

Ecocide Law: An Intriguing Tool to Global Environmental Justice

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Abstract: In contemporary society, ecocide is being perpetrated on a global scale, causing significant disruption to human harmony. The magnitude of this crime has reached a catastrophic level worldwide, necessitating the immediate establishment of stringent international and state laws to combat it. The concept posits that no one should escape retribution for annihilating the natural environment. Moreover, the act of ecocide should be made illegal to guarantee justice in the protection of the environment. A group of prominent attorneys, environmentalists, and intellectuals are urging the United Nations (UN) for recognizing ecocide as the fifth internationally recognized crime officially. The campaigners argue that the wrongdoing should come under International Criminal Court authority. This paper argues for the recognition of ecocide as a global crime by establishing precise as well as explicit criteria for prosecuting individuals. Lastly, this paper will wrap up by evaluating the practicality of incorporating ecocide legislation into the legal framework of Bangladesh.

Keywords: Ecocide, Environmental Justice, Environmental Law, Global Crime

1. Introduction

Basic idea of human rights is closely tied to nature and its surroundings. Throughout prehistoric times, various types of environmental degradation have existed.^{1 2} Even a name has been given to the widespread violation of the environment and human rights³: ecocide. Yet, starting in the latter half of the 20th century⁴, ecocide became a menace and a global concern.⁵ There have been many initiatives to safeguard the environment throughout the last few decades. We live in an era today where more harmful actions have to be dreaded as they not only endanger global peace and

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¹ Utsa sarker, Ecocide Protection Of Environment: An International Crime, (2021) International Journal Of Legal Development and Allied Issues VO. 8 Issue 1

² https://repository.up.ac.za/bitstream/handle/2263/60063/Malila_Place_2017.pdf

³ Alberta Fabbicotti, Intentional Destruction of Cultural Heritage and the Law, Routledge, 2024, at <https://doi.org/10.4324/9781003383093>

⁴ Ronald St. John Macdonald and Douglas M. Johnston, The Structure and Process of International Law, 1983, at <https://doi.org/10.1163/9789004636224>

⁵ Gray, Mark Allan (1995–1996). "The International Crime of Ecocide". California Western International Law Journal. 26: 215

security as present fundamental crimes do⁶, but also to environment. If we continue to degrade the environment at this rate, our ecosystems will suffer catastrophic repercussions⁷, based on the August 2021 Intergovernmental Panel on Climate Change (IPCC)⁸ report.⁹ Environmental devastation has become a key matter of concern for international attorneys and scientists.¹⁰ International criminal law has the promise to be viewed as a beneficial and effective tool in resolving and preventing environmental damages. Contrary to international human rights legislation or international environmental law, for example, criminalizing ecocide under domestic and international law might actually alter societal behavior, penalize the offender, and help deter future crimes of a similar nature.¹¹ The legal community has been divided over definition of the word "ecocide."¹² American scientist Arthur Galston originally used the word "ecocide" at the 1970 Conference on War and National Responsibility.¹³ Many international legal experts and practitioners have advocated that the four other "core" crimes listed in the Rome Statute should be included in this category and that the International Criminal Court should try offenders for these crimes.¹⁴ Different factions of researchers, however, have argued against classifying it as a specific criminal act pursuant to international law. The draft definition suggested by the Independent Expert Panel at simultaneously acknowledges natural worth of environment and provides route out of an excessively anthropocentric pathway by means of the crime of ecocide. Interpreting ecocide via a human rights prism will assist in creating a body of legislation that provides genuine environmental and climate justice.¹⁵ Including ecocide among "the most serious crimes of concern to the international community as a whole" acknowledges the climate and biodiversity crises, with its possibly devastating effects of our environment, as one of the biggest dangers to human rights of time.¹⁶ Moreover, criminalizing ecocide is a demanding but vital task. Yet, it is not solely about

⁶ Willem de Lint, Marinella Marmo, Nerida Chazal, *Criminal Justice in International Society*, 2013, Routledge, at <https://doi.org/10.4324/9780203067222>

⁷ The Herald, "Should the crime of 'ecocide' be enshrined in law?", October 6, 2021.

⁸ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, April 4, 2022 (Cambridge University Press, 2022), available at:

https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FinalDraft_FullReport.pdf

⁹ https://www.duo.uio.no/bitstream/handle/10852/95891/PILTHESIS_7009.pdf?isAllowed=y&sequence=1

¹⁰ Utsa sarker, *Ecocide—Protection Of Environment: An International Crime*, (2021) *International Journal Of Legal Development and Allied Issues* VO. 8 Issue 1

¹¹ https://www.duo.uio.no/bitstream/handle/10852/95891/PILTHESIS_7009.pdf?isAllowed=y&sequence=1

¹² *ibid*

¹³ Althor, G. et al. Global mismatch between greenhouse gas emissions and the burden of climate change. *Sci. Rep.* 6, 20281; doi: 10.1038/srep20281 (2016).

