RETHINKING ECOCIDE: REIMAGINING ENVIRONMENTAL PROTECTION THROUGH THE RECOGNITION OF ECOCIDE INTO NATIONAL & INTERNATIONAL CRIMINAL JURISPRUDENCE

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ABSTRACT

Amidst the global advent of rapid climate change, there has been an increasing advocacy on the world stage in recent times to recognize ecocide as a crime. Currently, ecocide is recognized as a crime in 12 countries, and it is being considered in 27 other countries. The discussion on ecocide has gained significant popularity after the constitution of the Independent Expert Panel in 2021 for the Rome Statute amendment, whose recommendations have been critically analysed. The jurisprudential personhood of the environment as a victim has been explored with differing meanings associated with the term 'victim' under the International Criminal Court (ICC) Rules of Procedure has been explored. From the Bhopal Gas Tragedy to the Sterlite copper plant catastrophe, India continues to experience severely egregious ecological devastation despite having extensive environmental legislation, with offenders usually escaping liability. In order to ascertain if India's current legal system is enough for deterring and penalising ecologically disastrous activities, the study reviews the country's laws, including the Environmental Protection Act of 1986, the Indian Penal Code, and disaster management statutes. Even tragedies such as the slow sinking of Joshimath have been discussed extensively with various instances potentially falling under the bracket of ecocide emanating right from the Vietnam War and the Chernobyl incident to the recent Californian fires. This paper investigates the normative and legal feasibility of introducing ecocide as a criminal offense under Indian law. The research examines whether India's existing environmental and criminal liability regimes adequately align with emergent international obligations, particularly those stemming from the Rome Statute's proposed ecocide amendments, the International Law Commission's Draft Principles on the Protection of the Environment in Relation to Armed Conflicts, the Stockholm+50 Declaration, recommendations of the Independent Expert Panel on Ecocide et cetera.

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The paper further conducts a comparative study of India with different countries such as France, the Philippines, Latin American countries et cetera adopting legislations such as these. While achieving international consensus on the precise wording of a definition clarifying the scope and extent of ecocide as a fifth international crime under the Rome Statute may be arduous and uncertain, this paper attempts to contend with the idea of ecocide being assimilated into Indian legislation. Differing thresholds of mens rea and actus reus to constitute Rome Statute level crimes have been considered as well. The paper attempts to analyse the efficacy of the strict liability and absolute liability principles in light of ecocide. The paper concludes with actionable policy recommendations calling for a legislative, institutional, and organizational overhaul, including but not limited to prosecutorial reforms, corporate liability, liability against public officials and individuals, and potentially creating specific independent environmental prosecutorial agencies. The paper advocates for international recognition of ecocide, as well as the creation of an enforceable ecocide doctrine that reconciles national constitutional commitments under articles 48A and 51A(g), as well as international responsibilities. The recommendatory proposals are ultimately framed within the lens of environmental justice, intergenerational equity, and rightful victim compensation. The paper adopts a doctrinal research methodology throughout.

Keywords: ecocide, liability, comparative environmental law, Rome Statute, environmental disaster

Introduction

The 21st century has ushered in an era marked by unprecedented ecological degradation. From vanishing forests and melting polar ice caps to air rendered toxic and oceans choking with plastic, the damage inflicted upon the Earth has not only been vast but often irreversible.

Ecocide, a term etymologically derived from the Greek *oikos* (home) and the Latin *caedere* (to kill), literally refers to "killing one's home."[3] In 2021, the Independent Expert Panel convened by the Stop Ecocide Foundation proposed a legal definition of ecocide 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."[4] This marked the first serious

[3] Polly Higgins et al., Earth is Our Business: Changing the Rules of the Game 68 (Shepheard-Walwyn 2012).
[4] Independent Expert Panel for the Legal Definition of Ecocide, Proposed Amendment to the Rome Statute, Stop Ecocide Foundation (June 2021), available at https://www.stopecocide.earth/legal-definition.

and overt effort to mark ecocide as a fifth international crime under the Rome Statute. This move was followed by a lot of countries being proactive and codifying ecocide domestically, as has been discussed further in the paper. Subsequently, in a landmark move, Vanuatu, alongside Fiji and Samoa, formally submitted a proposal to the International Criminal Court (ICC) Assembly of States Parties in September 2024, seeking an amendment to include ecocide as a new standalone crime under Article 5 of the Statute, which currently only recognizes genocide, crimes against humanity, war crimes and the crime of aggression as crimes within the jurisdiction of the ICC.[5]

Currently, ecological damages during times of war are justiciable under Article 8, but the definition remains frighteningly narrow and does not account for ecocide during times of peace. The term 'ecocide' may justifiably be applied to peacetime activities that destroy or damage ecosystems on a massive scale, thus filling up and catering to the legislative gap in the status quo. Normally, the environment that has been destroyed or harmed would be rather big. It might be a significant river, an enclosed sea, a mountain range, an aquifer, a forest, a wetland, or another terrain with unique plant or soil types. The ramifications of its degradation might extend throughout a vast region, or possibly the entire world, posing a serious threat to the health of many other ecosystems in a chain reaction. In many cases, the harm would be irreversible, and the environment would be irreparably damaged.[6] Putting the health or well-being of a species or the human population at danger, or causing significant damage to the environment, are examples of ecocide. Any action that may eventually endanger the planet or life on Earth is considered ecocide. An action that is "one and done" and easily reversible is typically not seen as ecocide. Acts that are deemed ecocide exacerbate the detrimental effects of global warming that people are currently experiencing.[7]

Examples of ecocide

Ecocide could occur in various forms because ecocide is an activity that causes a long-term negative domino effect on the environment, which would often times be irreversible or extremely hard to remedy. Some common examples of ecocide may include deforestation,

[5] Historic Move: Pacific Nations Submit Proposal to Criminalize Ecocide at ICC, EcoJurisprudence (Sept. 23, 2024), https://ecojurisprudence.org/historic-move-pacific-nations-ecocide-icc/ (accessed July 5, 2025).
[6] Aditi Jain & Charu Soni, Ecocide: A New International Crime, 2(2) J. Corp. & Leg. J**.** 1181 (2022).
[7] Stephanie Safdie, Ecocide: Definition and Examples, Greenly (Nov. 8, 2023), https://greenly.earth/en-gb/blog/ecology-news/ecocide-definition-and-examples (accessed July 4, 2025).

damage to the ocean, water pollution, soil pollution, air pollution et cetera.[8] A few examples from actual historic events that could be deemed as ecocide have been listed below.

