



The (International) Crime of Ecocide (?)

I. Terminology & context

- Ecocide = “*οἶκος*” (house) + “*occidere*” (killing)
- A.W. GALSTON (American biologist) (1970 - operation “ranch hand”)
- In layman’s terms: (total or massive) destruction of environment or ecological systems

I. Terminology & context

- International follow-up in the following years and decades
- Current context
 - “Anthropocene”
 - => scientifically established profound and irreversible transformation of the earth caused by human activity, which also causes or may cause (catastrophic) damage to the environment. Such environmental damage is a universal threat, including to the very survival of humankind

I. Terminology & context

- **Current context**
 - Different **ways** to address this issue
 - (Inter)national instruments, rules, accords, or soft law initiatives
 - (Inter)national litigation
 - */a.* ICJ 23 July 2025, Obligations of States in Respect of Climate Change, Advisory Opinion
 - **Criminal law**
 - Larger framework of environmental crimes

II. International level

- UNGA Resolution 76/300 on the human right to a clean, healthy and sustainable environment, *UN Doc. A/RES/76/300*
- Existing international instruments
 - Art. 1, § 1 ENMOD / art. 35, § 3 and 55 AP I / art. 8 (2) (b) (iv) Statute ICC
 - Prosecute environmental damage as aggression, genocide, CaH or WC

to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies,

1. *Recognizes* the right to a clean, healthy and sustainable environment as a human right;
2. *Notes* that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. *Affirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. *Calls upon* States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.

Not
(called)
ecocide
as such

■ II. International level

- Criminalization of ecocide as an international crime
 - Ecocide as (or in addition to) **genocide** in the Convention of 1948
 - UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (1978-1985)
 - Discussions on including **environmental crimes** in Draft Code of Crimes Against the Peace and Security of Mankind
 - ILC (1982-1996)

■ II. International level

- Criminalization of ecocide as an international crime
 - Ecocide as a **5th core crime** in the Statute of the International Criminal Court
 - 2019: Vanuatu and Maldives initiative
 - Support by other States (BE, FRA, NL, ESP, SWE, ...)
 - 2024: formal request by Vanuatu, Fiji and Samoa to the ICC Working Group on Amendments to include an **independent crime of ecocide** in the Statute (ICC-ASP/23/26)

■ II. International level

- Initiatives

- Polly Higgins
- Group of French experts
- Stop Ecocide Foundation – Panel of Experts (P. Sands)
 - Proposed new art. 8^{ter} Ecocide Statute ICC
 - Copied word for word in the proposal of Vanuatu (ICC-ASP/23/26, p. 9)
 - Draft Elements of crime of Ecocide

Image: Stop Ecocide International

■ II. International level

- Proposed new art. 8^{ter} Ecocide Statute ICC

“1. For the purpose of this Statute, “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts (...)”

■ II. International level

• Proposed new art. 8^{ter} Ecocide Statute ICC

“(...) 2. For the purpose of paragraph 1:

(a) “Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

(b) “Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;

(c) “Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;

(d) “Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;

(e) “Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.”

■ II. International level

- Proposed new art. 8^{ter} Ecocide Statute ICC
 - Ecocentric > anthropocentric
 - Pragmatic/realistic
 - Inspired/building on existing precedents

■ II. International level

- Proposed new art. 8^{ter} Ecocide Statute ICC
 - Elements
 - Unlawful or wanton acts (1st threshold)
 - Single or cumulative act(s) or omission(s)
 - No list of conduct
 - Unlawful: contrary to applicable national or international law
 - Wanton: proportionality test

■ II. International level

- Proposed new art. 8^{ter} Ecocide Statute ICC
 - Elements
 - *Substantial* likelihood of severe *and* either widespread *or* long-term damage to the environment being caused by those acts.
(2nd threshold)

■ II. International level

- Proposed new art. 8^{ter} Ecocide Statute ICC
 - Elements
 - Knowledge of likely consequences
 - ⇔ Art. 30 Statute ICC
 - Proposed Elements of crime of Ecocide: the perpetrator
 - (a) was **aware** of the factual circumstances that established the unlawfulness of the acts; or
 - (b) **recklessly disregarded** damage which would be clearly excessive in relation to the social and economic benefits anticipated.
 - In times of armed conflict and peace

■ II. International level

- Proposed new art. *8ter*
Ecocide Statute ICC
 - Observations & criticisms

■ III. National level

- States

- Vietnam (1990), Uzbekistan, Georgia, Romania, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Russia, ...
- Proposals: Mexico, Italy, United Kingdom, Scotland, the Netherlands, Argentina, Dominican Republic ...

