

# **ECOCIDE & THE INTERNATIONAL CRIMINAL COURT: A LONG-AWAITED AMENDMENT**

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## **ABSTRACT**

*As of 2023, there is no criminal liability for committing ecocide, or mass environmental destruction, within the international community. If the international community continues to ignore this issue, our world will eventually collapse under the pressure of today's countless environmental issues (climate change, deforestation, air/water pollution, biodiversity loss, soil degradation, etc.). This note advocates for ecocide to be added within the International Criminal Court's jurisdiction. It addresses six possible arguments against an ecocide amendment, including how serious ecocide is as a crime, its various definitions, the mens rea aspect, limited parties to the Rome Statute, limited liability under the International Criminal Court, and a lack of historic basis for the crime. Adding ecocide within the jurisdiction of the International Criminal Court is the first step in mitigating the environmental damage done thus far and preventing even further harm from occurring. Considering the pressing nature of this issue and the ongoing environmental issues, waiting is no longer an option.*

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## INTRODUCTION

Man-made environmental disasters are nothing new. From the countless oil spills that have occurred over the past several decades to the near constant destruction of the Amazon rainforest, there are many examples that show just how destructive the human race can be.<sup>1</sup> It was Professor Arthur W. Galson who coined the term “ecocide” to describe these atrocities.<sup>2</sup> He first used this term in 1970 to describe the United States military’s use of Agent Orange during the Vietnam War.<sup>3</sup> Since then, it has been used in a number of contexts and applied to various subsequent man-made environmental disasters.<sup>4</sup> Other notable examples include the 2010 Deepwater Horizon oil spill, palm oil production in Indonesia, and the Chernobyl nuclear accident.<sup>5</sup> Often used to describe serious, extensive, or long-lasting ecological damage, ecocide has become an abundant and wide-reaching issue that can no longer be ignored by the international community.<sup>6</sup>

The International Criminal Court (hereinafter “ICC”) is an international tribunal that prosecutes individuals who commit what are considered to be the “gravest crimes of concern to the international community.”<sup>7</sup> Whether or not ecocide should be added within the ICC’s jurisdiction has been a hotly

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<sup>1</sup> *Ecological Disasters*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/timeline/ecological-disasters> (last visited Jan. 27, 2023).

<sup>2</sup> Anastacia Greene, *The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?*, 30 FORDHAM ENV’T L. REV. 1, 7-10 (2019) (citing GAUGER ET AL., ECOCIDE IS THE MISSING 5<sup>TH</sup> CRIME AGAINST PEACE (2012)).

<sup>3</sup> *Id.*

<sup>4</sup> See Rebecca Clarke, *What Is Ecocide? Definition and Examples*, TREEHUGGER (June 30, 2021), <https://www.treehugger.com/what-is-ecocide-definition-and-examples-5188053>; Stephanie Safdie, *Ecocide: Definition and Examples*, GREENLY, <https://greenly.earth/en-us/blog/ecology-news/ecocide-definition-and-examples> (Nov. 7, 2023); Shiona Tregaskis, *Ten worst “ecocides,”*

THE GUARDIAN (May 4, 2010), <https://www.theguardian.com/environment/gallery/2010/may/04/top-10-ecocides>.

<sup>5</sup> *What Is Ecocide?*, STOP ECOCIDE INT’L, <https://www.stopecocide.earth/what-is-ecocide> (last visited Oct. 15, 2023).

<sup>6</sup> Mark Allan Gray, *The International Crime of Ecocide*, 26 CAL. W. INT’L L.J. 215 (1996).

<sup>7</sup> *About the Court*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/the-court> (last visited Jan. 27, 2022).

debated topic for years.<sup>8</sup> Given the current state of the world, and the near constant threat of mass environmental destruction, the answer is clear: add the crime of ecocide within the jurisdiction of the ICC and impose criminal liability for those responsible.