The Chernobyl nuclear power plant accident emitted toxic radioactive materials into the atmosphere. Surprisingly, the toxic radioactive materials so emitted were even more than the Hiroshima nuclear bombings.[9]

The Aral Sea, which lies in Central Asia between Kazakhstan and Uzbekistan, used to be one of the biggest lakes in the world. The Amu Darya and Syr Darya, two significant rivers, fed it, and the locals relied heavily on it for fish. However, the Aral Sea started to rapidly decline in the 1960s as a result of a number of reasons, including climate change and Soviet irrigation efforts. Much of the Aral Sea's shoreline had receded and the sea had lost more than half of its volume by the 1980s, leaving behind a huge area of salt flats. This catastrophe has had a catastrophic effect on the environment, harming both the local inhabitants and wildlife due to soil salinisation and desertification. With the majority of its water being diverted for farming, the Aral Sea is now only a small portion of its previous size. The remaining water is unsuitable for agricultural or human use due to its excessive salinity and pollution. Kazakhstan, Uzbekistan, Turkmenistan, Kyrgyzstan, and Tajikistan are among the nations that border the Aral Sea and are still dealing with the social, economic, and environmental fallout from this natural disaster.[10]

The water in the Niger Delta has been poisoned by consecutive oil spills, which has resulted in the inability to grow or harvest crops. The superfluous production of a non-renewable resource like oil is impacting both wildlife and food supply – as locals near the Niger Delta are left famished without any means to cultivate any new edible produce.[11]

The Amazon rainforest has also repeatedly suffered deforestation due to rampant industrialization and unchecked urbanization. The Amazon has lost the amount of trees equal to the size of France, all for the sake of creating new land for livestock farming or harvesting timber.[12]

[8] Stephanie Safdie, Ecocide: Definition and Examples, Greenly (Nov. 8, 2023), https://greenly.earth/en-gb/blog/ecology-news/ecocide-definition-and-examples (accessed July 4, 2025).
[9] Ibid.
[10] What Happened to the Aral Sea?, American Oceans, https://www.americanoceans.org/facts/what-happened-to-the-aral-sea (accessed July 4, 2025).
[11] Stephanie Safdie, Ecocide: Definition and Examples, Greenly (Nov. 8, 2023), https://greenly.earth/en-gb/blog/ecology-news/ecocide-definition-and-examples (accessed July 4, 2025).
[12] Ibid.

There have reportedly been over 1.8 trillion pieces of plastic floating in the Pacific Ocean, which is now being considered as the world's worst oceanic landfill.[13]

Historical Evolution of Ecocide

Ecocide is not a new concept. The historical roots of the term can be traced to the Vietnam War era in the 1970s, where the U.S. military's use of Agent Orange to defoliate large tracts of Vietnamese forests led to catastrophic environmental damage and devastating human health consequences.[14] The U.S. military was using chemical warfare and wreaking havoc on the environment. The term was first used by Professor Arthur W Galston in the context of the aforementioned war. Agent Orange was a dioxin-rich herbicide that deforested over five million acres and caused multigenerational, irreversible health effects.[15] This was said in the 1970 Conference on War and National Responsibility.[16]

Post this, even the Swedish Prime Minister Olof Palme declared at the 1972 United Nations Conference on the Human Environment, also known as the Stockholm Conference, that the use of war technology for environmental destruction should be condemned as ecocide. He further censured the bombings and the indiscriminate use of bulldozers and herbicides on natural ecosystems. He demanded and called for international attention to the issue.[17]

International Action against Ecocide Prevention

The Rome Statute of the International Criminal Court, which was enacted in 1998 and went into effect in 2002, solely addresses the crime of ecocide during times of war.[18] The United States, France, and the United Kingdom objected, and the Rome Statute was amended to exclude the mention of ecocide in peacetime. The difference arose from the colonial powers' resistance to the inclusion of cultural genocide in the talks that resulted in the Convention on

[13] The Great Pacific Garbage Patch, The Ocean Cleanup, https://theoceancleanup.com/great-pacific-garbage-patch/ (accessed July 5, 2025).
[14] Marjorie Cohn, The Devastation of Agent Orange, Truthout (Apr. 29, 2014), https://truthout.org/articles/the-devastation-of-agent-orange/.
[15] Arthur Galston, Science and Social Responsibility: A Case Study, 8 Annals N.Y. Acad. Sci. 17 (1972).
[16] Anja Gauger, Mai Pouye Rabatel-Fernel et al., *Ecocide is the Missing 5th Crime Against Peace* (Human Rights Consortium, 2012), https://sasspace.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf (accessed July 5, 2025)
[17] Olof Palme, Speech at the UN Conference on the Human Environment, Stockholm (1972), https://digitallibrary.un.org/record/1146075.
[18] Lauren Eichler, Ecocide Is Genocide: Decolonizing the Definition of Genocide, 14(2) Genocide Stud. & Prevention 104 (2020), https://doi.org/10.5038/1911-9933.14.2.1720.

the Prevention and Punishment of the Crime of Genocide, often known as the Genocide Convention.[19] Then came a period where the discussion on ecocide was almost lost out.

Despite the moral weight of the term, it has never been codified in the four cornerstone crimes under the Rome Statute of the International Criminal Court (ICC): genocide, crimes against humanity, war crimes, and the crime of aggression.[20] In the Rome Statute article 8 defining war crimes, article 8(2)(a)(iv) comes closest to the idea and conception f the definition of ecocide as has been aforementioned. Yet, it has two stark insufficiencies –

1. It only deals with 'property' – whether the conception of property would go on to involve the environment is yet to be seen or ruled, as the word 'property' has not been explicitly defined in the Rome Statute.
2. It only deals with extensive destruction and appropriation of property during times or war, and not during times of peace, when ecocide could happen at either of those times.

The absence of a legal recognition of ecocide as an international crime has allowed corporate and governmental actors to destroy the environment with impunity, especially in regions where regulatory enforcement is weak.[21] Countries in the Global South, including India, Brazil, Nigeria, and Indonesia, are disproportionately affected by such actions, both due to ecological fragility and colonial legacies that have structured extractive economic models.[22] The co-founder of the Stop Ecocide International, Jojo Mehta, at this, said, "Our planet is on fire, and we are watching it burn. The crime is real, but the law is silent,"[23]

In recent years, a profound momentum has emerged at the intersection of climate change, human rights, and international criminal law. As of 2025, 12 countries have criminalized ecocide in some form, including Russia, Ukraine, Georgia, Belarus, Kazakhstan, Kyrgyzstan, Belgium, Tajikistan, Moldova, Armenia, France and Vietnam, with Vietnam being the first

[19] Martin Crook & Damien Short, Marx, Lemkin and the Genocide–Ecocide Nexus, 18(3) Int'l J. Hum. Rts. 306 (2014), https://doi.org/10.1080/13642987.2014.914703.
[20] Rome Statute of the International Criminal Court art. 5, July 17, 1998, 2187 U.N.T.S. 90.
[21] Richard Rogers, *Defining Ecocide: The Legal and Normative Challenge*, *J. Int'l Crim. Just.*, Vol. 19, Issue 3 (2021).
[22] David Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2011).
[23] Jojo Mehta, Stop Ecocide Speech, International Parliamentary Union, Geneva (2021), https://www.stopecocide.earth.

