

PROPOSED AMENDMENT TO THE ROME STATUTE

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 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 shall prohibit mass damage and destruction by creating a legal duty of care for inhabitants that have been or are at risk of being significantly harmed. Ecocide law prevents, prohibits and pre-empts both human-caused ecocide and natural catastrophes. As a criminal law, it is first and foremost the duty of the state to prosecute; where a state is either unwilling or unable to do so, individuals can seek remedy through the International Criminal Court (ICC). Ecocide law has both criminal and civil law application. In the event of an ecological catastrophe (e.g. rising sea levels - naturally occurring ecocide, mass deforestation - human caused ecocide) or a cultural devastation (loss of a community's way of life - cultural ecocide), not only do the state parties have a duty to prosecute but also a duty to give assistance.

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.

ECOCIDE ACT

In 2011, Polly Higgins and a group of lawyers co-drafted the Ecocide Act, which was then tested in the UK Supreme Court in a mock trial. You can read the transcripts, download the documents, watch excerpts and the full trial online at eradicatingecocide.com/the-law/mock-trial. (The Ecocide Act was then mirrored in the draft European Parliament Ecocide Directive proposed by the social movement 'End Ecocide on Earth'. See their website endecocide.org) Section 6 of the Ecocide Act sets out the explicit right that is given recognition by the crime of ecocide:

The right to life is a universal right and where a person, company, organisation, partnership, or any other legal entity causes extensive damage to, destruction of or loss of human and or non-human life of the inhabitants of a territory ... is guilty of the crime of Ecocide.

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 into the drafting 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.

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