¹⁴ *Supra*, Note 11 [accessed March 2023]

¹⁵ Lisa O. and Kate M., *the Crime of Ecocide through Human Rights: A New Tool for Climate Justice*, (2022) *International Crimes Database*. <https://internationalcrimesdatabase.org/upload/documents/20220531T164956-The%20Crime%20of%20Ecocide%20Through%20Human%20Rights.pdf>

¹⁶ *ibid*

punishing perpetrators; equally concerned with changing the public's awareness and moral convictions since, at last, "law can influence our values and understanding."¹⁷ Thus, it is imperative to alter as there has not yet been a global environmental crime. Nonetheless, several nations have criminalized ecocide within their jurisdictions, in times of peace. 'The committee on the Ministry of Environment, Forestry and Climate Change' in Bangladesh has advised government to make ecocide crime akin to genocide.¹⁸ This research aims to critically examine the legal recognition of ecocide as an international crime and its potential incorporation into the legal framework of Bangladesh. Specifically, the study seeks to analyze the conceptual and legal foundations of ecocide, evaluate the necessity of recognizing it as the fifth core international crime under the jurisdiction of the International Criminal Court, and identify precise criteria for its prosecution. The research further assesses the adequacy of Bangladesh's existing environmental laws in addressing severe ecological destruction and explores the feasibility of adopting ecocide legislation to enhance environmental justice and accountability.

1.1 Sources and Method:

Given that the crime of ecocide has not been officially defined, it was necessary to refer to other international and local legal instruments to analyze and make predictions about future progress. Yet, to support pertinent claims, a few legal rulings were used. Many sources, including reports and statements from non-governmental organizations, newspaper articles, opinion pieces, and blogs by legal scholars, were consulted because the topic was new, there was a shortage of prior jurisprudence, and the definition of ecocide had not been thoroughly explored scientifically. Most resources were used to integrate many current perspectives to get a defensible outcome. Hence, this research entails a legal analysis of the newly suggested concept of Ecocide.

2. Ecocide as Fifth International Crime

2.1 Ecocide

Ecocide is composed of the two components eco and -cide, the former relating to the environment and latter denoting death. Ecocide denotes destruction of ecosystem and environment.¹⁹ The term ecocide was first emerged during Vietnam War²⁰ where US

¹⁷ Polly Higgins, *Eradicating ecocide* (London: Shephard-Walwyn, 2010)

¹⁸ The Financial Express, Parliamentary body suggests codifying ecocide as crime like genocide, June 2021 at <<https://thefinancialexpress.com.bd/national/parliamentary-body-suggests-codifying-ecocide-as-crime-like-genocide-1624276268> >

¹⁹ "Genocide," UN, accessed November 6, 2021. <https://www.un.org/en/genocideprevention/genocide.shtml>.

²⁰ Bibiana García, "The History of Ecocide, a New Crime Against Humanity." Open Mind (blog), Februar 27

2020, <https://www.bbvaopenmind.com/en/science/environment/the-history-of-ecocide-a-new-crime-against-humanity/>

used chemical weapon, a lethal herbicide, Agent Orange. The conflict in Vietnam sparked the ecocide movement. As soon as hostilities broke out in Vietnam, the ecocide campaign gained momentum. At the 1970 “Conference on War and National Responsibility”, Professor Arthur Galston asked for a new worldwide framework as well as agreement to control prevention of ecocide.²¹ There has been much talk over whether the US is committing ecocide in Vietnam due to the extensive usage of chemicals throughout the war, which has caused severe environmental damage. *Erga omnes*, or duty of nations of world community to preserve and advance the common ideals and interests of everyone, was recognized and maintained by the World Court of Justice in the *Barcelona Traction*²² case.

Richard Falk, an early scholar to fully explore concept ecocide, presented a proposed international treaty in 1973. In 1996, Allan Gray released study²³, ‘The International Crime of Ecocide,’ aiming illustrates ecocide within international law and explores the practicability of designating ecocide as a global criminal offence.²⁴ At the beginning of 21st century, a large number of scholars developed an interest in ecocide. In the early 2000s, Christopher Lytton and Franz Broswimmer presented two distinct interpretations of ecocide. Lytton concentrated on analyzing current human rights and environmental legal texts identify emerging trends in international law and ecocide. In contrast, Broswimmer emphasized recounting the historical context of ecocide²⁵, detailing how Homo sapiens have historically inflicted severe damage on the environment, which can be classified as acts of ecocide.²⁶ As awareness of the dire environmental crisis and the inadequacies of international law grow, the 21st century has seen a surge of scholarly examination about the potential use of international criminal law in combating ecocide. Scholars like Mark Drumbl, Steven Freeland, Peter Stoett, Frederic Megret, Tara Smith, Polly Higgins, Damien Short, and Nigel South had authored papers exploring potential of international criminal law as a means to provide enhanced legal protection against ecocide.²⁷ In 2010, UK lawyer Polly Higgins started her advocacy for recognizing ecocide as international crime. Her notion of ecocide is the most esteemed now. Higgins outlined ecocide as:

²¹ Gauger and others *The Ecocide Project: Ecocide is the missing 5th Crime Against Peace* (Human Rights Consortium, London, 2012)

²² [Icc-cpi.int. 2021. \[online\] Available at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>](https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf)

²³ Mark Allan Gray, ‘*The International Crime of Ecocide*’ (1995) 26 California Western International Law Journal 215

²⁴ <https://dspace.eiuc.org/bitstream/handle/20.500.11825/501/Curcio%20Lamas.pdf?sequence=1>