This note advocates for adding the crime of ecocide within the jurisdiction of the ICC while also examining the possible issues of an ecocide amendment. It begins with an introduction to the ICC and the history of ecocide. This is followed by possible examples of ecocide and previous attempts to add this crime within the ICC's jurisdiction. Section II examines six potential arguments against an ecocide amendment including, but not limited to, whether ecocide is "serious enough" to be added within the ICC's jurisdiction, the mens rea element, and the limited liability available under the ICC. Section III discusses the ongoing threats to the environment and why an ecocide amendment is both important and necessary. This note concludes with a call to action to the international community to add ecocide within the jurisdiction of the ICC and an emphasis on the importance of this issue.

## I. BACKGROUND

### *A. History, Jurisdiction, and Crimes Before the ICC*

The ICC is an international tribunal seated in The Hague, Netherlands that operates as a court of last resort.<sup>9</sup> Its founding treaty, the Rome Statute, was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in July 1998 and entered into force on July 1<sup>st</sup>, 2002, after being ratified by

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<sup>8</sup> See Peter Sharp, *Prospects for Environmental Liability in the International Criminal Court*, 18 VA. ENV'T L.J. 217 (1999); Rajendra Ramlogan, *Creating International Crimes to Ensure Effective Protection of the Environment*, 22 TEMP. INT'L & COMPAR. L.J. 345 (2008); Frédéric Mégret, *The Problem of an International Criminal Law of the Environment*, 36 COLUM. J. ENV'T L. 195 (2011); Rosemary Mwanza, *Enhancing Accountability for Environmental Damage Under International Law: Ecocide as a Legal Fulfilment of Ecological Integrity*, 19 MELBOURNE J. INT'L L. 125 (2018); Greene, *supra* note 2.

<sup>9</sup> *About the Court*, *supra* note 7.

more than sixty countries.<sup>10</sup> The ICC prosecutes against what are considered to be the “gravest crimes of concern to the international community,” including genocide, war crimes, crimes against humanity, and crimes of aggression.<sup>11</sup>

The court may exercise jurisdiction in a situation where genocide, crimes against humanity or war crimes were committed on or after 1 July 2002 and: 1) The crimes were committed by a State party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court; or 2) The crimes were referred to the ICC Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under chapter VII of the UN Charter.<sup>12</sup>

Since its establishment in 2002, there have been thirty-one cases before the ICC and approximately seventeen investigations ranging from alleged war crimes in Mali to alleged crimes against humanity in Georgia.<sup>13</sup>

The ICC was established in response to the heinous crimes that occurred during the twentieth century.<sup>14</sup> Following World War II, the Nuremberg and Tokyo Trials took place to hold Axis leaders accountable for their crimes.<sup>15</sup> Two new crimes were created as a result of these atrocities: “crimes against humanity” and “genocide.”<sup>16</sup> Crimes against humanity were officially defined as “murder, extermination, enslavement, deportation, and other

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<sup>10</sup> Claire Klobucista & Mariel Ferragamo, *The Role of the International Criminal Court*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/background/role-international-criminal-court> (Aug. 24, 2023).

<sup>11</sup> *About the Court*, *supra* note 7.

<sup>12</sup> *How the Court works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> (last visited Sept. 27, 2022).

<sup>13</sup> *About the Court*, *supra* note 7; *Situations under investigations*, INT’L CRIM. CT., <https://www.icc-cpi.int/situations-under-investigations> (last visited Nov. 7, 2022).

<sup>14</sup> *Understanding the International Criminal Court*, INT’L CRIM. CT. (2020), <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf> (last visited Nov. 7, 2022).

<sup>15</sup> *War Crimes on Trial: The Nuremberg and Tokyo Trials*, THE NAT’L WORLD WAR II MUSEUM (Nov. 24, 2020), <https://www.nationalww2museum.org/war/articles/nuremberg-and-tokyo-war-crimes-trials>.

