

ARTICLE

THE FIFTH CRIME: CAN ECOCIDE SAVE THE PLANET WHERE TREATIES FAILED?

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This research article explores the new theory of ecocide as a possible fifth international crime and discusses whether it is appropriate to offer an effective legal solution to the environmental annihilation where the current international treaties have not worked. The paper starts by following the historical development of ecocide, starting in the 1970s due to its impact on the environment, and the application of Agent Orange in the Vietnam War, to the 2021 legal definition offered by the Independent Expert Panel (IEP) to potentially be included in the Rome Statute of the International Criminal Court. It provides a critical examination of the weakness of existing soft-law environmental systems, especially the Paris Agreement and the Convention on Biological Diversity, in the light of how the lack of sanctions to enforce it and the lack of criminal culpability to individuals has enabled both state and non-state actors to view environmental harm as a cost of doing business.

The article also discusses the argument of whether ecocide meets the threshold of gravity needed to qualify as an international crime and whether it fits within the doctrinal framework of the current crimes of international criminal law. It also discusses how the International Criminal Court can be used as a permanent adjudicatory body that can enforce ecocide by using meaningful sentencing policies, and therefore overcoming the deficiencies of administrative penalties. The study also intersects with the wider paradigm shift in international law towards an ecocentric viewpoint, convinced that criminalisation of ecocide is a paradigm shift that would lead to the acknowledgment of the inseparable worth and rights of the ecosystem. Lastly, the paper discusses the critical issues and practical challenges that accompany the idea of making ecocide an international crime, and concludes that the challenges, instead of making it irrelevant, indicate the need to adopt more powerful and enforceable environmental protection mechanisms.

Keywords – Ecocide; International Criminal Law; Environmental Governance; Paris Agreement; Convention on Biological Diversity; International Criminal Court (ICC); Environmental Justice; Soft Law; Anthropocentrism; Ecocentrism; Environmental Accountability; Rome Statute.

I. INTRODUCTION: FROM ENVIRONMENTAL CRISIS TO CRIMINALISATION

The modern world order is characterized by an unparalleled environmental crisis that goes beyond the borders of countries and questions the basic premises of international law. The accumulated impacts of climate change, biodiversity loss, deforestation, ocean acidification, and widespread pollution have all led to irreversible tipping points in the Earth system.¹ It has become scientifically acknowledged that human activity has entered the Anthropocene, a period in the history of the Earth

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¹Paul J. Crutzen, *Geology of Mankind*, 415 *Nature* 23 (2002).

marked by the active role of human activity in the ecosystem and its highly inappropriate nature of life on Earth (a systemic ecological degradation). The immediate nature of this crisis does not only exist in its magnitude but in the fact that once it goes, it cannot be reversed since most of the environmental damage like the extinction of species or the destruction of ecosystems cannot be undone within the human timeframes.²

The current structure of international environmental governance has not been sufficient in dealing with environmental damage regardless of the magnitude of these challenges. States have created a wide system of treaties, conventions and soft law mechanisms since the second half of the twentieth century that seek to control environmental behaviour.³ Such tools as the Convention on Biological Diversity and the Paris Agreement are the international promises to reduce climate change and preserve biodiversity. Nevertheless, these frameworks are mostly based on voluntary compliance, state consent, and collaborations as opposed to enforcing them, thus permitting states and corporate actors to focus on economic growth at the expense of the environment, in which ecological degradation is accepted as a normal externality of growth. As a result, the international environmental law has been reproached on the basis of its normative aspiration but practical ineffectiveness.⁴

One of the key limitations of this framework is its design. The international environmental law is mainly practised in a state-centric paradigm whereby responsibilities are not on individuals but on states. The model also has inherent limitations to accountability because it does not include the contribution of the influential corporate bodies and decision-makers who have a direct impact on the destruction of the environment. Moreover, enforcement is fragile or absent, and relies on diplomatic pressure, reporting requirements, and reputational repercussions, and does not involve coercive sanctions. The effect of this regulatory model is a great discrepancy in compliance, in that there is a legal obligation on paper but there is none on the ground, in terms of theory and practice.⁵

To counter these deficiencies, the tendency towards the necessity of stricter accountability mechanisms has been increasing in the discourse of the world. This change is indicative of a larger change in international law, where the emphasis is slowly shifting off of the responsibility of states, onto the issue of criminal liability of individuals. The rise of international criminal law, especially by criminal justice institutions like the International Criminal Court (ICC), has shown the possibilities of criminalisation as a means of dealing with serious harms that pose a threat to humanity. In this changing terrain, the term ecocide has emerged as a proposed fifth international crime, in addition to genocide, crimes against humanity, war crimes, and the crime of aggression.⁶ In its modern definition, ecocide is extreme and either extensive or prolonged destruction of the environment through illegal or careless actions. This idea has been changed greatly since its initial expression in the 1970s, when it was first deployed to refer to the destruction of the environment by armed conflict, especially the use of Agent Orange in the Vietnam War. More recently, a group of

² Intergovernmental Panel on Climate Change, Sixth Assessment Report (2023).

³ Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79. Convention on Biological Diversity, May 22, 1992, 1760 U.N.T.S. 79.

⁴ Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope?* 110 Am. J. Int'l L. 288 (2016).

⁵ Lavanya Rajamani, *The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations*, 28 J. Env'tl. L. 337 (2016).

⁶ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

independent experts, meeting in 2021, has proposed an ecocide definition that may be included in the Rome Statute of the ICC. The development is a very important move towards making environmental destruction a matter of international criminal liability and not just a violation of regulation.⁷

This paper seeks to answer the main question, which is why international environmental treaties have never succeeded in stopping the large-scale environmental destruction. Although negotiations have taken decades and legal tools are developed, environmental degradation is happening at an unprecedented pace. This begs a core question: why have the current legal systems not been able to attain their intended goals? A reason why it may be one way is the lack of criminal liability. In contrast to other international law spheres, when serious violations are a subject of criminal punishment, in the case of environmental harm, the crime is often dealt with by civil or administrative, or diplomatic measures. The difference between the two results in a scenario in which even the worst kind of environmental harm may not translate to any meaningful responsibility among the perpetrators of such harm.⁸

This means that a gap in the research is the absence of integration between international criminal law and environmental law. Although much academic effort has been directed toward enhancing regulatory structures and compliance systems, very little has been emphasized on the possible role of criminalisation as a form of deterrence and accountability. The lack of a binding international crime that deals with the destruction of the environment is a major gap in the legal framework of international governance. It is this lacuna that is specially pronounced when the ecological damage is of the scale equivalent to other known international offences, but is not subject to the rules of criminal law prosecution.⁹

It is against this background that the main argument of this paper is that the criminalisation of ecocide is a structural change of regulatory compliance to punitive responsibility in international environmental governance. Introducing the issue of individual criminal responsibility towards environmental destruction, ecocide can radically transform the incentives of state and corporate forces. It shifts the legal structure to the voluntary commitments stage and places it in the status of enforceable commitments, thus, attempting to deal with one of the most notable flaws of current environmental regimes.

II. HISTORICAL EVOLUTION AND LEGAL FOUNDATIONS OF ECOCIDE

Although the idea of ecocide is currently becoming widely popular in the context of international law, its origins date back to the ethical and political indignation with regard to extensive environmental killing that occurred in the twentieth century.¹⁰ Its development is a process of gradual change of a rhetorical and ethical statement into a concept that gains more and more legal

⁷ Independent Expert Panel for the Legal Definition of Ecocide, Commentary and Core Text (Stop Ecocide Found., 2021).

⁸ Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, 28 J. Envtl. L. 19 (2016).

⁹ Polly Higgins, *Eradicating Ecocide: Laws and Governance to Prevent the Destruction of Our Planet* (Shep. Walwyn 2010).

¹⁰ Arthur H. Westing, *Environmental Consequences of the Second Indochina War* (Stockholm Int'l Peace Research Inst. 1982).

specificity and normative power. This trajectory is critical to understand in order to grasp its topicality and its restriction in the framework of the current international law.

Ecocide has its roots in the ecocidie that befell the Vietnam War, especially by the extensive deployment of chemical defoliants like Agent Orange by the American military. The destruction of millions of hectares of forest and agricultural land between 1961 and 1971 raised questions about whether the current legal frameworks were adequate to deal with such damages, as it caused serious ecological damage and significant health impacts on humans (Goleman, 2008). It was here that the concept of ecocide started to take form as a means of understanding the destruction of the environment not as a by-product but as an act that is condemnable on its own.

This early usage of the term became notable not only in that it first introduced the term into the international domain of meaning, but also in that the issue of environmental destruction in war came to be understood and comprehended as a world issue that needed to be addressed collectively by legal and moral means. Nevertheless, ecocide was mostly a theoretical construct at this point since it was not strictly defined by law or supported by institutions.

The concept of ecocide evolved through the decades in the field of international law, especially in terms of discussions in the United Nations. In the 1970s and 1980s, the International Law Commission (ILC) contemplated the idea of environmental destruction being an international crime in its Draft Code of Crimes against the Peace and Security of Mankind, as there was an increased understanding of the necessity of criminalising such actions. But these provisions were not included in the final text, in large part because of political opposition, and a fear of interference with the sovereignty of states. This exclusion was a pivotal point in the development of ecocide, as it exemplifies the conflict between normative obligations and political practicability in international lawmaking.

