic and Social Council, Revised and Updated Rep. on the question of the prevention and punishment of the crime of genocide, ECOSOC, ¶ 33, U.N. Doc. E/CN.4/Sub.2/1985/6 (July 2, 1985), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G85/123/55/PDF/G8512355.pdf?OpenElement>.

¹⁸ *Id.* at 17.

¹⁹ SHORT, *supra* note 3, at 68

guidelines stringently keeps the language of the International Law Commission Article 26: " A person who deliberately causes or coordinates the causing of broad, long haul, and serious harm to the regular habitat will, on conviction thereof, be condemned. " In 1990, Vietnam come to be the main country to proclaim "ecocide" a wrongdoing, doubtlessly in light of the ecological obliteration brought about by the Vietnam War. "²⁰

After the separation of USSR in 1990, Russian Federation and many former Soviet Union States incorporated "ecocide" in their criminal codes from 1994 to 2001.²¹ Kyrgyzstan, for example, defines ecocide in Art. 374 as Enormous obliteration of the creature or plant realms, defilement of the air or water assets, and furthermore commission of different activities equipped for causing a biological fiasco will be deserving of hardship of freedom for a term of 12 to 20 years."²² The protection of the environment is one of the aims of Kyrgyzstan's Criminal Code, and a whole part.²³

Domestic environmental courts have been established in some nations to hear issues concerning ecological harm. Guatemala lately introduced an anti-ecocide law and established an environmental court to hear such accusations.²⁴ Cases have been tried in national courts under these ecocide laws. Following the poisoning of a major river by a palm oil firm, which killed all the fish, a Guatemalan community filed a suit against the firm in court.²⁵ The office of the prosecutors charged the president of the business that supplied the radioactive coal with ecocide and began criminal inquiries into the government authorities who sanctioned the hazardous cargo.

However, there have been few accounts of effective convictions in some nations that have domestic ecocide legislation. The allegations against the executives of the business were dropped due to absence of data, and the government representatives got acquitted. After being presented to the Environmental Court in Guatemala, the matter stalled. One environmental activist was slain on the courthouse steps, while the palm oil firm pressured and harassed others. The palm oil facility resumed after a temporary halt and is still polluting the river today.²⁶ These instances may serve as a warning about the limitations of national laws against

²⁰ Penal Code Vietnam, Ch. 5, art. 342 (1990).

²¹ SHORT, *supra* note 3, at 48.

²² Criminal Code Kyrgyzstan, Ch. 34, art. 374 (1997).

²³ *Id* at Ch. 1, art. 2 § 1.

²⁴ Alana Marsili, A New Court in Guatemala Tackles Ecocide, FRONTLINES, (2015), <https://www.usaid.gov/news-information/frontlines/resilience2015/new-court-guatemala-tackles-ecocide>

²⁵ Guatemala's Environmental Crimes Court Hears First Case, SUSTAINABLE BUSINESS (Jan. 19, 2016), <https://www.sustainablebusiness.com/guatemalasesenvironmental-crimes-court-hears-first-case-55448/>

²⁶ Anastacia Greene, *The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?*, 30 Fordham Env. L. Rev., 21 (2019),

ecological crimes, as well the possible demand for a global authority to judge.

Parliamentarians and authorities from all across the world are now debating the issue of ecocide. President of France, Emmanuel Macron is one of ecocide's highly conspicuous defenders. In excess of the vast majority of the French residents' gathering, an assortment of 150 individuals picked by parcel to guide the country's environment strategy, casted a ballot recently to make ecocide unlawful. Macron answered by reporting that the organization would look for legitimate guidance on the most proficient method to integrate it into French regulation. Nevertheless, he went one bit farther.²⁷

In some countries of Europe, the two ecological coalitions in Belgium have presented an ecocide regulation that recommends resolving the issue on both a public and worldwide level — a concept that is also supported by Swedish legislators. "We've met all of the norms, and we've achieved all of our objectives." While presenting a motion in house of representatives a Swedish MP that the law should be put forward in actions from papers.