<sup>16</sup> *Id.*

inhumane acts committed against any civilian population, before or during the war.”<sup>17</sup> Genocide was a term created by Raphael Lemkin, a Polish-Jewish lawyer, to describe the efforts of the Nazi officials to exterminate all those deemed “unfit.”<sup>18</sup>

The United Nations General Assembly recognized a need for a permanent international court following the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter “Genocide Convention”) in 1948.<sup>19</sup> As its name suggests, the Genocide Convention criminalizes genocide and requires state parties to adopt measures to prevent such a crime from occurring.<sup>20</sup>

The idea of an international court reemerged during the Cold War, but negotiations were interrupted by the atrocities in the territory of the former Yugoslavia and Rwanda.<sup>21</sup> The United Nations Security Council established *ad hoc* tribunals in response.<sup>22</sup> The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were created to prosecute those responsible for genocide, war crimes, crimes against humanity, and other serious violations of international humanitarian law.<sup>23</sup> These events, conventions, and tribunals eventually led to the establishment of the ICC and provide the historic basis for the crimes it prosecutes against.<sup>24</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Understanding the International Criminal Court*, *supra* note 14.

<sup>20</sup> *Ratification of the Genocide Convention*, UNITED NATIONS – OFF. ON GENOCIDE PREVENTION & THE RESP. TO PROTECT, <https://www.un.org/en/genocideprevention/genocide-convention.shtml#:~:text=The%20Genocide%20Convention%20was%20the,during%20the%20Second%20World%20War> (last visited Nov. 3, 2022).

<sup>21</sup> *Understanding the International Criminal Court*, *supra* note 14.

<sup>22</sup> *Ad Hoc International Criminal Tribunals*, UNIV. N.C. SCH. OF LAW – KATHRINE R. EVERETT L. LIBR., <https://guides.lib.unc.edu/internationallaw/tribunals> (Oct. 19, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> *Understanding the International Criminal Court*, *supra* note 14.

### *B. History of Ecocide & Similar Crimes*

It was Raphael Lemkin, the individual who created the concept of “genocide,” who first recognized that cultural destruction can lead to the demise of a nation or ethnic group.<sup>25</sup> He urged the international community to recognize this during an address at the International Conference for Unification of Criminal Law in Madrid in 1933.<sup>26</sup> He explained that genocide could be achieved through means other than physical killing, such as by undermining a group’s way of life.<sup>27</sup> Approximately thirty-seven years later, in 1970, the term “ecocide” was coined by Professor Arthur W. Galson at the Conference on War and National Responsibility in Washington, D.C.<sup>28</sup> Professor Galson’s Ph.D. research was utilized by the United States military to develop Agent Orange, which he completely disagreed with and openly protested against.<sup>29</sup> Agent Orange was a tactical herbicide used by the United States during the Vietnam War to destroy forest areas that could conceal enemy forces as well as possible food sources for the Vietnam soldiers.<sup>30</sup> The use of this herbicide led to widespread ecological damage and serious health issues to those exposed.<sup>31</sup> It was during this time that the

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<sup>25</sup> Beatrice L. Hamilton, *Legal challenges to the inclusion of a crime of ecocide in the Rome Statute of the International Criminal Court*, in GREEN CRIMES AND INTERNATIONAL CRIMINAL LAW 107 (Regina M. Paulrose ed., 2021) (citing DAMIEN SHORT, THE ECOCIDE-GENOCIDE NEXUS IN REDEFINING GENOCIDE: SETTLER COLONIALISM, SOCIAL DEATH AND ECOCIDE 40 (2016)).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Greene, *supra* note 2, at 8 (citing GAUGER ET AL., ECOCIDE IS THE MISSING 5<sup>TH</sup> CRIME AGAINST PEACE (2012)). The overwhelming majority of sources point to Professor Galson as the individual who coined the term “ecocide,” but some disagree and mention Professor Falk as the founder. *See* Hamilton, *supra* note 25, at 110.