²⁵ Christopher H. Lytton, ‘Environmental Human Rights: Emerging Trends in International Law and Ecocide’ (2000) 13 Environmental Claims Journal 73

²⁶ Franz Broswimmer, *Ecocide: A Short History of the Mass Extinction of Species* (Pluto Press 2002)

²⁷ Andrea Curcio Lamas, Ecocide Addressing the large-scale impairment of the environment and human right at <https://www.studocu.com/in/document/university-of-delhi/llb-case-materials/curcio-lamas-environmental-law/89541392>

“Ecocide is the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.”²⁸

Despite lack of universally accepted definition, growing efforts to articulate the term, along with its frequent occurrence in academic, legal, and media contexts, clearly indicate that it is achieving global recognition, effectively becoming at least ‘a word of warning.’^{29,30}

2.2 Need for Ecocide Laws

This paper contextualized ecocide and thereafter analyzes necessity of recognizing as fifth international crime from different point of views.

2.2.1 Human Rights Treaties

The creation of a new international crime of ecocide shows the awareness of the link between human rights and the environment, hence including environmental issues into a legal system mostly oriented on protecting human life and dignity.³¹ No globally binding agreement specifically acknowledged environmental challenges throughout the drafting and adoption of human rights treaties by the international community.³² The Universal Declaration of Human Rights (UDHR) does not include environmental rights.³³ Although there is no formal right, several legal scholars contend that environmental rights are included under human rights frameworks, citing the apparent connection between certain human rights and environmental issues.³⁴ States must implement all feasible steps to protect the environment, since its deterioration may jeopardize human life. The Committee on Economic, Social and Cultural Rights (CESCR) has clarified that the right to the highest attainable standard of health, as expressed in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), comprises a wide range of socio-economic elements that support conditions favorable to a healthy life, and includes the basic determinants of health, such as a healthy environment. The CESCR has acknowledged the human right to water depending on the "environmental purity of the water".³⁵ In principle, there are some problems. Upon ratifying international human rights treaties, States must implement requisite domestic procedures and laws

²⁸ Supra Note 17

²⁹ South Nigel, ‘Ecocide, Conflict and Climate Change: Challenges for Criminology and the Research Agenda in the 21st Century’ *Eco-Crime and Justice* (UNICRI 2009) 41.

³⁰ Supra Note 28

³¹ Supra, Note 15

³² Dinah Shelton, ‘Human Rights, Health & Environmental Protection: Linkages in Law & Practice’ (2002) WHO Health and Human Rights Working Paper Series No.1, 6

³³ <https://ebs.pub/the-routledge-handbook-of-international-law-and-anthropocentrism-1nbsped-9781003201120-9780367858223-9781032508580.html>

³⁴ Glazebook, ‘Human Rights and the Environment’ (2009) 40 VUWLR 293, 295

³⁵ Supra Note 28

to assure adherence to the rights articulated in such accords.³⁶ If the state fails to fulfill its obligation, the result will be ineffectual.³⁷ Furthermore, grievances can be lodged against States, excluding people or non-State entities, like corporations. Moreover, such complaints can only be made after States have signed or acceded to the treaty granting the rights being violated.³⁸ Incorporating ecocide within "the most serious crimes of concern to the international community as a whole" acknowledges the climate and biodiversity crises, which poses potentially catastrophic dangers to our shared environment³⁹ and represents human rights tensions of our time.⁴⁰ The outlined definition offered by the 'Independent Expert Panel' acknowledges the natural significance of environment and offers a counter to overly anthropocentric view on the crime of ecocide.^{41,42} Furthermore, the proposed crime broadens the scope for prosecuting environmental damage beyond wartime contexts, allowing for persons to be held accountable for crimes including ocean degradation due to oil spills, deforestation, land and oil contamination.⁴³

2.2.2 International Environmental law

Creating an international crime of ecocide calls for including environmental issues into a legal system mostly oriented on protecting human life and dignity. It affirms scientific data pointing to catastrophic effects on our common environment from current rates of ecosystem deterioration and greenhouse gas generation.⁴⁴ International criminal law deals with "unimaginable atrocities that profoundly shock the conscience of humanity" and "endanger the peace, security, and welfare of the world" as stated in the Rome Statute. Including ecocide into the list of international crimes recognizes grave environmental damage is equal in severity and presents similar risks to the interests safeguarded by international crimes such as crimes against humanity, genocide, war crimes, and aggression.⁴⁵

Moreover, International Economic Law lacks definitive and unequivocal "prohibitions" on behavior akin to IHL or HR. IEL is notably more prudent and collaborative; it mandates governments to "consider" certain factors; it establishes standards for the equitable distribution of shared resources; it reconciles economic

³⁶ Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights In Context* (3rd edn, Oxford University Press 2008) 1156

³⁷ OHCHR, 'Individual Complaint Procedures under the United Nations Human Rights Treaties' (2013) Fact Sheet No.7 Rev.2.