International instruments for environmental protection

Traditionally, ecological safety has not been a major source of concern of nations worldwide. It has instead been considered as a political and scientific issue. Nonetheless, global patterns of environmental degradation have definitely resulted in an expansion of international environmental law. However, unlike civil rights law, law for environment is primarily concerned with interstate relations, with people and other non-State entities playing a minor role. It has mostly concentrated on demonstrating Government accountability rather than addressing "individual polluters' behaviour."²⁸

Despite the fact that the IEL body does not include human rights at its core, States' acknowledgement of the inseparability of human rights and environmental protection has been progressively growing, notably from various international environmental conferences. The United Nations Conference on the Human Environment, held in Stockholm in 1972, is widely regarded as the first international event to clearly establish the inextricability of human rights and environmental protection. 'Man has the fundamental right to freedom, equality, and adequate conditions of life, in a quality environment that permits a life of dignity and well-

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1814&context=elr>

²⁷ Sophie Yeo, *Ecocide: Should killing nature be a crime?*, BBC (6th November 2020), <https://www.bbc.com/future/article/20201105-what-is-ecocide>

²⁸ Andrea Curcio Lamas, *Ecocide Addressing the large-scale impairment of the environment and human rights*, 29, <https://repository.gchumanrights.org/bitstream/handle/20.500.11825/501/Curcio%20Lamas.pdf?sequence=1&isAllowed=y>

being,' according to Principle 1 of the Stockholm Declaration.²⁹

Some environmental crimes are now classified as "international environmental crimes." These include environmental offences involving operations that take occur across national borders or have a global impact. Their mission, however, is confined to transnational harm caused by harmful trashes,³⁰ ozone-reducing materials,³¹ illicit trawling, and³² flora and fauna industry.³³ Significantly, while their individual agreements make no express mention of the notion of human rights, they nevertheless provide implied safeguard to some human rights.

For example, the Basel Convention on the Control of Hazardous Wastes, which was adopted in 1989³⁴, has numerous allusions to well-being of humans. It is defined as environmentally viable organization of dangerous wastes or other materials and ensuring all reasonable precautions to safeguard the nature and human life from the harmful effects of these dangerous elements."³⁵

These documents are also significant since they are lawfully enforceable and include implementation measures, which is unusual in fields of environmental laws. In general, these treaties oblige States to criminalise particular environmental offences on a national basis, with punishments ranging from jail to simple fines or restitution. These enforcement techniques are examples of strategies to provide further environmental protection. Unfortunately, many environmental crimes are committed in countries with weak governments and ineffective systems to punish them. This is why, in July 2015, the United Nations General Assembly called on its state parties to take further useful steps to counteract and combat offences against nature; this assertion should be seen as a certain backing of the need for a worldwide ecocide regulation.³⁶

IV. NEED FOR ECOCIDE AS 5TH CRIME AGAINST PEACE

In recent times the demand for adding ecocide as 5th crime against peace into the Rome statute is increasing as legal experts are searching for the complete definition for ecocide. Ecocide

²⁹ *Id* at 30

³⁰ Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal (adopted 22 March 1989, entered into force 4 May 1992)

³¹ Montreal Protocol on Substances that Deplete the Ozone Layer (16 September 1987, entered into force 1 January 1989)

³² International Whaling Commission, International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948)

³³ Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (adopted 3 March 1973, entered into force 1 June 1975)

³⁴ *Supra* note 50

³⁵ *Id* at art (2)8.

³⁶ *Supra* note 28, at 35

cases could be trailed before the ICC if the law of ecocide is added to the Rome Statute. Higgins depicted ecocide as "the broad annihilation, harm to, or damage to a specific region's ecosystem, either by humans or different causes, so much that serene pleasure by the inhabitants of that region has been extraordinarily diminished." Higgins shortly based on this term to make a standard rule, which states: "Actions or mistakes committed in the midst of harmony or struggle by any senior individual throughout State, company, or whatever other person's actions that reason, add to, or can be anticipated to cause, genuine biological, environment, or social misfortune or harm to or obliteration of ecosystem(s) of a given territory(ies), to such an extent that serene happiness by the residents has been or will be seriously lessened." To be considered serious, the impact should be everywhere, or extreme."³⁷

A law against destruction of nature, for many proponents, is about modifying the concepts and theories that underpin the current legal system, not just introducing a new crime. According to this, it is a "revolutionary" endeavour to adjust a framework that has neglected to safeguard the nature.

- a) **Moral Obligation:** According to Mark Allen Gray an international law for ecocide is a moral duty of the society towards its upcoming generations. Ecocide is characterized as the wilful or reckless infringement of key state and basic freedoms, as well as the accompanying standards: (1) significant, broad, or long-term biological destruction, (2) global consequences, and (3) misuse, as per Gray's definition. The extreme idea of ecocide, when characterized along these lines, might be followed back to international law ideas.³⁸

The component of waste - natural harm on a level that penetrates an obligation of care owed to humankind overall – is what elevates ecocide from a violation to a crime, according to Gray.³⁹

- b) **Strict Liability:** Higgins pushes for total ban over compromises and quotas in her book. Her work focuses on the shortcomings of laws intended at minimising or diminishing a specific injury, instead of the regulations that outright prohibits crime. Using subjugation as an illustration she said that; merchants accepted that oppression was fundamental for the economy, and they upheld for negotiations, standards, and different cut-off points to "limit" bondage's effect. William Wilburforce, for example, campaigned for the abolition of slavery in the United Kingdom.