country to recognize ecocide as a crime since 1990 and Belgium being the latest recognize it in 2024.[24]

During wartime, ecological crimes can be prosecuted under Article 8 of the ICC's Rome Statute, which prohibits the launching of an attack in the knowledge it will cause "widespread, long-term and severe damage to the natural environment". Ukraine is currently collecting evidence and building legal cases against Russia in the ICC over environmental damage stemming from Moscow's 2022 invasion and seizure of the Chernobyl and Zaporizhzhia nuclear power plants.[25]

Another 27 countries are considering similar legislation, often with active lobbying from civil society and environmental defenders.[26]

One of the most important and significant efforts in this front has been made by the Stop Ecocide Foundation, co-founded by Jojo Mehta (executive director) and Polly Higgins. It works with governments, politicians, diplomats and wider society. The organisation has branches or associate groups in almost 50 countries.[27] They were instrumental in setting up the Independent Expert Panel for the Legal Definition of Ecocide, convened in 2021 and proposed the definition of ecocide to be "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."

For the purpose of paragraph 1:

"Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

"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;

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[24] *Ecocide: Should Destroying Nature Be an International Crime?*, Context (Asia Pacific), https://www.context.news/nature/ecocide-should-destroying-nature-be-an-international-crime (accessed July 5, 2025).
[25] *Ecocide: Should Destroying Nature Be an International Crime?*, Context (Asia Pacific), https://www.context.news/nature/ecocide-should-destroying-nature-be-an-international-crime (accessed July 5, 2025).
[26] Stop Ecocide International, *Country Tracker: Ecocide Legislation Status* (2025), https://www.stopecocide.earth.
[27] Ramon Antonio Vargas, *'A Powerful Solution': Activists Push to Make Ecocide an International Crime*, The Guardian (Sept. 26, 2022), https://www.theguardian.com/environment/2022/sep/26/ecocide-international-crime-environment (accessed July 5, 2025).

"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;

"Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;

"Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.[28]

The definition that has been proposed is quite wide-ranging and all-encompassing and also vividly challenges the inherent anthropocentric bias in internal law. It positions the environment not merely as a resource, but as a rights-holder. The phrase "unlawful or wanton" is the backbone of the proposed ecocide definition, meaning that the act is either manifestly unlawful based on present codification, or is of such moral recklessness to be considered as wanton. It encompasses both codified breaches as well as outrageous conduct, which, though not criminalized, is nonetheless considered universally condemnable.

The term "wanton" has also been used previously in international jurisprudence. In the context of warfare, Article 147 of the Fourth Geneva Convention[29] has also identified "wanton destruction of property" as a grave breach.

Further, the definition also introduces mens rea. The broadening of the ambit of mens rea in the definition has a better scope of being applied to international crimes now. The word 'knowledge' instead of mere 'intention' is certainly a welcome step.

Under Article 30 of the Rome Statute—the default mental requirement for international crimes—liability generally requires either intent or awareness that the consequence will occur in the ordinary course of events. Generally, it would co-opt into this definition of mental element defined in the article, but environmental crimes require a special degree of nuance. The Rome Statute bar of mens rea is very high for crimes of ecocide, as environmental crimes seldom occur with such a high degree of certainty. Rather, they unfold cumulatively, or in stages, with great scientific complexity and political obfuscation. The Panel's definition significantly relaxes the standard of mens rea, while still retaining it, to a sort of recklessness-

[28] Independent Expert Panel, Legal Definition of Ecocide (2021), available at https://www.stopecocide.earth/legal-definition (accessed July 5, 2025).
[29] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, art. 147.

based standard giving precedence to *dolus eventualis*.[30] It targets perpetrators who may not directly "intend" ecocide but who foresee it as a likely consequence and proceed anyway, often for economic or strategic gain.

The use of the phrase "substantial likelihood" is legally purposeful. It avoids the ambiguous language of "possible" or "foreseeable" and instead implies that a reasonable person in the accused's position, given the information available, would have been highly aware that their actions were likely to cause grave harm. In most large-scale environmental projects—whether fossil fuel extraction, ocean floor mining, or industrial agriculture—Environmental Impact Assessments (EIAs) and scientific reports are to be submitted before the project to assess the gravity and quantum of anticipated environmental damage.[31] Therefore, compliance norms would be stronger once corporations and governments start assessing threats and are more mindful of the scope of damage they may cause, and only such anticipated damage may be exempted with norms as may be prescribed for each violation pertaining to the specific environmental violation in question. This aligns with international environmental law principles such as: The Precautionary Principle, which requires action to prevent environmental harm even in the face of scientific uncertainty[32]; and The Duty of Due Diligence, which mandates that states and actors take all reasonable preventive measures to avoid transboundary environmental damage.[33] Politically, it closes the escape hatch of plausible deniability that many actors exploit. Governments and corporations often claim they didn't "know" the damage would be that bad, or that someone else should've spoken up. This clause rebukes that culture of deferral and diffused responsibility. It also fits perfectly into the legal maxim – "*ignorentia facti doth excusat, ignorentia facti non excusat*" (ignorance of facts is excusable, but ignorance of the law is not excusable). The defence of plausible deniability would usually not be available when the law defines strict compliance standards and threat thresholds.

The definition overall reflects accepted standards in a number of areas:

[30] Kai Ambos, *Treatise on International Criminal Law*, Vol. 1: *Foundations and General Part* 238–40 (Oxford Univ. Press, 2013).
[31] R. K. Craig, *Environmental Law in Context* 337–43 (4th ed., West Academic 2016).
[32] Rio Declaration on Environment and Development, Principle 15, U.N. Doc.
[33] International Law Commission, *Draft Articles on Prevention of Transboundary Harm*, with commentaries, 2001, art. 3.

The Rome Statute's Article 8(2)(a)(iv) already makes it illegal to launch a military attack knowing that it will result in extensive, protracted, and serious environmental harm that is out of proportion to the military advantage.[34]

Similar "knowledge of consequences" criteria are applied in international humanitarian law to determine a commander's responsibility in bombardment and scorched-earth campaigns.[35]

Environmental risk awareness frequently serves as the foundation for stringent or quasi-strict liability under civil environmental liability regimes, especially in EU and Latin American jurisprudence.

Going further in the analysis of the definition of the Panel, the word “severe”, “widespread”, and “long term” have been used here, with the words “either” and “or”, thus taking a reasonable middle ground, learning from the extremities of past laws. The ENMOD Convention used a low threshold: “widespread, long-lasting, or severe”,[36] while Protocol I of the Geneva Conventions (Art. 35(3)) set the bar too high by requiring harm to be widespread, long-term, and severe.[37] The word “widespread” as well, represents not just a geographical area, but a broader ecological and demographic footprint. It covers transboundary harm, while evoking the principle of state responsibility for actions having trans boundary ramifications.