³⁸ dspace.unive.it/bitstream/handle/10579/24129/888214-1274572.pdf?sequence=2

³⁹ Supra Note 15

⁴⁰ https://elibrary.chr.gov.ph/cgi-bin/koha/opacdetail.pl?biblionumber=3567&shelfbrowse_itemnumber=3401

⁴¹ Supra Note 15

⁴² *ibid*

⁴³ Rachel Killean, 'The Benefits, Challenges, and Limitations of Criminalizing Ecocide' (*IPI Global Observatory*, 30 March 2022) <https://theglobalobservatory.org/2022/03/the-benefits-challenges-and-limitations-of-criminalizing-ecocide/> accessed 4 May 2025.

⁴⁴ Supra, Note 51

⁴⁵ Supra Note 15

advancement with environmental impact.⁴⁶ Another limitation of International Environmental Law (IEL) is its reliance on State will as much of IEL is based on voluntary agreements. States usually follow ‘non-binding legal philosophy’, which holds that most instruments are non-binding. Furthermore, these instruments need strong enforcement systems to ensure State compliance.⁴⁷ International environmental law has focused mostly on defining State culpability rather than directly confronting the deeds of individual polluters.⁴⁸

2.2.3 Ecocide as *jus cogens*

Jus cogens norms are customary international law. The only treaty-based definition of jus cogens is Article 53 of the 1969 Vienna Convention on the Law of Treaties as:

“For the purposes of the present Convention, a peremptory norm of general international law [that is to say “a *jus cogens* norm”] is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.⁴⁹

There are no clear criteria for a rule to be considered *jus cogens*. A *jus cogens* norm is distinguished by its acceptance among nations and their acknowledgment of specific legal requirements associated with it- a ‘*jus cogens* norm permits no derogation’. Given the lack of literature, judges have also been reluctant to acknowledge and create environmental *jus cogens* criteria.⁵⁰ This Court determined *jus cogens* norms include norms seeking safeguard international peace, the freedom of nations to self-determination, and essential human rights, including critical standards for environmental protection.⁵¹ Though ICJ has not officially classified environmental protection as a *jus cogens* norm, it did so in ‘*Gabcikovo-Nagymaros case*’.⁵² The Court observed environmental conservation is a fundamental interest of the state by Article 64 of the VCLT (emerging *jus cogens*).⁵³ *Jus cogens* norms include several treaties as well as agreements that deal with environmental damage. The Additional Protocols of the 1949 Geneva Convention include rules prohibiting actions detrimental to the environment and establishing a non-derogable standard. What fundamentally constitutes an international debate about environmental degradation in both wartime and peacetime? Expanding the horizon of

⁴⁶ Darryl Robinson, Your Guide to Ecocide: Part 1,

⁴⁷ Alan E. Boyle, ‘Making the Polluter Pay? Alternatives to State Responsibility in the Allocation of Transboundary Environmental Costs, in Robert McLaughlin, ‘Improving Compliance: Making Non-State International Actors Responsible for Environmental Crimes’ (2000) 11 Colorado Journal of International Law and Policy p. 377, 381

⁴⁸ *Ibid* 380

⁴⁹ Vienna Convention on the Law of Treaties, adopted on 22 May 1969, 1155 UNTS 331

⁵⁰ Order of the German Federal Constitutional Court, 2 BvR 955/00, 2004, Deutsches Verwaltungsblatt 2005, at 178 para 1(c)

⁵¹ *ibid*

⁵² *Gabcikovo-Nagymaros Project (Hungary vs Slovakia)*, ICJ, 1997, para 97

⁵³ Available at <<https://arbitrationblog.kluwerarbitration.com/2021/08/31/consequences-of-recognizing-environmental-protection-as-an-emerging-erga-omnes-obligation-in-the-isd-context/>>

customary international law would facilitate the prosecution of people and multinational businesses engaged in environmentally detrimental actions.⁵⁴

2.2.4 Global Problem

Furthermore, ecocide must be recognized as an international offence, given the fact that recognised climate catastrophe is a global issue. National borders do not contain its causes or consequences, and often, the regions of the globe experiencing the most significant environmental degradation and those producing it are in entirely different legal jurisdictions. Making ecocide a worldwide crime will remove the current legal difference and allow those who damage the environment to be held accountable under worldwide Criminal Court jurisdiction, so acknowledging them regardless of the nation they inhabit. Once ecocide is acknowledged worldwide, national governments are anticipated to welcome it. A worldwide crime would have significant impact and consequences. Implementing this measure would serve as a potent deterrent and carry significant symbolic weight, signalling the end of a culture of impunity around environmental devastation. International Criminal Court only prosecutes most serious crimes of international nature and moral censure linked with such acts far beyond that of breaching domestic law. The preexisting creation of the ICC is one clear advantage of including a new crime to the Rome Statute.⁵⁵ Incorporating ecocide into its list of offenses might be advantageous for the ICC. In recent years, it has encountered (not baseless) allegations of only targeting nations in the Global South, applying a disparate standard compared to wealthier and more influential countries. Prosecuting ecocide would significantly mitigate the perception that the principal perpetrators of environmental degradation are situated in the Global North.⁵⁶

2.3 Ecocide in the Rome Statute: As A New Leaf

“The Independent Expert Panel for the Legal Definition of Ecocide” has submitted supporting debate together with its suggested legal definition of ecocide. Among current international crimes including war crimes, crimes against humanity, genocide, and the crime of aggression, the Expert Panel's proposal aims adding the crime of ecocide to the Rome Statute of the International Criminal Court (ICC).⁵⁷

2.3.1 Actus rea Requirement

The most important issue is exactly identifying the ecocide actions. It thus needs to be clear and uncontroversial enough.⁵⁸ Ecocide, first and foremost, is a crime that

⁵⁴ Supra Note 1

⁵⁵ Supra Note 15

⁵⁶ Seema Joshi, Why ecocide should be an international crime, available at: file:///F:/ecocide/Why%20ecocide%20should%20be%20an%20international%20crime%20_%20Global%20Witness.html

⁵⁷ Jelena Aparac, A Missed Opportunity for Accountability?: Corporate Responsibility and the Draft Definition of Ecocide, *Völkerrechtsblog*, 09.07.2021, doi: 10.17176/20210709-135824-0.