Although this was a defeat, issues concerning the damage to the environment caused by armed conflict resulted in the creation of certain legal safeguards of international humanitarian law. Article 35(3) and Article 55 of Additional Protocol I to the Geneva Conventions are also a key move in the acknowledgement of environmental protection as a legal duty in wartime. Nonetheless, they only extend to armed conflict and not to peacetime environmental destruction, which is the major ecological destruction in the modern world.¹¹

A more practical legal fragment on environmental harm is in the Rome Statute of the International Criminal Court (ICC), in particular, in Article 8(2)(b)(iv) which defines as a war crime the deliberate use of attacks when it is known that they will cause widespread, long-term, and severe destruction of the natural environment that would be manifestly excessive in relation to the estimated military benefit. As a result, it fails to offer a detailed model of responding to the large-scale destruction of the environment that is not associated with armed warfare.¹²

These shortcomings of the current legal frameworks have helped to give a revitalized impetus to the definition and codification of ecocide as an independent international crime. One of the major steps in this matter was the creation of the Independent Expert Panel (IEP) on the Legal Definition of Ecocide in 2021. The panel convened by the Stop Ecocide Foundation suggested a legal definition

¹¹ Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 (entered into force Dec. 7, 1978), arts. 35(3), 55.

¹² Rome Statute of the International Criminal Court, *supra* note 6, art. 8(2)(b)(iv).

of ecocide, based on the existing language of the law of international humanitarian law but including peacetime events such as those occurring in non-military contexts. It also brings a *Mens rea* criterion founded on knowledge of substantial likelihood thus addressing one of the major problems of attributing criminal responsibility to environmental degradation.

The IEP definition is a very significant move towards making ecocide a legally articulable concept that can be included in the Rome Statute. It is representative of the effort to strike the balance between legal precision and normative ambition, so that the definition is enforceable, yet broad enough to encompass a variety of types of environmental harm. The proposal however is not binding and it has not yet been adopted as a formal part of international criminal law. In this sense, ecocide is still in a normative development phase as opposed to being codified.

In parallel with these global trends, various domestic jurisdictions have started examining the possibility of recognizing ecocide or other offences in their domestic legal frameworks. As an example, in its 2021 Climate and Resilience Law, France proposed the concept of ecocide but the final act adopted a more limited offence of environmental damage instead of a fully-fledged crime of ecocide, although this does not rule out the possibility that the concept of ecocide will ultimately become embedded in the international law system.¹³

To sum up, the historical development of ecocide demonstrates a slow yet substantial transition towards the use of moral opprobrium toward a legal formulation. Since its inception in the environmental destruction of the Vietnam War, ecocide has been conceptualized and its normative strength and legal edges have grown. But in spite of this, it is not formally covered by international criminal law. The lack of codification captures the persistent problem of political will, particularity of definition, and institutional viability. However, the course of ecocide gives a sign that it has ceased to be a mere rhetorical device and stands a chance to be listed as the fifth international crime.

III. FAILURE OF INTERNATIONAL ENVIRONMENTAL TREATIES: THE LIMITS OF “SOFT LAW”

The modern structure of international environmental law has frequently been hailed as extensive, sophisticated and virtually universalist. States have over the last 50 years negotiated and implemented an impressive number of multilateral environmental agreements on climate change, loss of biodiversity, marine pollution, and sustainable development. However, even with all this thick web of legal tools, the rate of environmental degradation remains high. This paradox, of proliferating law and ecological degradation, begs deeper questions of the efficacy of the current system of treaty-based governance. The issue is not with a lack of norms, but with their low enforceability. International environmental law has remained largely a system of soft law, where voluntary obligations prevail, compliance is weak and there is a chronic deficit of coercive accountability.

The use of state consent and cooperation is a characteristic feature of international environmental treaties. In contrast to the domestic legal systems, where the binding rules are supported by the enforceable sanctions, international law is decentralised in nature, as sovereignty is still the priority.

¹³ Loi n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets (France).

Environmental treaties are thus aimed at motivating participation as opposed to imposing binding duties. An example is the Paris Agreement, a historic international attempt to deal with climate change, but whose fundamental mechanism, Nationally Determined Contributions (NDCs) is non-binding in nature with regard to results and can be adapted or altered over time and at their own rate of progress.¹⁴ Although the agreement provides a procedural commitment like reporting and transparency, it does not have substantive enforcement measures to hold parties accountable on meeting the objectives of emission reduction.

The same trend can be traced in the Convention on Biological Diversity (CBD) which aims to encourage the conservation and sustainable use of biodiversity, though the implementation of the Convention mainly relies on domestic action by the states, through the establishment of significant principles and frameworks such as the ecosystem approach and the national biodiversity strategies.¹⁵ Not achieving conservation targets has no binding penalties, and there is no effective mechanism to penalise states that cause biodiversity loss. Consequently, the world biodiversity is still deteriorating even after decades of international agreements. These cases are representative of a bigger structural constraint: international environmental agreements focus on consensus and flexibility to the detriment of effectiveness.