The recognition of ecocide during times of peace reaffirms a number of past international principles as well. The International Law Commission’s (ILC) Draft Principles on the Protection of the Environment in Relation to Armed Conflicts (2022) affirm that environmental protection is not suspended during armed conflict, but instead carries obligations before, during, and after hostilities, as does the Rome Statute Article 8(2)(a)(iv).[38] Similarly, the Stockholm+50 Declaration reaffirmed states’ commitment to ensuring a healthy planet for the prosperity of all, emphasizing intergenerational equity and urgent action against environmental degradation.[39] The United Nations Human Rights Council Resolution 48/13

[34] Rome Statute of the International Criminal Court art. 30, July 17, 1998, 2187 U.N.T.S. 90.
[35] Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law*, Rule 43 (ICRC, 2005).
[36] Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, art. I, May 18, 1977, 1108 U.N.T.S. 151.
[37] Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), arts. 35(3), 55(1), June 8, 1977, 1125 U.N.T.S. 3.
[38] Int’l Law Comm’n, *Draft Principles on the Protection of the Environment in Relation to Armed Conflicts*, U.N. Doc. A/CN.4/L.937 (2022).
[39] United Nations Environment Programme, *Stockholm+50: A Healthy Planet for the Prosperity of All – Our Responsibility, Our Opportunity* (June 2022), https://www.stockholm50.global.

(2021) recognized the right to a clean, healthy, and sustainable environment as a universal human right.[40] Together, these changes show that ecocide is a natural step in the development of international environmental and human rights law rather than just a radical legal invention.

Comparative State Practice towards Ecocide

A growing number of countries have begun to recognize ecocide as a criminal offense or are moving toward doing so through legislative proposals. While the approaches vary in terminology, scope, and enforceability, they collectively demonstrate that criminal environmental liability for systemic or large-scale harm is not merely aspirational, but operational. This section critically analyses the legal frameworks adopted by France, Ukraine, the Philippines, Latin American jurisdictions, and a few emerging proposals in the Global North and South, focusing on how these states have framed mens rea, actus reus, penalties, enforcement, etc.

France

In 2021, France became the first major Western nation to enact a law using the word 'ecocide'. It was introduced as a part of a larger "Climate and Resilience Law".[41] The statute criminalizes the act of "seriously polluting" the environment when committed intentionally and with enduring impact.[42] Here, a stricter connotation has been adopted with respect to intention. The penalties range from up to 10 years of imprisonment and a fine of €4.5 million**,** extendable to ten times the profits generated by the environmental crime.[43] A punishment as stringent as this could potentially act as a massive deterrent factor to prevent ecocide. Businesses would also be wary of expending their capital on environmentally risky ventures, as such profits would eventually have to be forsaken.

Critics contend that the French law lacks the seriousness necessary for actual ecocide, despite the use of forceful language. First of all, it requires intent rather than criminalising wanton or careless behaviour.[44] Second, it has extensive exemptions for actions that are "authorised by law," so protecting military operations and massive projects that are approved by the state.[45]

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[40] U.N. Human Rights Council Res. 48/13, *The Human Right to a Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/RES/48/13 (Oct. 8, 2021).
[41] *Loi n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets*, [2021] JORF 0196.
[42] Ibid., art. L.231-3 of the French Environmental Code.
[43] Ibid., arts. L.231-4 to L.231-6.
[44] Laure-Emmanuelle Husseini, *France's 'Ecocide' Law Lacks Teeth*, *Le Monde Diplomatique* (2021), https://mondediplo.com.
[45] Ibid.

Environmental non-governmental organisations like Notre Affaire à Tous have referred to it as a "cosmetic reform"—a political compromise devoid of substance.[46]
Nevertheless, despite shortcomings, it seems like a steo in the right direction.

Ukraine

Ukraine offers one of the most explicit and longstanding criminal law recognitions of ecocide. Under Article 441 of its Criminal Code, "mass destruction of flora or fauna, poisoning of air or water resources, and other acts that could cause an ecological disaster" are punishable by up to 15 years imprisonment.[47] The law, enacted in 2001, places Ukraine at the vanguard of ecocide codification, even predating the ICC's ecological discussions.

In 2022, amid the Russia-Ukraine war, Ukrainian officials filed charges invoking ecocide for the destruction of the Donbas coal mines, chemical spills, and the alleged shelling of nuclear infrastructure.[48] This marks one of the first instances in modern history where ecocide is being prosecuted in the context of armed conflict through the Rome Statute Article 8(2)(a)(iv)[49]. However, the possibility of a result or punishment seems bleak and unlikely with Russia not being a signatory to the Rome Statute.

Philippines

The Philippines is among the few countries where the doctrine of environmental personhood has been woven into both statutory proposals and precedents. In 2019, the Environmental Protection and Rights of Nature Act, also known as the Ecocide Bill (House Bill No. 2954),[50] was introduced in Congress. It proposes the crime of ecocide as the "widespread or long-term and severe destruction of ecosystems", with punishments ranging up to reclusion perpetua (life imprisonment).[51]

In addition to criminal sanctions, the bill calls for the recognition of nature as a rights-holder, echoing the "Rights of Nature" movement seen in Latin America.[52] Although not yet passed into law, this proposal reflects a paradigm shift—from anthropocentric environmental law to

[46] Notre Affaire à Tous, *Ecocide Law: A Missed Opportunity*, Press Release (Aug. 2021), https://notreaffaireatous.org.
[47] Criminal Code of Ukraine, art. 441 (2001).
[48] Denys Shmyhal, *Ukraine Seeks International Investigation for Russia's Environmental Crimes*, Press Statement, Kyiv Post (June 2022), https://kyivpost.com.
[49] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, art. 8(2)(a)(iv).
[50] House Bill No. 2954, 18th Cong., Republic of the Philippines (2019).
[51] Ibid., § 5.
[52] Nicanor Perlas, *The Rights of Nature in the Philippines*, *RightsofNature.ph* (2020), https://rightsofnature.ph.

one rooted in ecocentric jurisprudence, aligning with indigenous philosophies and postcolonial critiques.[53]

Additionally, the Philippines Supreme Court acknowledged intergenerational equity in Oposa v. Factoran[54] and gave future generations locus standi, strengthening a legal system that might soon be prepared to accommodate ecocide laws.

Ecuador

Ecuador's 2008 Constitution recognizes nature (Pachamama) as a legal subject, with the right "to exist, persist, maintain and regenerate its vital cycles."[55] Article 71 permits individuals and communities to demand enforcement of these rights before courts.[56] While enforcement has been modest, cases like the Vilcabamba River litigation[57] in Ecuador demonstrate that nature can, in practice, be represented in court, setting the ground for ecocide trials in the future.