III. National level

- France: art L-231-1 – art. L-231-3 *Code de l'environnement*

- *The act, in clear and deliberate violation of a specific obligation of caution or safety provided for by law or regulation, of emitting into the air, throwing, dumping, or allowing to flow into surface water, groundwater, or sea water within territorial waters, directly or indirectly, one or more substances whose action or reactions cause serious and lasting harmful effects on health, flora, or fauna, with the exception of the damage referred to in Articles L. 218-73 and L. 432-2, or serious changes to the normal water supply regime, shall be punished by five years' imprisonment and a fine of one million euros, which may be increased to five times the benefit derived from the commission of the offense. (...) “(own translation) => ecocide if committed intentionally*
- *“The act of abandoning, depositing, or causing to be deposited waste under conditions contrary to Chapter I of Title IV of Book V, and the act of managing waste, within the meaning of Article L. 541-1-1, without complying with the requirements concerning the characteristics, quantities, technical conditions for waste management, and treatment processes implemented in accordance with Articles L. 541-2, L. 541-2-1, L. 541-7-2, L. 541-21-1, and L. 541-22, when they cause substantial damage to fauna and flora or to the quality of the air, soil, or water, shall be punished by three years' imprisonment and a fine of €150,000” (own translation) => ecocide if committed intentionally + when the offences result in serious and lasting damage to health, flora, fauna, or the quality of the air, soil, or water*

III. National level

- EU Directive 2024/1203 of 11 April 2024 (OJ L 30/4/24)
 - Art. 3 (3): Member States must ensure that criminal offences relating to conduct listed in art. 3 (2) (= list of environmental offences when the conduct in question is unlawful and intentional) constitute **qualified criminal offences** if such conduct causes:
 - (a) the **destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, *or***
 - (b) **widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water**

III. National level

- EU Directive 2024/1203 of 11 April 2024 (OJ L 30/4/24)
 - Preamble § (21): “*Those qualified criminal offences can encompass conduct comparable to ‘ecocide’, which is already covered by the law of certain Member States and which is being discussed in international fora*”
 - Art. 8 (a): to the extent that *i.a.* the fact that the offence in question caused the destruction of, or irreversible or long-lasting substantial damage to, an ecosystem, does not form part of the constituent elements of the criminal offences referred to in *i.a.* Art. 3 (3): obligation for States to regard this as an **aggravating circumstance**.
 - Cf. Draft COE Convention on the Protection of the Environment through Criminal Law

III. National level

- Art. 94 New Belgian Criminal Code 2024

“§1. The crime of ecocide, as defined below, committed in times of peace or war, shall be punished in accordance with the provisions of this title [2 of the Criminal Code]. The crime of ecocide is the intentional commission, by act or omission, of an illegal act that causes serious, large-scale, and long-lasting damage to the environment, with knowledge that such damage will be the result, insofar as such act involves a violation of federal law or international law that is binding on the federal government or insofar as the act cannot be localized in Belgium (...)” (own translation)

■ III. National level

- **Art. 94 New Belgian Criminal Code 2024**
 - Definitions of 'severe damage', 'large-scale damage', 'long-lasting damage' and 'environment'
 - Penalty:
 - NP: 15 to 20 years imprisonment/treatment under deprivation of liberty of 11 years to 16 years
 - LP: 1.200.000,00€ to 1.600.000,00€
 - Differences
 - Observations



DEFENCE

**Thank you for your
attention!**