The preeminence of soft law in the realm of environmental governance can be explained by the political and practical factors. States are not willing to guarantee binding obligations that could hamper their economic growth or be liable. Environmental concerns typically feature complicated trade-offs between environmental protection and economic development, and it is often challenging to get consensus around high legal standards. As a result, treaty regimes are likely to be flexible and adaptive, focusing on cooperation, capacity-building and incrementalism. Although this can make participation more widespread, it also weakens the normative power of legal obligations so that they can be viewed as aspirational, but not binding obligations.

Among the greatest repercussions of this soft law framework, there is a lack of meaningful penalties in case of non-compliance. International environmental regimes in most cases have their enforcement mechanisms restricted to reporting, peer reviews and diplomatic pressure. To illustrate, the compliance mechanism of the Paris Agreement is strictly non-punitive and facilitative, meant to help states stick to their commitments, and not to punish them in case of default. Such a lack of coercive implementation calls into question the preventive impact of international law, whereby states are free to avoid their obligations without much repercussions.

The restrictions of treaty-based governance are also exacerbated by the state-centric focus. The international environmental law mainly focuses on states as the targets of the legal responsibility leaving a huge gap of accountability to non-state actors, especially multinational corporations. Corporate bodies are at the center of operations that are associated with environmental degradation in the modern global economy (extraction of fossil fuels, deforestation, and industrial pollution). Nevertheless, the current laws do not give such actors any international responsibilities. Rather, the

¹⁴ Paris Agreement, Dec. 12, 2015, 3156 U.N.T.S. 79, art. 4.

¹⁵ Convention on Biological Diversity, May 22, 1992, 1760 U.N.T.S. 79.

states mediate responsibility acting in a way that they may or may not have the capacity or desire to exercise control over strong economic interests within their jurisdiction.¹⁶

This structural disjuncture has resulted in a scenario in which environmental degradation is commonly seen as a cost of doing business. The companies can also include the risks of fines, regulatory fines, or reputational risks in the costs of doing business and not in discouraging bad behavior. Without criminal responsibility, even a massive ecological destruction can lead to monetary fines which cannot correspond to the extent of damage done. This is a dynamic which weakens the normative basis of environmental law, turning it into an economic regulatory system instead of a system of justice and accountability.¹⁷

The absence of criminal responsibility is another severe constraint of international environmental treaties. The environmental law has not been subject to state responsibility, as compared to other fields like international humanitarian law and human rights law, where individuals can be made responsible to serious violations. This difference has far-reaching consequences on enforcement. States can be diplomatically or economically pressured into action but the decision-makers-political leaders or corporate executives- rarely have legal responsibility towards the harm of the environment. Such lack of individual responsibility undermines the deterrent impact of legal norms and permits maladaptive practices to continue.

This is especially illustrated in the contrast between environmental law and international criminal law. The creation of the International Criminal Court (ICC) was a big step towards the personal responsibility to commit crimes like genocide, crime against humanity, and war crimes. These crimes are defined by the severity and their effects to the global society. However, the scale and gravity of some types of environmental destruction are similar, and such behavior are not covered by the international criminal law. This omission indicates a historical prioritisation of human-based harms over those of the ecology, not to mention the political issues involved in increasing the jurisdiction of international criminal institutions.¹⁸

To sum it up, the ineffectiveness of international environmental treaties is not only a result of the poor implementation of the treaties but a result of the very design of the system. The supremacy of soft law, the heightened value of state sovereignty, and the lack of binding penalties have resulted in a new legal framework that is unsuited to deal with the magnitude and acuity of modern environmental issues. This organizational deficiency gives a good reason to consider the alternative solutions, such as the consideration of ecocide as an international crime. Ecocide can transform the constraints of the current systems and offer a more efficient tool of environmental protection by bringing criminal responsibility to environmental policy.

IV. ECOCIDE AS AN INTERNATIONAL CRIME: MEETING THE GRAVITY THRESHOLD

The emergence of ecocide as a crime against humanity under international law requires a strict interaction with the theoretical basis of international criminal law, especially the threshold conditions that identify a behavior as an international crime. In contrast to regulatory infractions or domestic

¹⁶ John H. Knox, Linking Human Rights and Climate Change at the United Nations, 33 Harv. Env't L. Rev. 477 (2009).

¹⁷ Philippe Sands, *Principles of International Environmental Law* (3d ed. 2012).

¹⁸ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

crimes, international crimes are defined by their extraordinary seriousness, their effects on the international community on the whole, and the necessity to enforce them with the help of international courts, like the International Criminal Court (ICC). Thus, any suggestion to incorporate ecocide into the focus of international criminal law should prove that it meets these basic requirements.