<sup>29</sup> Greene, *supra* note 2, at 8 (citing DAVID ZIERLER, THE INVENTION OF ECOCIDE: AGENT ORANGE, VIETNAM, AND THE SCIENTISTS WHO CHANGED THE WAY WE THINK ABOUT THE ENVIRONMENT 19 (2011)).

<sup>30</sup> *Agent Orange*, BRITANNICA, <https://www.britannica.com/science/Agent-Orange> (Dec. 20, 2023).

<sup>31</sup> *What is Agent Orange?*, ASPEN INSTITUTE, <https://www.aspeninstitute.org/programs/agent-orange-in-vietnam-program/what-is-agent-orange/#:~:text=Agent%20Orange%20was%20a%20herbicide,to%20have%20harmful%20impact%20today> (last visited Nov. 13, 2022); *Agent Orange*, HIST.COM, <https://www.history.com/topics/vietnam-war/agent-orange-1> (May 16, 2019).

term “ecocide” gained traction, as it started being used in news articles, legal scholarship, and books in reference to the Vietnam War.<sup>32</sup>

The United Nations Conference on the Human Environment, held in June of 1972 in Stockholm, Sweden, was the first world conference that specifically focused on environmental issues.<sup>33</sup> It was in his opening speech that Olaf Palme, the Prime Minister of Sweden, stated that the Vietnam War was an “ecocide.”<sup>34</sup> Many others in attendance, including Indian Prime Minister Indira Gandhi and Tang Ke, the leader of the Chinese delegation, agreed.<sup>35</sup> This conference increased the notoriety of environmental issues among the international community and established a clear groundwork for addressing them.<sup>36</sup> For example, participants adopted the Stockholm Declaration and Action Plan for the Human Environment, which placed environmental issues at the forefront of international concerns.<sup>37</sup> Additionally, the United Nations Environment Programme was later created as a result of this conference.<sup>38</sup>

Another result of the United Nations Conference on the Human Environment was the proposal of the International Convention on the Crime of Ecocide in 1973.<sup>39</sup> There were several unofficial events that ran parallel to the aforementioned conference, one of which was the Folkets

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<sup>32</sup> Greene, *supra* note 2, at 9 (citing Arthur H. Westing, *Herbicides as Agents of Chemical Warfare: Their Impact in Relation to the Geneva Protocol of 1925*, 1 ENV'T AFFS. 578, 583 (1971); Harry W. Pettigrew, *A Constitutional Right of Freedom from Ecocide*, 2 ENV'T L. 1 (1971); L. Craig Johnstone, *Ecocide and the Geneva Protocol*, 49 FOREIGN AFFS. 711 (1971); BARRY WEISBERG, *ECOCIDE IN INDOCHINA: THE ECOLOGY OF WAR* (1970).

<sup>33</sup> *United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm*, UNITED NATIONS, <https://www.un.org/en/conferences/environment/stockholm1972> (last visited Jan. 18, 2023) [hereinafter *United Nations Conference on the Human Environment*].

<sup>34</sup> Greene, *supra* note 2, at 10; DAMIEN SHORT, *REDEFINING GENOCIDE: SETTLER COLONIALISM, SOCIAL DEATH AND ECOCIDE* 41 (2016).

<sup>35</sup> *Id.*

<sup>36</sup> *United Nations Conference on the Human Environment, supra* note 33; Philippe Boudes, *United Nations Conference on the Human Environment*, BRITANNICA, <https://www.britannica.com/topic/United-Nations-Conference-on-the-Human-Environment> (Sept. 15, 2014).

<sup>37</sup> *United Nations Conference on the Human Environment, supra* note 33.

<sup>38</sup> *Id.*

<sup>39</sup> Greene, *supra* note 2, at 11.



