

PROPOSED AMENDMENT TO THE ROME STATUTE

Ecocide is the extensive loss or damage or destruction 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 or will be severely diminished.

In 2010, lawyer Polly Higgins proposed the Rome Statute be amended to include the international crime of ecocide. Her proposal was submitted into the United Nations International Law Commission, 'mandated to promote the progressive development of international law and its codification'. The submission was published as Chapters 5 and 6 in her first book, *Eradicating Ecocide*.

The purpose for creating the offence of ecocide as the 5th international Crime Against Peace is to put in place an international law at the very top level. 122 nations (as of 2015) are state parties to the Rome Statute. International crime (which is codified in the Rome Statute) applies to signatory states. Where a person commits a Crime Against Peace, the International Criminal Court has powers to intervene in certain circumstances. The Rome Statute is one of the most powerful documents in the world, governing 'the most serious crimes of concern to the international community as a whole' over and above all other laws.

Crimes that already exist within the jurisdiction of the International Criminal Court under Article 5 of the Rome Statute are known collectively as Crime Against Peace. They are:

Article 5(1) *The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:*

*1. The Crime of Genocide, 2. Crimes Against Humanity, 3. War Crimes, 4. The Crime of Aggression.
To be added: 5. The Crime of Ecocide.*

The crime of ecocide, as proposed, prohibits serious loss or damage or destruction. Ecocide law shall prevent, prohibit and pre-empt both human-caused ecocide and human activity known to give rise to climate ecocide. A State or corporate senior official or other person of superior responsibility shall be criminally liable for ecocide crime where the perpetrator's acts or omissions caused ecocide or activity known to give rise to ecocide; the perpetrator knew or ought to have known of the consequences; and the conduct was committed in the context of corporate and/or State activity. By creating a legal duty of care for inhabitants, ecocide crime establishes an over-riding primary legal duty to protect both society and ecology.

Proposals for a new international court exist, as proposed by the Brussels Charter group and the Coalition for the International Court for the Environment.

LAW OF ECOCIDE

Prevents the risk of and/or actual extensive damage to, destruction of or loss of ecosystem(s);
prohibits decisions that result in extensive damage to or destruction of or loss of ecosystem(s);
pre-empts decision-making of a political, financial and business nature that may lead to significant harm.

DUTY OF CARE

Superior responsibility provision: an international and transboundary and therefore cross-jurisdictional duty of care on any person or persons who exercises a position of superior responsibility, without exemption, in either private or public capacity to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).

Business provision: an international and transboundary duty of care on CEOs and directors of a business and/or any person who exercises rights over a given territory to ensure ecocide does not occur.

Political provision: an international and transboundary duty of care on governmental actors, specifically Heads of State and Ministers with environment/energy/climate change portfolios, to ensure ecocide does not occur and to provide emergency assistance before, during and after to other territories at risk or adversely affected by ecocide.

Financial provision: an international and transboundary duty of care on financiers, investors, CEOs and directors of any banking and investment institutions who exercises a position of superior responsibility, to ensure ecocide is not financed.

TRUSTEESHIP

A law of ecocide imparts a legal duty of care to assist where there is loss and/or damage arising from natural catastrophe (e.g. rising sea-levels, droughts, earthquakes). In law, trusteeship principles apply. In the United Nations, a Trusteeship Council already exists. The purpose of the United Nations Trusteeship Council was to assist territories that were unable to self-govern (formerly it was put to use to assist territories that were former colonies). It is proposed that the Trusteeship Council re-open to assist non-self governing territories that have been or are at risk of being harmed by ecocide, whether ecological or cultural.

By re-opening the UN Trusteeship Council (closed in 1994) chamber, member states have a ready-made forum in which to determine what support and aid to put in place for non-self governing territories facing ecocide.

CLIMATE JUSTICE

Currently climate justice is predominantly a “soft law” narrative. Remedy for climate-related loss, damage or destruction is severely limited and society remains unprotected, as do the planet's ecosystems. International agreements, such as the Paris Agreement, establish knowledge but do not impute legal duties or obligations to prevent.

Where the United Nations has failed to address the wider issue of justice through annual negotiations, the International Criminal Court has the ability to prosecute. Serious international crime can be and is prosecuted in many countries throughout the world, under the principle of universal jurisdiction.

MISSING LAW

The international crimes currently provided for under the Rome Statute do not however address

- the protection of ecology (non-human inhabitants of a territory);
- the protection of indigenous and cultural rights (for example when there is destruction of a traditional way of life); or
- loss, damage and destruction that occurs in peace time.

Ecocide crime shall address all of this.

HISTORY

Ecocide law proposals date back to 1972. Olof Palme, then Prime Minister of Sweden, in his opening speech at the Stockholm Conference for the Human Environment, spoke explicitly of the Vietnam war as an ‘ecocide’. The Stockholm Conference focused international attention on environmental issues for the first time, especially those relating to environmental degradation and transboundary pollution. Others, including Indira Gandhi from India and Tang Ke, the leader of the Chinese delegation, also denounced the war in human and environmental terms. They too called for ecocide to be an international crime. A Working Group on Crimes Against the Environment was formed at the conference, and a draft Ecocide Convention was submitted into the United Nations in 1973. An international Crime of Ecocide was included in earlier drafts of the Rome Statute (1985 – 1996) and had the support of many countries, but was removed at the 11th hour despite objections. For over 40 years we have had the means to bring ecocide to an end.

Books: Polly Higgins, *Eradicating Ecocide: laws and governance to prevent the destruction of our planet*, 2010, 2nd Ed. 2015 and *Earth is our Business*, 2011.

Key Document: Prof D Short et al, *Ecocide is the Missing 5th Crime Against Peace*, 2012, 2013. See sas.ac.uk/node/1033 also sas.ac.uk/hrc/projects/ecocide-project.