The current body of international criminal law, as contained in the Rome Statute of the ICC, recognizes four essential crimes: genocide, crimes against humanity, war crimes, and the crime of aggression.¹⁹ These four crimes are not only characterised by the nature of the crime but also by their magnitude, gravity and impact on humanity. An example of this would be genocide, which is an act of annihilating a national, ethnic, racial or religious group wholly or partially. Crimes against humanity include the common or organized attacks on civilian groups, whereas the war crimes deal with the grave infractions of the laws and customs of armed violence. The crime of aggression, in its turn, is related to the illegal use of force by a state toward the sovereignty or territorial integrity of another state. All these categories create a high level of gravity and indicate the exceptional character of the behavior that should be prosecuted by the international criminal courts.²⁰

When determining whether ecocide qualifies as this threshold, one must look into the nature of environmental harm, and its implications more generally. When severe, widespread, or long-term, environmental destruction may have comparable or even greater impacts than those of known international crimes. Massive deforestation, oil spills, industrial pollution, and ecosystem destruction may leave communities, livelihoods, and the environment in which humans exist in ruins. Furthermore, environmental degradation tends to be transboundary in nature and the effects of one state and one population will be felt by another hence involving the international community as a whole. Ecocide, in this respect, works in line with the basic logic of the international criminal law, which is to combat actions that endanger international peace, security, and well-being.²¹

One of the major factors that define the severity of a crime is the magnitude and the extent of harm. The suggested ecocide definition by the Independent Expert Panel (IEP) includes this condition by prioritizing on severe and either widespread or long-term harm to the environment. Such thresholds allow ecocide to be limited to the most heinous types of environmental destruction, thus remaining consistent with the gravity standard of international criminal law. It also averts excessive criminalisation of minor and incidental environmental damage that can be effectively solved by local regulation procedures.

The use of these thresholds, however, presents key interpretative concerns. Severe, widespread, and long-term are all flexible terms, and can be interpreted differently by different people. To give an example, what is considered severe damage in one ecological environment may be very different in the other. Equally, the time aspect of the long-term damage can differ, based on the ecosystem involved. Such ambiguities require formulation of clear legal standards and guidelines so that there is consistency and predictability in applying the law. However, these difficulties are not isolated to

¹⁹ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, arts. 5–8 bis (entered into force July 1, 2002).

²⁰ Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, 28 J. Env'tl. L. 19 (2016).

²¹ Independent Expert Panel for the Legal Definition of Ecocide, *Commentary and Core Text* (Stop Ecocide Found. 2021).

ecocide; the same problems exist in the interpretation of established international crimes and have been solved by judicial interpretation and developing jurisprudence. However, these are not unique to ecocide, as the same issues are present in the interpretation of established international crimes, which have also been resolved through judicial interpretation and emergent jurisprudence.

The identification of the other essential element in international crimes is that these crimes must have a mental element or *mens rea*. The Rome statute tends to presuppose intent and knowledge as a crime, which is why the intent is a challenging concept to prove in the case of ecocide, where environmental damage is usually a complex and diffuse phenomenon, and thus not necessarily an act of intentional destruction. In acknowledgement of this difficulty, the IEP definition uses a standard that considers knowledge of a substantial likelihood of environmental damage, instead of taking specific intent to cause environmental damage (as an example, the damage may be knowingly caused as a result of economic or political reasons).

The incorporation of a knowledge-based standard is a significant doctrinal development, because it broadens the criminal liability to encompass careless or wanton behavior. It recognizes that the destruction of the environment is frequently a calculated risk-taking and not a deliberate action and that such conduct is no less destructive. Simultaneously, the method makes it a subject of controversy, as it may be seen as the weakening of the *mens rea* element, especially in terms of the distinction between criminal and negligence actions. A reasonable balance between responsibility and justice is thus vital in the development of ecocide as a global crime.

Another aspect of the gravity threshold is associated with the effect of the conduct on the interests under protection. The definition of traditional international crimes is mostly related to any damage to human beings, either through physical abuse, displacement, or even persecution. Ecocide, in its turn, is focused on environmental damage itself and makes one wonder whether the damage to the environment can be compared to the damage to humanity. The question raises more philosophical issues about the anthropocentric principles of international law. Though the damage of the environment certainly impacts on human population, its importance goes beyond human immediate needs to include the value of the ecosystems as well as the rights of future generations.²²

To sum up, the notion of ecocide has all the necessary qualities to be considered an international crime, especially in the aspect of severity, scope, and consequences. Although there is a problem with defining its scope and setting the right standards of liability, these problems are not that overwhelming. The history of international criminal law proves that the new types of crimes may appear depending on the development of new global conditions. Ecocide is one of such evolutions, and it can be attributed to the increasing awareness of the fact that environmental pollution is a threat not only to the state elements but also to the entire international community. Its possible inclusion in the Rome Statute would be a major leap towards bringing the international law in line with the ecological issues of the twenty-first century.

²² Christopher D. Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450 (1972).