Forum, also known as the People's Forum.<sup>40</sup> The Forum's participants discussed drafting a law against ecocide and created a working group to do so.<sup>41</sup> Ultimately, one member of the group, Richard A. Falk, published an article in 1973 that contained a draft of the proposed convention.<sup>42</sup> Article II of the proposed International Convention on the Crime of Ecocide contains one of the first attempts to fully outline a definition for the term 'ecocide.'<sup>43</sup>

In the present Convention, ecocide means any of the following acts committed with intent to disrupt or destroy, in whole or in part, a human ecosystem: (a) The use of weapons of mass destruction, whether nuclear, bacteriological, chemical, or other; (b) The use of chemical herbicides to defoliate and deforest natural forests for military purposes; (c) The use of bombs and artillery in such quantity, density, or size as to impair the quality of the soil or to enhance the prospect of diseases dangerous to human beings, animals, or crops; (d) The use of bulldozing equipment to destroy large tracts of forest or cropland for military purposes; (e) The use of techniques designed to increase or decrease rainfall or otherwise modify weather as a weapon of war; (f) The forcible removal of human beings or animals from their habitual places of habitation to expediate the pursuit of military or industrial objectives.<sup>44</sup>

Falk's proposal was later included in a study done by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities to evaluate the effectiveness of the 1948 Genocide Convention and to consider adding "ecocide" and "cultural genocide" to the list of crimes.<sup>45</sup> Unfortunately, Falk's proposal was never adopted.<sup>46</sup>

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<sup>40</sup> Anja Gauger et al., *Ecocide is the missing 5<sup>th</sup> Crime Against Peace* 4 (Human Rights Consortium - School of Advanced Study, University of London 2012).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Ecocide Law: History*, ECOCIDE LAW, <https://ecocidelaw.com/history/> (last visited Jan. 18, 2023).

<sup>44</sup> Richard A. Falk, *Environmental Warfare and Ecocide – Facts, Appraisal, and Proposals*, 4 BULL. PEACE PROPOSALS 80, 93 (1973).

<sup>45</sup> Gauger et al., *supra* note 40.

<sup>46</sup> SHORT, *supra* note 34, at 42.

The International Law Commission (hereinafter “ILC”) was the first to attempt to codify an autonomous environmental crime.<sup>47</sup> The Draft Code of Crimes Against the Peace and Security of Mankind (hereinafter “Draft Code”) was adopted by the ILC in 1996 during its Forty-Eighth Session.<sup>48</sup> This code was created at the request of the United Nations General Assembly and strongly reflected the Nuremberg principles, a set of guidelines established after the Nuremberg Trials to determine what constitutes a war crime.<sup>49</sup> The Draft Code eventually became the Rome Statute, the ICC’s founding treaty and the basis for its jurisdiction.<sup>50</sup>

The Draft Code was revised in 1991 and included Article 26, which was “the first provision capable of imposing individual criminal liability for environmental damage whether caused in peace or wartime.”<sup>51</sup> Titled “Wilful and severe damage to the environment,” Article 26 provided that “An individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the nature environmental shall, on conviction thereof, be sentenced.”<sup>52</sup> The addition of Article 26 led to widespread criticism and debate, as many countries expressed concern regarding the mens rea component and its alleged inconsistencies with Article 22(2)(d), which addressed environmental damage that occurs during times of war.<sup>53</sup> Unfortunately, these concerns led to Article 26 being removed entirely by the time the Draft Code was adopted in 1996.<sup>54</sup> Two provisions in the final Draft Code addressed environmental damage, Article 17(c) on the crime of genocide and Article 20(g) on war crimes, neither of which contained an autonomous environmental crime.<sup>55</sup>

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<sup>47</sup> Hamilton, *supra* note 25, at 110-11.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 117.

<sup>51</sup> *Id.* at 112.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 115.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

### C. Possible Examples of Ecocide

Unfortunately, there are various possible examples of ecocide from the past several decades. What an individual identifies as ecocide might fluctuate depending on which definition is applied. Regardless, the following examples show man-made disasters that resulted in long-lasting and irreversible environmental damage.