⁵⁸ Minkova (n 28)

must be proven by meeting certain objective standards. Ecocide, according to the current working definition, must meet the *actus rea* criteria in order to be considered illegal and also demands⁵⁹

“a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”.⁶⁰

This definition considers crucial elements that should be included in international legislation on ecocide. Significantly, it recognizes that acts of ecocide may occur during both wartime and peacetime and provides safeguards for all the living beings within an ecosystem. The definition of ecocide in this manner offers the benefit of safeguarding the welfare of all living beings rather than just focusing on humanity. Therefore, during prosecution, the ICC might prioritize assessing the overall damage inflicted on the environment rather than only focusing on the harm inflicted on civilian populations. Moreover, the *actus rea* implied by Higgins may be linked to the *actus rea* outlined in her proposed definition, which also relates to the event of "widespread, long-term, and serious harm" to natural environment. Establishing the autonomous crime of ecocide calls for classification as a crime of strict liability, meaning no proof of intent is needed. Strict liability crimes do not need any proof of intent concerning one or more elements of the criminal conduct. Consequently, the prosecution would be exempt from demonstrating that the defendant behaved with a blameworthy state of mind. Establishing ecocide as crime depending on strict responsibility would, on the whole, clarify the criteria for demonstrating the mental state (*mens rea*) and the physical behaviour (*actus reus*). In addition, strict liability has practical advantages and is often used to enhance public safety in regions where it is deemed necessary.⁶¹

2.3.2 Threshold of *means rea*

Over the last few decades, many definitions of ecocide have been put out, including varying *mens rea* qualifications. For example, Polly Higgins and Mark Grey have outlined the idea of "ecocide" as a crime with severe responsibility, notwithstanding motive. They contend that this strategy is very crucial to prevent companies from endangering the environment as a byproduct of their commercial operations⁶². Other models⁶³ define a crime as one needing direct intent and restrict acts of ecocide

⁵⁹ Céline van den Berg, *Options for Addressing Instances of Ecological Harm under the Rome Statute, the Added Value of an Autonomous International Crime of Ecocide, and its Hurdles* (LLM thesis, Tilburg University) <https://arno.uvt.nl/show.cgi?fid=145800> accessed 4 May 2025.

⁶⁰ Stop Ecocide International, 'Top International Lawyers Unveil Definition of "Ecocide"' (22 June 2021) <https://www.stopecocide.earth/press-releases-summary/top-international-lawyers-unveil-definition-of-ecocide> accessed 30 August 2021.

⁶¹ Céline van den Berg, *Options for Addressing Instances of Ecological Harm under the Rome Statute, the Added Value of an Autonomous International Crime of Ecocide, and its Hurdles* (LLM thesis, Tilburg University) <https://arno.uvt.nl/show.cgi?fid=145800> accessed 4 May 2025.

⁶² Minkova (n 17).

⁶³ Richard A Falk, 'Environmental Warfare and Ecocide: Facts, Appraisal, and Proposals' (1973) 4(1) *Bulletin of Peace Proposals* 80 <https://doi.org/10.1177/096701067300400105>

carried out throughout military operations or war. From industrial mishaps, when no blame attaches, to intentional environmental harm, "ecocide" may mean several things.^{64,65} The standard for *mens rea* required to commit ecocide is far lower than that of the other four crimes when it comes to the reasons behind it. Regardless of the motivation, the outcome is determined by the act's repercussions. A general duty of care is necessary to avoid the conduct of such actions since they are more damaging and disastrous. Therefore, amending Rome Statute for adding ecocide as the fifth core international crime will help to establish a global criminal framework for environmental preservation. Should ecocide be acknowledged as a separate crime under the Rome Statute? the next question would be which court would be most suitable for its judgments? Should the International Criminal Court (ICC) be the suitable forum for the legal resolution and jurisdiction of the crime, or should an independent adjudicatory body be established? The fact that the ICC may punish crimes committed during wartime for damage is well-established. However, no legislation addressing a consistent method for the same exists in universal international law in cases of environmental damages.⁶⁶

Mens rea intent in ICC prosecutions can be three main types: "dolus directus," in which offender directly foresee and intends to cause particular harm; "dolus indirectus," in which the offender foresees further harms, in addition to primary goal, an unavoidable outcome of their action and still acts; and finally "dolus eventualis," in which the offender foresees other harm as a possibility or likely outcome of their action and still acts.⁶⁷