V. ROLE OF THE INTERNATIONAL CRIMINAL COURT: FROM SYMBOLISM TO ENFORCEMENT

When it is proposed to declare ecocide an international crime, the issue of institutional enforcement is also bound to arise and, in this respect, the International Criminal Court (ICC) holds a central stage. Created by the Rome Statute, the ICC was the most important step in the history of international criminal law as it offered the world an enduring judicial process to bring offenders before the court to face charges of the utmost interest to the global community. Its decision to include ecocide in its jurisdiction would not only be a sign of formal recognition but would turn the concept into a normative aspiration into a legal reality.

The ICC has its jurisdiction restricted now to four fundamental crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. These offenses are brought together by the fact that they are extraordinary and have the ability to cause a security and peace threat to the international community. Notably, ICC is based on the concept of individual criminal responsibility where individuals and not states are liable to wrongs. This aspect characterizes international criminal law as opposed to traditional international law that mainly deals with the responsibility of states. Making ecocide a subject of ICC prosecution would therefore be a paradigmatic change that would allow to prosecute those individuals, including political leaders, corporate executives and decision-makers, who have caused massive destruction of the environment.

Making ecocide a part of the ICC system would need a revision of the Rome Statute. Article 121 of the Statute provides that any State Party may propose an amendment which must be adopted by a two-thirds majority of the Assembly of States Parties, and subsequently by individual states, a process that is legally, but politically, complicated, given the need to have wide international agreement. States that have a high stake in the economies of fossil fuels, mining and large-scale agriculture might not want the inclusion of ecocide because of the issue of potential liability and limitations to development. However, history of international criminal law has shown that change in norms in many cases comes before political acceptance and this therefore indicates that continued advocacy and future evolving world consciousness may one day lead to an amendment.

The strongest rationale behind the ICC jurisdiction in the ecocide is that it has the potential to provide greater deterrence. In contrast to civil or administrative punishment which is usually viewed as a financial penalty, criminal penalties are highly stigmatized in terms of morality and social considerations. The threat of being prosecuted in an international court, including the risk of imprisonment can play a major role in shaping the behaviour of decision-makers. Criminalisation of ecocide would change the cost-benefit analysis of state and corporate players, by making it impractical to engage in environmentally risky actions, by personalising environmental harm.

In addition, ICC offers a voice in expressing the moral denunciation of some types of behavior. International criminal law is more than a punitive law; it is also expressive; it gives expression to the overall view of the international community what unacceptable behaviour is. The ecocide being recognized as an international crime would send the message that extensive ecological devastation is no longer an acceptable by-product of economic process but a break on the most basic international standards. This expressive role is especially important in the area of environmental law, where the current frameworks frequently lack the normative authority and moral persuasiveness to create behavioural change.

The other benefit of ICC involvement is that it can help to close the gap of accountability that exists in the present-day environmental governance. As explained in the preceding discussion, the international environmental law is mainly effective at the state responsibility level, implying that the individuals are largely out of its jurisdiction. ICC, on the other hand, is devoted to individual responsibility, thus allowing the name of culpability to be charged against people, whose decisions lead to environmental degradation. This change is particularly applicable to the multinational companies, where the power of decisions taken by the organization is often in the hands of a small number of people. The ICC does not presently exercise jurisdiction over legal entities like corporations, but when individuals act in their behalf, it is capable of prosecuting them, thus indirectly combating corporate wrongdoing.²³

The success of the ICC in enforcing ecocide would however hinge on some structural and practical factors. The principle of complementarity, which regulates the relations between the ICC and the national jurisdictions, is one of the most important challenges. Although the principle of complementarity is created to honour the sovereignty of states and promote domestic accountability, it can also restrict the ICC in its intervention in situations where states are not willing or able to prosecute powerful actors. When considering the ecocide, in which environmental damage is frequently associated with state policy or economically important actions, chances of domestic prosecution can be minimal, thus imposing more burden on the ICC.

The other limitation is that the ICC relies on state cooperation. The Court lacks its enforcement tools and depends on states to perform arrest warrants, collect evidence, and support investigations. Such reliance may impede the success of prosecutions, especially when states are not cooperative because of political or economic factors. When it comes to ecocide, and the alleged action might involve powerful states or influential actors, it may be especially difficult to obtain cooperation.²⁴

To sum up, the ICC is an opportunity and a challenge in the quest to criminalise ecocide. On the one hand, it offers a well-established institutional framework that is able to enforce the international criminal norms and hold individuals liable to serious harms. Conversely, it has limited performance by the political reality, structural constraints, and practical issues Mattawa enforcement. However, making ecocide a part of the ICC would be a great step towards turning the environmental protection on its head so that it is not a case of voluntary compliance but a case of legal duty. It would seal the divide between normative aspiration and institutional enforcement, thus, promoting the overall goal of attaining meaningful accountability of environmental harm.