One of the most notable examples is the Vietnam War, as it is this conflict that led to the invention of the term and introduced the concept of ecocide to the world.<sup>56</sup> Other possible examples include the Chernobyl nuclear accident, the Fukushima disaster, the palm oil plantations in Indonesia, the Exxon Valdez oil spill, oil exploitation in the Niger Delta, and the current war in Ukraine.<sup>57</sup> Though some individuals have been criminally charged for their involvement in these ecological disasters, this is not the case for all of them.<sup>58</sup>

Although more than ten years have passed since the Fukushima Daiichi Accident, the Japanese government only started allowing residents to return to the village in 2021.<sup>59</sup> In 2021, a Japanese court acquitted three former Tokyo Electric Power Company executives accused of criminal

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<sup>56</sup> Greene, *supra* note 2, at 8.

<sup>57</sup> *Id.* at 131; ROB WHITE & DIANE HECKENBERG, GREEN CRIMINOLOGY: AN INTRODUCTION TO THE STUDY OF ENVIRONMENTAL HARM 54-55 (2014); *Examples of Ecocide*, END ECOCIDE, <https://www.endecocide.org/en/examples-of-ecocide/> (last visited Nov. 13, 2022); Tetiana Perga, *Ecocide in Ukraine: How Russia's War Will Poison The Country (And Europe) for Decades to Come*, DE GRUYTER (June 30, 2022), <https://blog.degruyter.com/ecocide-in-ukraine-how-russias-war-will-poison-the-country-and-europe-for-decades-to-come/>.

<sup>58</sup> Ben Dooley et al., *Fukushima Nuclear Disaster Trial Ends With Acquittals of 3 Executives*, N.Y. TIMES, <https://www.nytimes.com/2019/09/19/business/japan-tepco-fukushima-nuclear-acquitted.html> (Apr. 13, 2021); Hans Nicholas Jong, *One in five hectares of palm oil in Indonesia is criminal, report shows*, ECO-BUS. (Nov. 12, 2021), <https://www.eco-business.com/news/one-in-five-hectares-of-palm-oil-in-indonesia-is-criminal-report-shows/>.

<sup>59</sup> Emiko Jozuka & Helen Regan, *'We're still recovering': 11 years after Fukushima nuclear disaster, residents return to their village*, CNN, <https://www.cnn.com/2022/06/14/asia/japan-fukushima-katsurao-village-return-intl-hnk/index.html> (June 14, 2022).

negligence for their roles in the disaster.<sup>60</sup> This verdict likely means no one will be held responsible for the worst nuclear accident since Chernobyl.<sup>61</sup>

Similar to Fukushima, individuals have yet to be held responsible for the presence of illegal palm oil plantations in Indonesia.<sup>62</sup> These plantations are destroying a large amount of existing rainforests, bringing vulnerable species to the brink of extinction, and threatening the delicate ecosystems that exist there.<sup>63</sup> Very few criminal charges have been brought despite local communities demanding accountability.<sup>64</sup> Both Fukushima and the palm oil plantations in Indonesia are examples of ongoing environmental harm where no one has been held responsible.<sup>65</sup> These disasters are just a few examples that show why ecocide needs to be acknowledged as an international crime. Until this is done, individuals will continue causing severe environmental harm without any liability being imposed.

#### *D. Adding Ecocide to the Rome Statute & Previous Attempts*

In order to include ecocide as the ICC's fifth international crime, a signatory country must call for an amendment to the Rome Statute.<sup>66</sup> Any State Party may propose an amendment by submitting the text to the Secretary General of the United Nations who will then circulate it to all State Parties.<sup>67</sup> A two-thirds majority is required for the adoption of any proposed amendment.<sup>68</sup> The most recent amendment to the Rome Statute was in 2019 when the State Parties agreed to amend Article 8.<sup>69</sup> In December 2018,

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<sup>60</sup> Dooley et al., *supra* note 58.