³⁷ Greene, *supra* note 26, at 2-3.

³⁸ Mark Allan Gray, *The International Crime of Ecocide*, 26 CAL. W. INT'L L.J. 215, 216 (1996), <https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1335&context=cwilj>

³⁹ *Id* at 218

Following the abolition of slavery, the same merchants quickly transitioned towards exporting other items. She looks at the adequacy of early natural developments to boycott DDT and forestall harmful radiations to the disappointment of resulting compromise strategies to direct unsafe substances. Firms can change assuming that the public authority forbids the conduct first. However, relying on market systems to "create a construct to safeguard the earth" is "building on sand." Prevent ecocide, Higgins suggests "correcting all compromise provisions, regulations, rules, and regulations: (i) displace all harming and disastrous practices with abjurations, and (ii) incorporate arrangements to permit reclamation of harmed areas to be focused on over existing practices dependent exclusively upon monetary punishments."⁴⁰

- c) Corporate Accountability:** Businesses would be required to examine the ecological effects of their choices if there was a legislation prohibiting harm against nature. Proponents argue that an ecocide law would hold businesses liable for environmental damage.⁴¹ Higgins emphasises the negative consequences of the current legal system, in which corporations are treated as "fictional individuals" who can sue, advocate, and cause harm but are not prosecuted in criminal court for their actions. As a result, there is a strong incentive to maximise profit at all costs. A legislation of ecocide would impose a responsibility of care and a legally binding obligation on corporations. Directors, CEOs, and top executives might all be held criminally liable for the company's environmental problems. This would provide an incentive for businesses to be more environmentally conscious and avoid the reckless or profit-driven acts that have resulted in several environmental disasters. By acting as a check on corporate recklessness, an ecocide law can prevent such calamities from arising in the first place.

Superiors cannot refer to absence of information or expectation as a guard since the proposed regulation is severe responsibility. The bigger a company is, the simpler it is for its leaders to stay away from criminal obligation. In view of the size and intricacy of enormous associations, no single official will have absolute responsibility, plan, or information on their lead, making it hard to consider any one individual responsible for violations of direction. Ecocide, being a severe obligation wrongdoing, keeps away from this proviso by zeroing in on the consequence of the applicable demonstration as opposed to the reason. Accordingly, organizations are constrained to go to drive taking lengths to keep such exercises from happening in any case.⁴²

INADEQUACIES IN CONTEMPORARY INTERNATIONAL LAW increasing problem

⁴⁰ Greene, *supra* note 26, at 26-27

⁴¹ *Id* at 27

⁴² *Id*

of ecological harm.⁴³ As there is a lack of completely organized international agreement on ecological disputes; thus, a patchwork of multiple environmental accords creates laws on specific issues. Individual countries are left to adopt domestic legislation and ways of compliance with environmental treaties that solely manage (protecting whales or ducks), and it is up to them to do so.⁴⁴

As a minimum 2 environmental agreements oblige countries to enact national criminal laws, but these are "sporadic and restricted in scope." As a result, many people are calling for a specified worldwide law for ecocide that classifies and gathers the crimes, to which the group of experts deems to be the most serious risks to the environment.⁴⁵ At the moment, there is no such world-wide offense against the environment.

There is only one article in the Rome Statute – Article 8(b)(iv) – that talk about the environment, that just ambiguously with regard to war crimes. From the time of ICC's origin, Corporations can overlook the principles and cause the expenses of common liabilities as an expense of carrying on with business in the event that they so want. Civil fines can urge businesses to consider environmental damage as a cost of doing business; if that cost is surpassed by profit, pollution can still be justified.⁴⁶ Since damages to the nature are the result of a planned, relentless money-making plan, the discouraged worth of criminal punishment for crimes against nature could be more justified than for different fields of international criminal law.⁴⁷

V. EFFECTIVENESS OF LAW ON ECOCIDE UNDER ICC

This chapter emphasis to check the competency of ICC as the suitable court for criminalising ecocide and adding it in Rome Statute. Some academics embrace the concept of a universal law for criminalising ecocide however argue against the International Criminal Court being the appropriate venue for the same.⁴⁸ For any criminal provision against ecocide, the Rome Statute raises a variety of concerns.

⁴³ Frédéric Mégret, *The Case for a General International Crime Against the Environment* (April 3, 2010), <https://dx.doi.org/10.2139/ssrn.1583968>.