The ecocide includes the idea of "dolus eventualis," which describes the mental condition of someone who acts knowing there is a great likelihood of harming the natural environment. *Dolus eventualis* is often present when an individual acknowledges the possibility, albeit not completely ruling out, that their actions or lack thereof might result in the ingredients necessary to constitute a crime.⁶⁸ In such cases, the person willingly accepts this potential consequence via agreement or consent. Nevertheless, this *mens rea* criterion significantly differs from the ICC's remainder. Furthermore, Article 30 of Rome Statute addresses mens rea necessary for criminal liability. Article 30 establishes the standard rule for "*mens rea*," which refers to the mental state of the culprit. According to this Article, the perpetrator may be held criminally responsible only if they intentionally and knowingly (with 'intent and knowledge') conduct the essential components of the crime (paragraph 1). The article provides definitions for both "intent" and "knowledge". This includes either

⁶⁴ Anastacia Greene, 'Mens Rea and the Proposed Legal Definition of Ecocide' (*Völkerrechtsblog*, 7 July 2021) <https://voelkerrechtsblog.org/mens-rea-and-the-proposed-legal-definition-of-ecocide/> accessed 4 May 2025.

⁶⁵ <https://voelkerrechtsblog.org/mens-rea-and-the-proposed-legal-definition-of-ecocide/>

⁶⁶ Ecocide Law Alliance (n 1).

⁶⁷ Supra Note 65

⁶⁸ *Prosecutor v Thomas Lubanga Dyilo* (Decision on the Confirmation of Charges) ICC-01/04-01/06, PTC I (29 January 2007) para 351.

intending to create a specific outcome or being aware that the outcome will likely be a natural result of their actions “Knowledge” is further elucidated as “awareness that a circumstance exists or a consequence *will occur* in the ordinary course of events” (para. 3). Its mental component must be of a comparable scale for ecocide to be acknowledged as fifth international crime, on par with previous four capital crimes. Considering Article 30's provisions, which include less strict purpose criteria, it is reasonable to include *dolus eventualis* as it does not completely negate any degree of intentionality. Including culpability criteria that are purely based on objective criteria and exclude any voluntary component is unlikely to get much acceptance.⁶⁹

2.4 International Good Practices

Advocates assert that ecocide is a worldwide concern that disproportionately impacts countries according to their contributions to environmental deterioration. Thereby, it has to be categorized as fifth international crime subject to ICC, thereby allowing prosecution of perpetrators independent of jurisdiction. Though the UN does not acknowledge ecocide globally, 10 countries have included the offence of ecocide to their national constitution. Though the jurisdiction is restricted to their territory, only a few countries—including Georgia, Armenia, Ukraine, Belarus, Ecuador, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan, and Vietnam—have officially declared ecocide a crime.⁷⁰ Consequently, the efficacy of these ecocide statutes could be more questionable. International law serves a crucial role in dealing with the limitations of national and regional laws, improving global awareness of important issues, and pushing States to act or refrain from certain activities. Thus, as a subject of worldwide importance, crucial to examine ecocide from a global perspective.⁷¹

3. Necessity and Feasibility to Establish ‘ecocide’ as Crime in Bangladesh

Bangladesh has set up legal frameworks to actively protect our surroundings. Two notable legal institutions with great concern for environmental protection are Supreme Court and the Constitution of Bangladesh. Though several Constitutional and Supreme Court rules help to safeguard our environment somewhat, there are no particular laws in Bangladesh addressing ecocide. Preamble of the Bangladeshi constitution declares explicitly state is obligated to achieve the fundamental aim of socialism, which is to provide everyone a fair quality of life, which is possible in an environment free from pollution. Article 18A of the constitution also addresses environmental protection. It encompasses safeguarding and conserving environment, maintaining natural balance without air and water contamination, and ensuring

⁶⁹ Lachezar G Minkova, ‘The Fifth International Crime: Reflections on the Definition of “Ecocide”’ (2021) 25(1) *Journal of Genocide Research* 62 <https://doi.org/10.1080/14623528.2021.1964688>

⁷⁰ Shuma Talukdar, ‘An Ecocide Law in India: The Need of the Hour’ (*Café Dissensus Everyday*, 5 June 2020) <https://cafedissensus everyday.com/2020/06/05/an-ecocide-law-in-india-the-need-of-the-hour/> accessed 4 May 2025.

⁷¹ Minkova (n 28).

proper sanitation, essential for an optimal standard of life.⁷² It encompasses enjoying clean water and air for a fulfilling existence. The basic rights that could be legally enforced in court under Part III of the Bangladesh Constitution are those that have been violated. The Supreme Court has held in many decisions that Article 32 protects the "Right to life," a basic right including right to a safe and healthy environment.⁷³ This responsibility is particularly operationalized through the Bangladesh Environment Conservation Act 1995, which serves as the primary framework law governing environmental conservation, pollution control, environmental standards setting and regulatory action by the Department of Environment.⁷⁴ Environment Conservation Rules 2023 provides a more robust structure to this and mandates environmental clearance and risk based assessment for industrial and development projects thus setting up a deterrent towards environmentally detrimental activities.⁷⁵ The Environment Court Act 2010 was established in response to findings that there were barriers preventing effective access to environmental justice, with the aim of establishing specialist forums for dealing with environmental offences. Functions such as wildlife protection, biodiversity conservation and sustainable use of biological resources are provided in statutes like the Wildlife (Conservation and Security) Act 2012 and the Bangladesh Biological Diversity Act 2017.⁷⁶ But regardless of these formidable safeguards, the present-day legal regime is still fragmented and regulatory in nature; it does not legally define ecocide, create a threshold for "serious" widespread or long-term ecology destruction, or include a specific justice lynchpin to show willingness for felony liability for critical ecological harm. Thus, Bangladesh's current environmental laws do offer a starting-point for prevention against ecocide, but will require reform in the future through clearer criminal prohibition, enhanced corporate and individual liability provisions and well-integrated regulatory instruments.