VI. ANTHROPOCENTRIC VS ECOCENTRIC PARADIGM SHIFT IN INTERNATIONAL LAW

One cannot fully comprehend the discussion of the criminalisation of ecocide without addressing the more philosophical underpinnings of international law. Primarily, the discussion is a clash of two opposing paradigms: the anthropocentric model where the interests of humans are the core of protection, and the ecocentric approach where nature is inherently valuable regardless of its benefit to man. The appearance of ecocide as an international crime proposal is an indication that the former

²³ Andrew Clapham, *The Question of Jurisdiction Under International Criminal Law over Legal Persons: Lessons from the Rome Conference on an International Criminal Court*, 11 *Crim. L.F.* 157 (2000).

²⁴ William A. Schabas, *An Introduction to the International Criminal Court* (5th ed. 2017).

might turn into the latter and the conceptual inclination of the international legal systems would change radically.

Traditionally, international law has been anthropocentric to the greatest extent. The legal norms are created with the main purpose to control the relations between states, as well as to safeguard the human interests which can be in the form of sovereignty, territorial integrity, or individual rights. In this context, environmental protection has been vindicated to a great extent on the consideration of its influence on the welfare of human beings. As an example, international environmental agreements tend to focus on the importance of conserving natural resources so that they can be used to achieve economic growth, human health, and to ensure the survival of future generations.²⁵ These goals are certainly sound, but they are utilitarian in nature where the environment is only appreciated as a means to human end and not the end in itself.

This anthropocentric inclination can be seen through the formulation of international environmental law in which the damage to the environment is often understood in ways that involve its effects on human populations. An example of this is climate change which is not only seen as an ecological problem but also as a threat to food security, water accessibility, and human livelihoods. Similarly, biodiversity conservation is often justified in terms of ecosystem services and their contribution to economic and social stability. Although it is true that these views have enabled the inclusion of the issue of environment into the mainstream policy debate, they have also restricted the capacity of the law to protect the environment in the sense that they place the interests of the environment in the same category as human interests.

The ecocentric approach in contrast questions this hierarchy by stating that nature has an intrinsic value that must be preserved regardless of its value to humans. This view builds upon various philosophical and ethical traditions, such as deep ecology, indigenous worldviews, environmental ethics, which focus on the interrelatedness of all life forms. Based on ecocentric perspective, environmental degradation is not an incidental harm to human interests but a breach of ecological integrity. The implications of this reconceptualisation on legal frameworks are huge because they broaden the scope of notions of the protection of rights and reformulate the foundation of legal responsibility.²⁶

The next most evident ecocentric paradigm manifestation is the new acknowledgment of the Rights of Nature. The idea is to give natural resources like rivers, forests and ecosystems legal status as persons, and thus be able to enjoy the rights of the law. Well-known instances are the legal status of the Whanganui River in New Zealand as a person, and the constitutional rights of nature in Ecuador. Although these efforts are still small-scale, they are significant steps towards *re*defining the connection between law and ecology.

Ecocentrism can be thought of as the wider shift that will lead to the ecocide concept. Ecocide makes the environment the center of the greatest legal concern by making it clear that the destruction of the environment is a global crime. In contrast to the conventional environmental offenses, which more often are considered as a violation of regulations, ecocide has a moral and legal reproach similar to other central worldwide offenses. This is indicative of a realization that some types of environmental

²⁵ Stockholm Declaration on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

²⁶ Arne Naess, *The Shallow and the Deep, Long-Range Ecology Movement*, 16 *Inquiry* 95 (1973).

damage are so serious that they should be condemned and punished as a whole rather than simply regulated.²⁷

Notably, ecocide does not reject the anthropocentric considerations but, instead, incorporates them in a more holistic approach. The destruction of the environment can be very extensive and can affect human population in displacement, health effects and even loss of livelihoods. Ecocide strengthens the relationship between ecological integrity and human well-being by considering such harm through ecological crime law. Meanwhile, it recognizes that the environment, too, is an object of protection, thus filling the gap between the anthropocentric and ecocentrism viewpoints.

The ecocentrism paradigm shift also carries considerable consequences in terms of legal norms and institutions development. It necessitates the re-evaluation of important concepts like harm, responsibility and justice. In an anthropocentric model, the harm is normally quantified in relation to the effect it has on human interests, an ecocentric model quantifies the effect it has on ecosystems and biodiversity in general. In the same way, it is no longer only the responsibility of direct human victims but the responsibility of safeguarding the ecological systems in general. Such an expanded notion of harm and responsibility requires new legal mechanisms and approaches, such as integrating scientific knowledge and ecological evaluations into legal decision-making processes.²⁸ Nonetheless, the shift towards an ecocentric paradigm does not come without difficulties. The possible conflict of economic growth and environmental protection is one of the major issues. The exploitation of natural resources is a major mode of economic development in many states especially in the Global South. Strict environmental policies, particularly criminal liability, can be viewed as a restriction to development and environmental neo-colonialism. These issues can be tackled by a subtle measure that would ensure the protection of the environment and at the same time consider equity and sustainable development.²⁹

The other issue is the problem of incorporation of ecocentric principles into the legal frameworks, which are entrenched in the anthropocentric tradition. The establishment of the rights of nature and the criminalisation of ecocide necessitate important conceptual and institutional changes. The law should be adjusted to new types of evidence, new kinds of harm, and new ways of representation. It is not likely to be a quick and unarmoured process, as it represents the transformation of societal values and priorities in general.