Although not framed as "ecocide" in a criminal law sense, these developments shift legal systems toward a relational ontology that foregrounds nature's intrinsic worth, challenging conventional legal categories of victimhood.[58]

Further, Belgium and Mexico are currently debating legislative proposals to criminalize ecocide, while the European Union (EU) is in the process of expanding its Environmental Crime Directive to include "the most serious crimes against the environment," which could soon encompass ecocide.[59] In 2021, the European Parliament passed a resolution calling on the European Commission to explore criminalizing ecocide under EU law.[60]

These developments show a continental shift toward not just recognizing ecocide but embedding it within the internal criminal codes and supranational regimes that govern

[53] Athena C. Mejia, *Environmental Personhood and Filipino Indigenous Jurisprudence*, 48 *Phil. L.J.* 99 (2021).
[54] Oposa v. Factoran, G.R. No. 101083 (S.C., July 30, 1993).
[55] Constitution of the Republic of Ecuador, 2008, art. 71.
[56] Ibid., art. 72.
[57] Wheeler v. Director of Provincial Government of Loja, Constitutional Court of Ecuador, Judgment No. 11121-2011-0010 (2011).
[58] Maria Valeria Berros, Rights of Nature in Latin America: On the Diffusion of a New Legal Category, J. Hum. Rights & Env't 11.1 (2020): 71–93.
[59] European Commission, Proposal for a Directive on the Protection of the Environment through Criminal Law, COM(2021) 851 final.
[60] European Parliament Resolution of 20 January 2021 on the EU Strategy for Biodiversity (2020/2273(INI)).

transboundary environmental harm.[61] If passed, the EU model may set a global standard akin to the GDPR's effect on data privacy regulation.

Understanding India's Environmental Jurisprudence

This section offers a structured examination of the historical development of Indian environmental law, statutory and constitutional commitments to environmental protection, the scope and challenges of existing criminal and civil remedies, (iv) doctrines of strict and absolute liability and their fit into ecocide jurisprudence, and (v) an analysis of India's institutional and normative readiness to adopt ecocide as a crime.

Historical Development of Indian Environmental Law

Environmental protection in India, prior to the 1970s, was largely governed by common law tort principles—particularly nuisance, trespass, and negligence. However, these remedies were inherently private and reactive, offering relief to individuals post-injury, rather than proactively preventing environmental degradation. Moreover, the burden of proof often fell on the plaintiff to demonstrate causation and actual loss, rendering the framework ineffective against systemic ecological harm or slow-onset degradation like groundwater depletion or deforestation.[62]

Colonial-era statutes like the Indian Forest Act, 1927, and The Easements Act, 1882, were more focused on regulating resource extraction and safeguarding imperial economic interests than anything.[63]

The Indian Penal Code, 1860 (IPC) criminalized certain environmental harms under sections related to public nuisance (Sections 268–290) and negligent acts endangering human life (Sections 284–289), but these were generic and insufficient to address systemic ecological destruction.[64] For instance, Section 277 IPC, which criminalizes the fouling of water, prescribes a maximum punishment of only three months—a penalty disproportionate to modern industrial violations.[65]

[61] Kai Ambos & Valerie Cabanes, *Ecocide in the European Legal Framework*, *Max Planck Institute for Foreign and International Criminal Law* Working Paper No. 25 (2022).
[62] Shyam Divan & Armin Rosencranz, Environmental Law and Policy in India (2d ed., Oxford Univ. Press 2001) at 20–25.
[63] Indian Forest Act, No. 16 of 1927, India Code (1927); Easements Act, No. 5 of 1882.
[64] Indian Penal Code, 1860, §§ 268–290, 284–289.
[65] Indian Penal Code, § 277.

A turning point occurred after the 1972 Stockholm Conference, following which India enacted several environmental statutes in rapid succession: The Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981, The Environment (Protection) Act, 1986 (EPA), The Forest (Conservation) Act, 1980 and The Biological Diversity Act, 2002.

Of these, the EPA, 1986, passed in response to the Bhopal Gas Tragedy, remains the most comprehensive environmental legislation. It grants wide powers to the central government under Sections 3–6 to issue notifications, impose standards, restrict industries, and protect biodiversity.[66] However, the penalties under Section 15—five years' imprisonment or ₹1 lakh fine—are widely criticized as inadequate, especially for large corporations.[67]

The 1976 Constitutional (42nd Amendment) inserted Article 48A[68] and Article 51A(g)[69] into the Constitution, introducing for the first time an express constitutional mandate for environmental protection. While Article 48A, a Directive Principle, requires the State to "protect and improve the environment," Article 51A(g)[70] imposes a fundamental duty on every citizen to safeguard natural resources.

Indian environmental jurisprudence derives its greatest strength not from statutory law, but from constitutional interpretation, especially Article 21 of the Constitution, which guarantees the right to life. In Subhash Kumar v. State of Bihar, the Supreme Court held that the right to life includes the right to enjoy pollution-free air and water.[71] The Court further held that: "If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 for removing the pollution of water or air which may be detrimental to the quality of life."[72] Further, this was the case reaffirmed the polluter pays principle in Indian environmental jurisprudence.

Further, in Vellore Citizens' Welfare Forum v. Union of India, the Supreme Court held that: "The Precautionary Principle and the Polluter Pays Principle are essential features of Sustainable Development. They are part of the environmental law of the country."[73] Further,

[66] The Environment (Protection) Act, No. 29 of 1986, India Code (1986), §§ 3–6.
[67] Ibid., § 15.
[68] India Const. art. 48A.
[69] India Const. art. 51A(g)
[70] Ibid.
[71] Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
[72] Ibid.
[73] Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647, ¶11 (India).

"Environmental measures — by the Government or the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."[74] Such precedents help pave the way for ensuring that provisions like ecocide can be statutorily implemented with legal precedents already backing their validity and constitutionality.

Similarly, in M.C. Mehta v. Union of India,[75] and a series of public interest litigations (PILs) expanded this doctrine a lot further.

Although Article 48A and 51A(g), being directive principles of state policy, are not enforceable in the Court, courts have used these principles to justify expansive environmental rulings.[76]

Derived from Rylands v. Fletcher, the strict liability principle holds a person liable for damage caused by hazardous activity, regardless of negligence.[77] In India, this doctrine was initially applied in M.C. Mehta v. Union of India (Oleum Gas Leak case), where a gas leak from Shriram Industries caused massive health impacts.[78] However, the Court in that case took a more radical turn. In Oleum Gas Leak, the Supreme Court created a new doctrine of "absolute liability", tailored for India, stating that enterprises engaged in hazardous activity owe absolute and non-delegable duty to ensure no harm is caused. This liability applies without exceptions or defenses, unlike strict liability, and is part of constitutional tort law under Article 21.