In addition, there are around 200 legislations on the preservation of the environment. Furthermore, the Bangladeshi parliamentary committee in charge of the Ministry of Environment, Forests, and Climate Change has lately suggested adding a clause in the Code of Criminal Procedure to define ecocide as a criminal act.

Several occurrences in Bangladesh have emphasized the urgent need for the adoption of ecocide legislation. Recently, Bangladesh has seen a rise in the frequency as well as intensity of heat waves throughout summer. In 2024, the average temperatures in all districts reached a scorching 40 to 42 degrees Celsius, making it the warmest year

⁷² Jasim Ali Chowdhury, *The Constitutional of Bangladesh*, Book zone Publication, para 101

⁷³ *Farooque vs Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh* 1997, 49 DLR(AD) p.1

⁷⁴ Bangladesh Environment Conservation Act 1995

⁷⁵ Environment Conservation Rules 2023

⁷⁶ Wildlife (Conservation and Security) Act 2012; Bangladesh Biological Diversity Act 2017.

on record. The harsh weather in Bangladesh is a reflection of the country's inadequate environmental governance and environmental fragility.⁷⁷

The Bangladesh Country Environmental Analysis (CEA) reveals that air pollution, contaminated water, inadequate sanitation and hygiene, and lead contamination sure is responsible for more than 272,000 premature deaths and 5.2 billion of sickness annually.⁷⁸ The storm Remal, the first significant cyclone of the year, brought about powerful gales and intense rainfall that battered the coasts of India and Bangladesh on Monday, 27 May 2024. This resulted in the unfortunate demise of at least 10 individuals in Bangladesh and caused power outages affecting millions.⁷⁹ In 2020, a series of devastating disasters occurred rapidly, notably Cyclone Amphan. In 2019, a research report derived from the “Global Burden of Diseases, Injuries and Risk Factors” study (GBD) revealed that 215,000 lives were lost in Bangladesh due to different forms of environmental pollution. Air pollution resulted in 173,515 fatalities, water pollution caused 30,874 deaths, and occupational pollution accounted for 10,289 deaths.⁸⁰ Recent research indicates that not less than 56 rivers throughout country experience severe pollution during the low-flow season when Natural River flows are at their nadir.⁸¹ The RDRC, a non-governmental organization dedicated to river conservation, conducted a study spanning from February 2022 to February 2023. Out of the 56 rivers being considered, a minimum of 16 are contaminated by domestic and plastic waste. Simultaneously, a total of 35 rivers were contaminated by plastic, industrial trash, and residential refuse originating from local authorities.⁸² According to a research conducted by Greenpeace, the Rampal power station, which covers an area of 1834 acres of land located to norther part of Sundarbans is projected to result in a minimum of 6,000 early deaths and low birth weights for 24,000 newborns throughout its 40-years lifespan.⁸³ All of these phenomenons simultaneously have had a negative influence on our biosphere. Subsequently, the Researchers and Scientists discovered these phenomena are caused by environmental

⁷⁷ Sharif Mustajib, 'Extreme Heatwaves in Bangladesh: The Environmental Governance Perspectives' (The Diplomat, 25 April 2024) <https://thediplomat.com/2024/04/extreme-heatwaves-in-bangladesh-the-environmental-governance-perspectives/> accessed 28 May 2024.

⁷⁸ World Bank, 'Addressing Environmental Pollution is Critical for Bangladesh's Growth and Development' (28 March 2024) <https://www.worldbank.org/en/news/press-release/2024/03/28/addressing-environmental-pollution-is-critical-for-bangladesh-s-growth-and-development> accessed 4 May 2025.

⁷⁹ Asian Disaster Reduction Center, 'Bangladesh: Tropical Cyclone: 2024/05/26' (26 May 2024) https://www.adrc.asia/view_disaster_en.php?NationCode=50&Lang=en&Key=2688 accessed 4 May 2025

⁸⁰ Mohammad Al-Masum Molla, 'Environment pollution: 2.15 lakh lives lost in Bangladesh in 2019' (The Daily Star, 21 May 2022) <https://www.thedailystar.net/environment/pollution/news/environment-pollution-cost-bangladesh-215-lakh-lives-2019-3027991>

⁸¹ *ibid*

⁸² Pinaki Roy, 'River Pollution: It's Now All Over the Country' (The Daily Star, 2023) <https://www.thedailystar.net/environment/pollution/water-pollution/news/river-pollution-its-now-all-over-the-country-3270451> accessed 4 May 2025.