⁴⁴ *Id*

⁴⁵ *Id* at 3

⁴⁶ Hamdan Qudah, *Towards International Criminalization of Transboundary Environmental Crimes* (May 2014) (SJD dissertation, Pace University School of Law), <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1015&context=lawdissertations>

⁴⁷ Mégret, *supra* note 51, at 5

⁴⁸ Mark Drumbl, *International Human Rights, International Humanitarian Law, and Environmental Security: Can the International Criminal Court Bridge the Gaps?*, 6 ILSA J. INT'L & COMP. L. 305, 327 (1999), <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1258&context=ilsajournal>

- a) **Primary focus on rights of Humans:** The main objective of the International Criminal Court was to safeguard the rights of man and dealing with its violations.⁴⁹ The need to protect worldwide harmony and security following World War II was the essential driver behind the formation of ICC. Its main goal is to deter crimes that endanger the harmony and safety of humanity. The Rome Statute is human-centric, with the goal of safeguarding humans from brutalities and disturbance in peacetime. The role of core crimes in achieving this goal is evident, while the role of environmental crimes may be less clear, have drawn a clear link between environmental destruction and conflict, claiming that environmental damage will cause chaos, dislocation, and war for resources. Some, nonetheless, have one or two misgivings of this hypothetical suspicion, guaranteeing that as opposed to taking on conflicts over assets, humanity could participate to adopt arrangements.⁵⁰
- b) **Lack of specialization to prosecute ecocide:** The court may lack the professional knowledge required to prosecute environmental crimes. Environmental law is neither a specialty of the prosecutors or the judges. Minimum 9 judges need to have experience in criminal law and procedure, and five out of them must be expert of relevant areas.⁵¹

ICC Court's composition mirrors the ICC's core purpose. The judges are not specialized in environmental law they specialize in criminal law or humanitarian law. According to the profiles of all judges present in ICC none have any familiarity in environmental law.⁵² To consider environmental issues, the current ICC Court would require significant outside assistance and time. International environmental law is far different from the International criminal law, and both are such diverse and specific subjects. It is challenging to foresee many judges with appropriate knowledge in both subjects. The ICC judges are not proficient in environmental law even though they have expertise in human rights and criminal law.

Inviting ICC judges and prosecutors to investigate incidents of "ecocide" might jeopardise the court's credibility, leaving it vulnerable to accusations that its decisions are based on ignorance or inexperience. This could in fact erode, rather than boost, environmental crime's (already poor) credibility. As a result, many experts have suggested that crimes against nature to be

⁴⁹ Peter Sharp, Note, *Prospects for Environmental Liability in the International Criminal Court*, 18 VA. ENVTL. L.J. 217 (1999).

⁵⁰ Mark Notaras, *Should Ecocide Be Deemed a Crime against Peace?*, OUR WORLD, <https://ourworld.unu.edu/en/should-ecocide-be-deemed-a-crime-againstpeace>

⁵¹ *Supra* note 51, at 327.

⁵² Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court (ICC-ASP/3/Res.6) 1 - Consolidated version, https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-3-Res.6-CONSOLIDATED-ENG.pdf

punished in an independent environmental court. Judges and prosecutors in that court might have the particular scientific expertise needed to effectively examine and decide environmental concerns. However, proponents of bringing ecocide before the ICC have urged that environmental crimes be dealt with by expert board of ICC judges.⁵³ International Criminal Court (ICC) has restricted powers as a criminal court. The Rome Statute permits victims to obtain forfeited funds from the criminal, but it makes no provision for the restitution or rehabilitation of harm. It lacks traditional "equity" remedies such as imposing a sanction for preventing potential harms, for example. Furthermore, in instance related to ecocide, the profits would be given to people who were harmed rather than to the land itself.⁵⁴

- c) **Jurisdictional Issues:** Other restrictions are set down in the Rome Statute. It only has authority over Signatory Countries under its rules. The United States, Russia, China, and India are among the world's largest countries that have not joined the Rome Statute. These countries are also among the world's worst polluters.⁵⁵ The impact of any 'ecocide' clause in the ICC is restricted without the participation of, and jurisdiction over, these big polluters. Individuals, or "natural persons," are subject to the jurisdiction of the International Criminal Court.⁵⁶ It lacks the authority to file lawsuits against any country or "fictitious individuals," like companies. That could be a problem because nations at times actively implicated in ecological harm (such as land frauds or colonisation); but, as with other "core crimes," individual leaders of state may be tried under the ICC.⁵⁷

Corporates are responsible for the vast majority of commonly mentioned acts of peacetime ecocide. The ICC, on the other hand, cannot charge businesses. Despite the fact that a draught provision was introduced to charge "legal people" in front of the ICC, it was defeated.⁵⁸ In theory, criminal punishment can be included in the Rome Statute that can hold head of the companies responsible for their actions. Superiors can be expected criminally to take responsibility for wrongdoings perpetrated by subordinates under their effective command and

⁵³ Gar Smith, *Ecocide, the Fifth War Crime?*, EARTH ISLAND JOURNAL (2010), https://earthisland.org/journal/index.php/magazine/entry/ecocide_the_fifth_war_crime/

⁵⁴ *Supra* note 51, at 328.