The absolute liability doctrine is uniquely Indian and well-suited for ecocide. Its application does not require proving intent or negligence—only that an ultra-hazardous activity caused massive environmental harm. In theory, a statute criminalizing ecocide could incorporate this doctrine to lower evidentiary burdens, making prosecution of industrial polluters more feasible. It could also be used to define aggravating circumstances for criminal sentencing. That said, these doctrines have thus far been used only in civil contexts—for compensation. Translating them into criminal culpability would require statutory incorporation, especially

[74] Ibid.
[75] M.C. Mehta v. Union of India, AIR 1987 SC 965 (India).
[76] India Const. arts. 48A, 51A(g).
[77] Rylands v. Fletcher, (1868) LR 3 HL 330.
[78] M.C. Mehta v. Union of India, (1987) 1 SCC 395 (Oleum Gas Leak).

since Indian criminal law mandates proof beyond reasonable doubt. But philosophically and jurisprudentially, the shift is achievable.

Despite the existence of criminal provisions in environmental law (e.g., EPA 1986, Water Act 1974), these have rarely been invoked meaningfully. Regulatory capture, delayed prosecution, and lack of investigative capacity plague enforcement mechanisms. Even in the Bhopal case, the conviction under Section 304A IPC (negligent homicide) led to minimal punishment for a disaster that killed over 15,000 people and devastated generations.[79] Indian laws define neither ecological destruction or environmental crimes.

Moreover, criminal cases under environmental statutes require sanction from regulatory authorities rife with bureaucratic hurdles, often undermining prosecutorial independence. The National Green Tribunal (NGT), established in 2010, provides civil remedies and fines but has no criminal jurisdiction, weakening the deterrent effect.[80] Thus, without a criminal offence of ecocide, Indian law cannot punish or deter acts of willful, widespread environmental destruction, especially those with transboundary, irreversible, or intergenerational impacts.

India's environmental jurisprudence has undergone an impressive transformation—from common law to constitutional law, from weak statutory deterrence to strong judicial mandates. Yet despite this progress, India still lacks a legal framework capable of addressing ecocide-level harms.

The absence of a dedicated crime for ecocide means that neither corporations nor state officials can be criminally held accountable for large-scale environmental destruction unless it fits existing (and inadequate) categories like negligence, public nuisance, or minor pollution offences.

Furthermore, India's legal doctrines, especially absolute liability, are doctrinally robust enough to be embedded within an ecocide statute. But without a statutory definition, enforcement mechanisms, and penal consequences, these doctrines remain underutilized. If properly legislated, ecocide could become the missing bridge between constitutional environmentalism and criminal accountability.

Criticisms for the adoption of Ecocide as a Fifth International Crime

While the definition of ecocide as accepted by the panel is comprehensive in its own right, it

[79] Union Carbide Corp. v. Union of India, AIR 1990 SC 273; Criminal Case No. 8460/1996, Bhopal CJM Court.
[80] National Green Tribunal Act, No. 19 of 2010, § 14.

suffers from a high degree of ambiguity and vagueness. Terms like *wanton, substantial likelihood, severe, widespread,* and *long-term* are inherently subjective and may vary widely across jurisdictions, ecosystems, and evidentiary scenarios.[81] Legal scholars have noted that the vagueness of these terms may violate the principle of *nullum crimen sine lege certa*, the maxim of modern criminal jurisprudence requiring that laws should be clear and ascertainable.[82] According to Elies van Sliedregt and Sergey Vasiliev, "international crimes must be exceptional, precisely defined, and rooted in customary law, lest they dilute the legitimacy of the Rome Statute."[83] The aforementioned terms may have a different application on a case-by-case basis, thus increasing legal uncertainty, without the presence or the anticipation of a pre-defined threshold to fulfil these conditions.

It is also argued that intent has already been defined in the Rome Statute, and going away from the core legislative norms of the statute itself would defeat the purpose of the statute. The use of a knowledge-based standard ("substantial likelihood") departs from the intent- focused framework of the Rome Statute, which predominantly requires specific intent or purpose to commit crimes, especially in genocide and aggression.[84] By incorporating foreseeability and recklessness instead of intent, ecocide risks broadening criminal culpability to potentially negligent industrial or state behaviour, a move many argue is incompatible with the structure of international criminal law.

It could be argued that an approach moving away from anthropocentrism to ecocentrism may not be the most desirable. International criminal law (ICL) has traditionally been concerned with the protection of individual rights, human security, and the punishment of morally egregious acts perpetrated by individuals or state actors during armed conflict or political oppression. The crimes currently covered under the Rome Statute—genocide, war crimes, crimes against humanity, and the crime of aggression—are each defined by their intentional and mass-scale harm to human beings.[85] Ecocide, by contrast, centers the environment as the primary victim, which is a significant doctrinal shift. While laudable in moral terms, this

[81] Christina Voigt & Jaap Spier, *Vagueness in International Environmental Law: A Cause for Concern?*, 20 J. Envtl. L. 375, 379 (2021).
[82] Claus Kress, *On the Outer Limits of Crimes Against Humanity: The Concept of Humanity and the International Legal Protection of the Environment*, 22 Eur. J. Int'l L. 3, 4–5 (2011).
[83] Elies van Sliedregt & Sergey Vasiliev, *Pluralism: A New Framework for International Criminal Justice*, in Pluralism in International Criminal Law 4 (van Sliedregt & Vasiliev eds., Oxford Univ. Press 2014).
[84] Christina Voigt & Jaap Spier, *Vagueness in International Environmental Law: A Cause for Concern?*, 20 J. Envtl. L. 375, 379 (2021).
[85] Margaret M. deGuzman, *Is the Rome Statute's Aggression Provisions Consistent with International Law?*, 25 Leiden J. Int'l L. 849, 850–851 (2012).

represents a conceptual departure from the anthropocentric foundation of the Rome Statute. Though human suffering often accompanies environmental degradation, the harm targeted under the ecocide definition may be non-human-centric, such as damage to coral reefs, glaciers, or biodiversity. Critics argue that such a shift may dilute the moral clarity and theoretical cohesion of ICL.[86]

Further, by criminalizing industrial activities like fossil fuel extraction, deforestation, or large-scale mining, ecocide law would push ICL into the terrain of environmental regulatory law, which is typically handled through treaties, civil fines, or domestic penalties.[87] The move risks confusing ICL's focus and blurring the line between criminal punishment and administrative regulation.