⁸³ The Daily Star, 'Rampal Power Plant Pollution Impact: Greenpeace Study Shows Grim Picture' (The Daily Star, 6 May 2017) <https://www.thedailystar.net/frontpage/6000-premature-deaths-40yrs-1401421> accessed 4 February 2025.

change, for which human civilization has exclusive responsibility. The environment in Bangladesh is unsafe due to the implementation of multiple developmental initiatives that require the removal of trees of "historical importance."

These results underscore the imminent need for stringent legislation against ecocide due to the over-exploitation as well as depletion of natural resources, ecology, and environment. Bangladesh is at critical juncture to implement ecocide legislation and establish as a significant safeguard for its environment and ecosystem, which profoundly affects the health of millions of its citizens. Ecocide law could play a key role in curbing pollution and environmental degradation, protect biodiversity and contribute to a reduction of climate change by protecting important carbon sinks, and impeding further investment in fossil fuel infrastructure⁸⁴. The worldwide environmental deterioration is one of the main reasons why people are impoverished, hungry, displaced, and prone to conflict. A less destructive and more peaceful society is possible with the help of ecocide legislation.⁸⁵ The primary goal is not retribution but prevention; specifically, it ensures that decision-makers (such as investors, banks, and insurance companies) exercise due diligence when deciding on actions that could negatively affect the environment.⁸⁶

Bangladesh should leave behind the current patchwork environmental framework and invest in a separate national Ecocide Prevention and Accountability Act or amend the Bangladesh Environment Conservation Act 1995 or add a clause in the Code of Criminal Procedure to expressly criminalize ecocides. Such reform should be guided by a clear legal definition of ecocide, defined based on serious and widespread or long-term environmental damage that is committed with intent, but also hold accountable corporate directors / officers and public officials whose conduct or omissions contribute to large-scale ecological destruction. Through mandatory environmental impact assessment, strategic environmental assessment, public consultation, minimum transparency in the procedures of environmental clearance and constant vigilance around these high-risks industries and development projects, the law should reinforce preventive mechanisms. The jurisdiction and capacity of the Environment Courts should also be extended so that they can make urgent injunctions, order ecological restoration, grant compensation to impacted communities as well as proportionate criminal penalties. Bangladesh needs to create a standalone environmental prosecution and investigation branch under the Department of Environment, backed by scientific expertise but also regional based community-based reporting system (i.e., forensic labs). Ecocide prevention should also be integrated with biodiversity safeguarding; climate change adaptation and disaster risk governance, so that environmental harm is seen not merely as a form of

⁸⁴ Ecocide Law Alliance, *Why Ecocide Law* (April 2023) <https://www.ecocidelawalliance.org/wp-content/uploads/2021/11/Why-ecocide-law.pdf> accessed 4 May 2025

⁸⁵ *Ibid*

⁸⁶ Zahra McDonnell-Elmetri, *The Crime of Ecocide: The Answer to Our Environmental Emergency?* https://www.otago.ac.nz/__data/assets/pdf_file/0022/326731/the-crime-of-ecocide-the-answer-to-our-environmental-emergency-828558.pdf accessed 4 May 2025.

regulatory non-compliance but rather as an extremely serious crime against present and future generations.⁸⁷

4. Conclusion

The suggested international crime of ecocide includes environmental issues into a judicial system mostly orientated on protecting human life and dignity hence acknowledging the inherent connection between human rights and environmental preservation. Including ecocide within the framework of existing international crimes under the authority of the International Criminal Court would help close the accountability gap by establishing individual criminal liability for perpetrators, including state officials and corporate executives.⁸⁸ It may also be crucial in avoiding and correcting environmental injustices that do not constitute ecocide, consequently promoting tools for local justice and serving as a catalyst for systematic transformation. Viewed through the prism of human rights, an international crime of ecocide defined and enforced might help to increase accountability for major environmental harm and advance environmental and climatic justice.

Involving the ICC in quest of environmental justice might help community, governments, and the international communities recognize ecocide as a very destructive and transformative crime.

Confronted with a climatic catastrophe and a period of widespread extinction, we must use all available instruments, including legal mechanisms, to effectuate significant systemic change for the preservation and restoration of the natural ecosystems.⁸⁹

This study sought to investigate the link between ecocide and the present international environmental law system and determine its possible function in reducing environmental harm and protecting the planet for future generations. Ecocide has recently been proposed as a legal mechanism to address deficiencies in the international response to global environmental deterioration.⁹⁰

⁸⁷ Constitution of the People's Republic of Bangladesh, art 18A; Bangladesh Environment Conservation Act 1995; Environment Court Act 2010; Wildlife (Conservation and Security) Act 2012; Bangladesh Biological Diversity Act 2017.

⁸⁸ *Supra*, Note 17

⁸⁹ Rachel Killea, The Benefits, Challenges, and Limitations of Criminalizing Ecocide, file:///F:/ecocide/The%20Benefits,%20Challenges,%20and%20Limitations%20of%20Criminalizing%20Ecocide%20_%20IPI%20Global%20Observatory.html

⁹⁰ Zahra McDonnell-Elmetri, THE CRIME OF ECOCIDE: THE ANSWER TO OUR ENVIRONMENTAL EMERGENCY?, retrieved from: https://www.otago.ac.nz/__data/assets/pdf_file/0022/326731/the-crime-of-ecocide-the-answer-to-our-environmental-emergency-828558.pdf

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