<sup>61</sup> *Id.*

<sup>62</sup> Jong, *supra* note 58.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*; Dooley et al., *supra* note 58.

<sup>66</sup> Greene, *supra* note 2, at 7 (citing Polly Higgins et al., *Protecting the planet: A proposal for a law of ecocide*, CRIME, L. & SOC. CHANGE 251, 251-266 (2013)).

<sup>67</sup> Rome Statute of the International Criminal Court, art. 121, July 7, 1998, 2187 U.N.T.S. 3.

<sup>68</sup> *Id.*

<sup>69</sup> This latest amendment involved the State Parties defining the war crime of intentional use of starvation of civilians as a method of warfare in armed conflicts. *Rome statute and other agreements*, INT'L CRIM. CT., <https://asp.icc-cpi.int/RomeStatute> (Oct. 31, 2023).

the country of Vanuatu expressed interest in bringing a proposed ecocide amendment forward to the ICC but has yet to take any action to do so.<sup>70</sup>

In April 2010, Polly Higgins, a UK-based lawyer and environmental lobbyist, submitted a proposal for an international law of ecocide to the United Nations Law Commission.<sup>71</sup> Higgins proposed an amendment to the Rome Statute to add ecocide as the fifth international crime prosecutable under the ICC.<sup>72</sup> She provided the following definition for the crime: “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.”<sup>73</sup> Unfortunately, this proposal did not gain much traction at the time, but the movement pushing for the amendment has continued on.

## II. CRITICISMS & POTENTIAL ISSUES

### A. *Is Ecocide “Serious Enough” To Be Added?*

As mentioned above, the ICC prides itself on prosecuting against only the “gravest crimes of concern to the international community.”<sup>74</sup> Many have questioned whether ecocide is serious enough to be added within the ICC’s jurisdiction, as these individuals claim the four crimes currently within its jurisdiction are incomparable and far more heinous.<sup>75</sup> Some opponents to an ecocide amendment have even voiced concerns that such an addition may “diminish” or “trivialize” the other four crimes against peace (genocide, war crimes, crimes against humanity, and crimes of

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<sup>70</sup> Greene, *supra* note 2, at 7 (citing *Healing Polly and Testing Existing Law*, MISSION LIFEFORCE (Mar. 26, 2019), <https://perma.cc/2KNN-TC5W>).

<sup>71</sup> Polly Higgins et al., *Protecting the planet: A proposal for a law of ecocide*, CRIME, L. & SOC. CHANGE 251, 258 (2013).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *About the Court*, *supra* note 7.

<sup>75</sup> See Greene, *supra* note 2, at 37; Hamilton, *supra* note 25, at 129; Mark Notaras, *Should Ecocide Be Deemed a Crime against Peace?*, OUR WORLD (May 3, 2010), <https://ourworld.unu.edu/en/should-ecocide-be-deemed-a-crime-against-peace>.

aggression).<sup>76</sup> However, prosecuting against the crime of ecocide is not just about harm the environment. It also involves a threat to our health and safety, as well as being a human rights issue.<sup>77</sup>

According to the World Health Organization, climate change is the “single biggest health threat facing humanity.”<sup>78</sup> In support of this statement, the organization mentions several different ways climate change is already impacting our health including “death and illness from increasingly frequent extreme weather events, such as heatwaves, storms and floods, the disruption of food systems, increases in zoonoses and food-, water-, and vector-borne diseases, and mental health issues.”<sup>79</sup> According to estimates from a 2016 World Health Organization report, an estimated 12.6 million people die each year as a result of living or working in an unhealthy environment.<sup>80</sup> “Environmental risk factors, such as air, water and soil pollution, chemical exposures, climate change, and ultraviolet radiation, reportedly contribute to more than 100 diseases and injuries.”<sup>81</sup>

These staggering numbers show how crucial a healthy environment is and emphasize why the crime of ecocide should be taken more seriously by the international community. Adding an ecocide amendment would not just be about remedying environmental harm. It would also be a way to ensure that people around the world can exist in healthy environments without near constant threat of the consequences addressed above.<sup>82</sup> Prosecuting individuals responsible for serious environmental harm would allow the ICC to limit the negative effects such harm has on our health and general well-being. Adding ecocide as the fifth international crime under the ICC

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<sup>76</sup> Greene, *supra* note 2, at 37.