⁵⁵ *Who are the world's biggest polluters?*, REUTERS (June 2, 2017), <https://www.reuters.com/news/picture/who-are-the-worlds-biggest-polluters-idusrtxrksi>

⁵⁶ Rome Statute, *supra* note 40, art. 25

⁵⁷ Laurent Gbagbo, *Former Ivory Coast Leader, Acquitted of Crimes Against Humanity*, N.Y. TIMES (Jan. 15, 2019), <https://www.nytimes.com/2019/01/15/world/africa/laurent-gbagbo-ivory-coast-icc.html> (<https://perma.cc/9W3B-4G5H>)

⁵⁸ Mohammad Saif-Alden Wattad, *Rome Statute & Captain Planet: What Lies Between Crime Against Humanity and the Natural Environment*, 19 FORDHAM ENVTL. L. REV. 265, 279 (2009), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1637&context=elr>

control in the event that they knew or had data about the wrongdoing and neglected to do whatever it may take to keep the wrongdoing from occurring.⁵⁹

d) Alternative to the ICC: Scholars and activists have recommended alternative strategies of dealing with the issue of environmental degradation instead of using the Rome Statute to make ecocide an international crime.

a) *International Convention for law of ecocide:* A new Ecocide Convention could be negotiated instead of revising the Rome Statute to include ecocide. As part of this Convention, an International Environmental Court might be formed to manage cases that involve international environmental crime. The Convention might incorporate ecocentric elements such as restitution and recovery for the impacted region, as well as injunctions to prevent additional ecological damage, under this proposal. Furthermore, the Convention will not be bound by the previous constraints of Rome Statute, and it may require mens rea at significant level. An International Environmental Court might comprise of competent ecological professionals who can assess environmental harm and potential solutions. A court like this might also rule on less serious acts that harm the environment. The court may take upon criminal as well as civil cases rather than referring cases of ecological harm to the International Criminal Court.⁶⁰

b) *International environmental court:* Alternatively, 'ecocide' may be considered a transnational crime with domestic courts enforcing it indirectly. Following that, these offences are prosecuted in domestic courts under national laws. Other environmental statutes with enforcement measures should follow this concept.⁶¹

If the term "ecocide" were defined in this way, it might be easier to use. Countries could simply use existing domestic courts instead of attempting to establish a separate court with autonomous rules of procedure, funding mechanisms, and jurisdiction. A treaty like this would establish a mandate, compelling countries to enact national legislation prohibiting ecocide.⁶²

VI. CONCLUSION

Ecocide term does not still occur in the domain of international law, but it has gained worldwide attention in recent decades. Regardless of the seriousness of the outcomes of ecocide, the existing international legal framework's combined safety of human rights and the environment

⁵⁹ Rome Statute, art. 28.

⁶⁰ *Supra* note 48, at 44

⁶¹ *Id* at 44-45

⁶² *Id*

is insufficient to counteract ecocide. As a result, making ecocide an international crime can be seen as a crucial step toward increasing protection. Raising the significance of ecocide as an international crime will serve as a significant warning, forcing countries and corporates to cautiously consider potential environmental and human rights consequences before embarking on any new project.

The concept of presenting ecocide before the International Criminal Court as 5th crime against peace seems tempting at first. And the Rome Statute's history, which includes a section on the environment in several draughts, appears to favour its inclusion. On closer inspection, however, the suggested ecocide law appears to conflict with some other sections of the current Rome Statute, including the need for criminal intent and command responsibility, as well as the ICC's broader emphasis on humanitarian issues and human rights. If an ecocide law is enacted, it should be decided by a specialised international court. Furthermore, a Convention on Ecocide might establish more adaptable solutions. A distinct convention for ecocide focusing on the ecosystem as a whole might include provisions to preserve and recover from ecological damage. Separate provisions for climate change and other injuries that are difficult to punish could be included in a new Convention.

As the world's environmental crises worsen, so does the necessity for a coordinated worldwide response. Even if not adopted in its current form, the concept of an ecocide law establishes a framework for prohibiting harmful and damaging actions against the environment.