Another major criticism stems from the practical limitations of the International Criminal Court (ICC), particularly its jurisdictional reach, state cooperation, and resource constraints. The ICC relies on State Party cooperation to investigate and arrest individuals, yet many states, especially the largest carbon emitters and environmental offenders, are not parties to the Rome Statute. This includes China, Russia, India, and the United States.[88] Even among State Parties, political selectivity and under-enforcement have plagued the Court, especially in Africa-related prosecutions. Adding ecocide to the Court's mandate, especially with its wide-ranging evidentiary and scientific demands, may overburden the ICC's already fragile structure, further undermining its legitimacy.[89] The principle of 'one country, one vote' followed in the ICC amendment procedure may also deter the possibility of this amendment coming to fruition, as it would require a two-thirds majority, and convincing major global powers to accept such an amendment could prove to be a herculean task.

Criticisms for the adoption of Ecocide as a Crime in the Indian Statutory Regime

A line of criticism contends that India already possesses a sufficient body of environmental legislation, and that the problem lies not in the absence of laws but in their ineffective enforcement.[90] The Environment (Protection) Act, 1986, provides for penalties under Section

[86] Douglas Guilfoyle, *The Political Case Against Ecocide as an International Crime*, Just Security (July 2021), available at: https://www.justsecurity.org/77199/the-political-case-against-ecocide-as-an-international-crime/.
[87] Douglas Guilfoyle, *The Political Case Against Ecocide as an International Crime*, Just Security (July 2021), available at: https://www.justsecurity.org/77199/the-political-case-against-ecocide-as-an-international-crime/.
[88] International Criminal Court, *The States Parties to the Rome Statute*, available at: https://asp.icc-cpi.int/states-parties.
[89] Dapo Akande et al., *The ICC and the Crime of Ecocide: A Cautionary Note*, EJIL: Talk! (June 2021), available at: https://www.ejiltalk.org/the-icc-and-the-crime-of-ecocide-a-cautionary-note/.
[90] Mahima Khurana, Rethinking the Scope of Ecocide under Indian Criminal Law, (2022) 2(2) JCLJ 116, 121.

15, including imprisonment up to 5 years or fines up to ₹1 lakh, with higher penalties for continued violations. The Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, contain similar penal provisions. The National Green Tribunal Act, 2010[91] allows for quasi-judicial civil remedies and compensation mechanisms, even for future environmental risks.

It is often argued that before creating new penal codes, India should enhance its institutional capacity to enforce existing laws by strengthening State Pollution Control Boards (SPCBs), prosecutorial authorities, and scientific evidence-gathering bodies. As Mahima Khurana observes, the deterrent impact of criminal law is only effective when the certainty of punishment outweighs its severity.[92] Therefore, without the infrastructure to investigate and prosecute environmental crimes—especially those involving corporate actors or transnational entities—criminalizing ecocide may become symbolic rather than substantive. From an operational standpoint, the successful prosecution of ecocide would require a massive shift in institutional architecture, including: Special ecological prosecutors, Forensic environmental units, Interdisciplinary expert panels to assess ecological damage, Whistleblower protections in climate-sensitive industries, etc. At present, India's environmental enforcement bodies, especially at the state level, are chronically underfunded, suffer from technical deficits, and are vulnerable to political interference.[93]

Furthermore, establishing criminal culpability in ecocide cases would require proving not just ecological damage, but that it was committed with intent, recklessness, or gross negligence.[94] In industrial or climate-related cases, where scientific uncertainty and multi-causal events are the norm, meeting this evidentiary burden would be extraordinarily difficult. This may result in selective enforcement, where some actors are punished while others, often better resourced, evade liability.

A final concern is the potential politicization of ecocide prosecutions, especially in India's highly federal and politically polarized environmental governance structure. Critics warn that Governments may use ecocide laws selectively against opposition-ruled states or NGOs challenging infrastructure projects; Corporate competitors may weaponize ecocide complaints to block rivals through litigation; Over-criminalization may deter investment in

[91] National Green Tribunal Act, No. 19 of 2010, § 14.
[92] Mahima Khurana, Rethinking the Scope of Ecocide under Indian Criminal Law, (2022) 2(2) JCLJ 116, 121.
[93] Kritika Agarwal, *Ecocide Laws: The Need of the Hour*, iPleaders Blog (Dec. 2023), available at: https://blog.ipleaders.in/ecocide-laws-the-need-of-the-hour/.
[94] K.N. Chandrasekharan Pillai (ed.), R.V. Kelkar's Lectures on Criminal Law (Eastern Book Co. 2017).

environmentally beneficial sectors (e.g., renewable energy or mining rehabilitation) due to fear of liability.

A Way Forward for India

India finds itself at a critical environmental and constitutional crossroads. As a nation facing the dual burden of rapid development and accelerating ecological collapse, the imperative to craft stronger, enforceable environmental protections is very much present. From the Bhopal Gas Tragedy to the Joshimath subsidence, the failure to deter, prosecute, or remedy large- scale environmental destruction shows the insufficiency of India's current environmental legal regime. Yet, as this paper has demonstrated, India is not without a foundation. Its constitutional jurisprudence, doctrinal innovations, and legislative capacity provide the normative and legal infrastructure necessary to recognize ecocide as a punishable crime.

India may consider one of two legislative routes to incorporate ecocide into its criminal jurisprudence, or include a new section into the Bharatiya Nyaya Sanhita. Whatever approach the legislators may deem fit, they could co-opt the definition suggested by the Independent Expert Panel (2021), while also outlining thresholds or harm based on scientifically measurable criteria. A flexible list of prohibited activities could be laid down that could be considered as ecocide and presumptively harmful. They could define the specific standard of mens rea, affix alternative criminal liability for corporations and artificial persons, and include restorative remedies such as ecological restoration order based on the polluter pays principle, community compensation, rehabilitation funds, etc. A dedicated National Ecocide Investigation Agency could also be set up under the aegis of the Ministry of Environment, Forest and Climate Change, staffed with forensic ecologists, climate scientists, and trained prosecutors. A specific creation of fast-track benches could be set up in the National Green Tribunal or in the High Courts for matters of grave environmental concern. Further, ecocide could be integrated into the mandate of the State Pollution Control Boards, Central Bureau of Investigation (CBI), and the National Green Tribunal.

India must innovate beyond adversarial litigation by recognizing ecosystems as legal persons, following the precedent in Mohd. Salim v. State of Uttarakhand, where rivers Ganga and Yamuna were granted legal personhood.[95] Civil society, tribal communities, forest dwellers,

[95] Mohd. Salim v. State of Uttarakhand, 2017 SCC OnLine Utt 367.

and youth-led climate groups should be empowered to act as representatives or guardians of ecosystems in both civil and criminal proceedings.

This approach will ensure that ecocide is not merely state-prosecuted, but community-driven, resonating with India's Article 51A(g)[96] fundamental duty that every citizen shall protect and improve the environment.