Nevertheless, the trend to an ecocentric paradigm is indicative of a changing perception of the interaction between the human and the natural world. The growing number and magnitude of environmental crises have highlighted the constraints of the current legal frameworks and the necessity of more effective protection mechanisms. The proposed international crime of ecocide reflects this change by acknowledging that destruction of ecosystems is not just a regulatory problem but an issue of global justice.

Finally, the anthropocentric and ecocentric approaches are the main topics of the future of international environmental law. Although the anthropocentric model has been historically influential on the legal norms, the viewpoints which focus on the inherent worth of nature are

²⁷ Polly Higgins, *Eradicating Ecocide: Laws and Governance to Prevent the Destruction of Our Planet* (Shep. Walwyn 2010).

²⁸ Christopher D. Stone, Should Trees Have Standing? Toward Legal Rights for Natural Objects, 45 S. Cal. L. Rev. 450 (1972).

²⁹ Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford Univ. Press 2006).

increasingly challenging it. Ecocide is a crucial point in this development, and this concept can provide a framework that embraces the protection of the ecology in the context of the international criminal law. This way, it not only overcomes the shortcomings of current systems, but also reinvents the moral and legal rationales of the environmental governance. This revolution, which is still in development, can revolutionize how law views and safeguards the planet.

VII. CHALLENGES, CRITIQUES, AND THE WAY FORWARD

Although the idea of ecocide as an international crime can be viewed as a very strong answer to the shortcomings of current environmental regulation, it is also fraught with a lot of political, doctrinal, institutional, and practical issues. Another significant obstacle is political opposition, because including ecocide in the Rome Statute would mean a wide-spread international agreement, especially on behalf of the states whose economies are largely dependent on industries that are environmentally intensive. The fear of sovereignty and economic implication only adds to the challenges of acceptance.

Definitional ambiguity is also not an easy task because such terms as severe, widespread, and long-term are flexible and can be interpreted inconsistently, which is subject to question in the postulate of legality. Also, there is a threat of selective enforcement, considering the disparate enforcement of the international criminal law, which can lower the credibility of ecocide as a dispassionate legal means.

Its effectiveness is additionally limited by the lack of direct corporate responsibility because corporate action is many times a driver of environmental damage. There are practical challenges in showing causation, attribution, and the necessary mental element and jurisdictional complications under the principle of complementarity, which contribute to the implementation challenges.

Nevertheless, these challenges do not reduce the imperative behind ecocide, instead, it underscores the need to develop laws and institutions carefully. Effective implementation requires a clear and precise definition, domestic legislation that has been strengthened, and an improvement in international cooperation. Finally, ecocide must not be considered as a single solution but a component of a larger system of environmental governance.

Finally, the ecocide criminalisation, although difficult, is a step towards closing the disjuncture between the environmental damage and legal responsibility and is an indicator of a shifting dedication to responding to the ecological crises on a global scale.

VIII. CONCLUSION: REGULATION TO RESPONSIBILITY

The discussion presented in this paper reveals one basic paradox to international environmental governance: even though the world has an elaborate system of treaties and conventions, environmental degradation is only getting worse. This ineffectiveness lies not only in ineffective implementation but in the very nature of the international environmental law building, which puts an emphasis on voluntary compliance over enforceable responsibility.

The development of ecocide is seen to be a gradual transformation of a concept of morality to a legally viable system to combat this deficiency. Current environmental regimes based on soft law and lax enforcement mechanisms have not deterred bad behavior so environmental harm has become

an acceptable cost. Conversely, the international criminal law shows that individual accountability is effective- a phenomenon that is mostly not realized in environmental governance.

Ecocide aims to fill this gap by bringing about a change in the approach to regulation to responsibility, criminalizing decision-makers who are responsible for serious environmental damage. It also indicates a wider shift towards an ecocentric rather than an anthropocentric legal view, and acknowledging the intrinsic worth of ecosystems, not limited to human use.

Although there are still substantial issues, such as political opposition, lack of definition, and enforcement, they do not negate the idea. Instead, they highlight the need for careful legal development and institutional strengthening. Ecocide needs to be seen as a subset of a larger set of environmental governance that has to be reinforced by national laws, international collaboration, and scientific integration.

To sum up, ecocide criminalisation is a needed and transformative measure to change the legal responsibility to the seriousness of the destruction of our environment. It provides a platform to surpass non-functional regulatory frameworks to one that environmental protection is a binding international requirement.