India is already a signatory to several international environmental treaties, including the Convention on Biological Diversity, the Paris Agreement, and the UN Framework Convention on Climate Change.[97] As such, it bears obligations to protect ecosystems and reduce emissions in the global commons. Recognizing ecocide will demonstrate India's commitment to climate justice, intergenerational equity, and global environmental leadership, particularly as it takes on larger roles in the G20, BRICS, and UN environmental diplomacy. Moreover, this will enable India to set a regional precedent, encouraging South Asian and Global South nations to adopt similar measures, building a coalition of ecological accountability.

Therefore, it is up to legislators to find out the best mix of provisions best applicable to a country as diverse as India, while biting the bullets as have been identified above and considering the best of international efforts and legislations, and incorporating the same or something new as a pioneer into Indian environmental law.

A Way Forward for the World

The incorporation of ecocide as a fifth international crime under the Rome Statute represents a historic opportunity to bridge the longstanding divide between environmental protection and international criminal accountability. While criticisms regarding definitional vagueness, institutional feasibility, and normative fit are not without merit, the possibility of ecocide as a fifth international crime is still quite probable.

One of the most groundbreaking aspects of the proposed ecocide crime is its re-centering of the environment as a direct victim of criminal acts, independent of immediate human harm. This shift reflects a growing normative transition in international law, exemplified by recent decisions of regional courts such as the Inter-American Court of Human Rights, which in its

[96] India Const. art. 51A(g).
[97] United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107; Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104.

2017 advisory opinion declared that "the environment is a protected interest in itself."[98] This is indeed a paradigm shift visible in global courts to recognize the importance of the environment that surrounds us.

By recognizing that environmental destruction threatens not just ecosystems but the foundation of all human rights, the proposed ecocide crime aligns with the UN Human Rights Council's 2021 resolution recognizing a clean, healthy, and sustainable environment as a human right.[99] Therefore, the crime of ecocide does not challenge the anthropocentric foundations of the Rome Statute but rather expands them toward ecological realism.

Further, the recommendations of the Independent Expert Panel (2021) have received support. The Panel's draft Article 8 offers a dual-threshold structure that balances the imperative to protect the environment with the caution required in criminal law. By requiring both a substantial likelihood of severe, widespread or long-term harm and that the conduct be "unlawful or wanton", the definition reduces the risk of over-criminalization while targeting truly egregious environmental destruction.[100] This dual threshold reflects existing norms in international humanitarian and environmental law—particularly Article 8(2)(b)(iv) of the Rome Statute and Articles 35 and 55 of Additional Protocol I to the Geneva Conventions.[101] The use of terms like "severe," "widespread," and "long-term" is drawn from multilateral treaties such as ENMOD (1976) and has been previously interpreted by disarmament and humanitarian law bodies.[102]

Perhaps the most compelling legal innovation in the Panel's definition is the decision to adopt a mens rea standard based on recklessness or dolus eventualis—that is, a "substantial likelihood" of harm known to the perpetrator.[103] This represents a departure from the default

[98] Inter-American Court of Human Rights, Advisory Opinion OC-23/17, *Environment and Human Rights*, 15 Nov. 2017, ¶ 59.
[99] U.N. Human Rights Council Res. 48/13, The Human Right to a Clean, Healthy and Sustainable Environment, U.N. Doc. A/HRC/RES/48/13 (Oct. 8, 2021).
[100] Independent Expert Panel, *Commentary and Core Text: Legal Definition of Ecocide*, Stop Ecocide Foundation (2021), at 6–7.
[101] Rome Statute of the International Criminal Court art. 8(2)(b)(iv), July 17, 1998, 2187 U.N.T.S. 90; Protocol Additional to the Geneva Conventions of 12 August 1949, arts. 35(3), 55(1), June 8, 1977, 1125 U.N.T.S. 3.
[102] Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, Dec. 10, 1976, 1108 U.N.T.S. 151.
[103] Independent Expert Panel, *Commentary and Core Text: Legal Definition of Ecocide*, Stop Ecocide Foundation (2021), at 11.

mental element in Article 30 of the Rome Statute, which requires intent or knowledge that a consequence "will occur in the ordinary course of events."[104]

This evolution in culpability is not unwarranted. Environmental harm often results from cumulative acts, regulatory indifference, or corporate recklessness, rather than genocidal or malicious intent. Requiring proof of intent to cause ecological devastation would preclude prosecution in nearly all conceivable cases of ecocide. The Panel's approach thus preserves the criminal law's threshold of culpability while tailoring it to the unique character of environmental harm.

Further, the Panel's recommendation to place ecocide within Article 5(e) of the Rome Statute and to structure Article 8 similarly to Article 7 (Crimes Against Humanity) is a deliberate effort to avoid institutional disruption.[105] By mirroring the ICC's existing framework in both substance and procedure, the amendment minimizes the need for sweeping structural reform. Moreover, the proposed definition is sufficiently restrained to differentiate between criminal acts and permissible developmental activities. The inclusion of the "wantonness" standard, requiring a reckless disregard for clearly excessive damage in relation to social and economic benefits, reflects the proportionality tests familiar to both environmental and humanitarian law.[106] This ensures that ecocide law will not criminalize all environmental degradation, but only those acts that are clearly excessive, preventable, and systemically harmful.

For ecocide to function as a legitimate international crime, its adoption must be accompanied by multi-level legal harmonization. The ICC alone cannot carry the burden of global ecological justice. States must incorporate ecocide into their domestic penal codes, as France, Ukraine, and the Philippines have begun to explore.[107] Furthermore, regional courts such as the European Court of Human Rights and the African Court on Human and Peoples' Rights, could begin to interpret environmental destruction through the lens of collective and intergenerational rights.

At the same time, the ICC must be equipped with scientific and investigative capacities, including ecological forensics, multidisciplinary expert panels, and climate damage valuation

[104] Rome Statute, art. 30(2)(b), 2187 U.N.T.S. 90.
[105] Supra note 96.
[106] Rome Statute, art. 8(2)(b)(iv), 2187 U.N.T.S. 90.
[107] European Parliament Resolution of 20 January 2021 on the EU Strategy for Biodiversity (2020/2273(INI)); France's Loi n° 2021-1104 du 22 août 2021; Criminal Code of Ukraine, art. 441; House Bill No. 2954, 18th Cong., Republic of the Philippines (2019).

frameworks, to carry out meaningful prosecutions. Without these supports, ecocide may remain symbolic or under-enforced, repeating the limitations seen in early enforcement of genocide or aggression.

In an age where climate catastrophe, biodiversity collapse, and ecosystemic violence threaten the very foundations of life, international criminal law must evolve to match the gravity of global harm. Just as the crime of genocide redefined the contours of justice in the 20th century, ecocide has the potential to do the same in the 21st century, if met with resolve, cooperation, and courageous legal imagination. Therefore, it is up to member states, as well as other state parties, to chart out the most desirable path for the global world order with respect to the criminalization of ecocide.