<sup>77</sup> *Climate change*, WORLD HEALTH ORGANIZATION (Oct. 12, 2023), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>; Ilze Brands Kehris, Assistant Sec’y Gen. for Hum. Rts., Expert Seminar on UN recognition of the right to a clean, healthy, and sustainable environment: past developments and future prospects (Apr. 12, 2022).

<sup>78</sup> *Climate change*, *supra* note 77.

<sup>79</sup> *Id.*

<sup>80</sup> John Hogg, *UN Estimates 12.6 million deaths each year attributable to unhealthy environments*, UN NEWS (Mar. 15, 2016), <https://news.un.org/en/story/2016/03/524352-un-estimates-126-million-deaths-each-year-attributable-unhealthy-environments>.

<sup>81</sup> *Id.*

<sup>82</sup> *Climate change*, *supra* note 77.

would be a great start in the fight against environmental destruction and would help bring justice to those who have fallen victim to the crime of ecocide and whose health has suffered as a result.<sup>83</sup>

Harm to the environment has also become a human rights concern. More than 150 countries “recognize and protect the right to a healthy environment through their constitutions, national laws, judiciaries, or ratification of international instruments.”<sup>84</sup> In addition, on October 8th, 2021, the UN Human Rights Council adopted Resolution 48/13, recognizing that a clean, healthy, and sustainable environment is a human right.<sup>85</sup> During a speech at New York University, Assistant Secretary General for Human Rights, Ilze Brands Kehris, emphasized how urgent this issue is.<sup>86</sup> Referring to nature loss, pollution, and climate change as a “triple planetary crisis” and some of the top “human rights challenges of our era,” she put out a call to action to the international community and stressed that inaction, denial, and delay are no longer options.<sup>87</sup>

Other members of the international community have also acknowledged how serious ecocide is and several national jurisdictions have adopted their own laws to address the crime. The national penal codes of thirteen countries (Georgia, Armenia, Ukraine, Belarus, Ecuador, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Uzbekistan, Vietnam, and France) all recognize the crime of ecocide with terms of imprisonment varying from ten years to life.<sup>88</sup> Belgium, Australia, Kenya, Iceland, Bangladesh, Spain, Sweden, Portugal, and the United Kingdom have also expressed an intent

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<sup>83</sup> See Hogg, *supra* note 80.

<sup>84</sup> Kehris, *supra* note 77.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> The following countries have a punishment of ten to fifteen years imprisonment for the crime of ecocide: Kazakhstan, Belarus, Moldova, and Armenia. Russia, Vietnam, and the Kyrgyz Republic have a punishment of twelve to twenty years imprisonment. Ukraine’s term of imprisonment is eight to fifteen years while Tajikistan’s is fifteen to twenty years. Georgia’s term of imprisonment is the most severe, as an individual found guilty of committing ecocide can face twelve to twenty years in prison, but if the act is committed during an armed conflict it is increased to fourteen to twenty years or life. *Ecocide / serious environmental crimes in national jurisdictions*, ECOCIDE L., <https://ecocidelaw.com/existing-ecocide-laws/> (last visited Nov. 14, 2022); Kevin Jon Heller, *Belgium Set to Criminalise Ecocide (Kinda Sorta)*, OPINIO JURIS (Nov. 8, 2022), <http://opiniojuris.org/2022/11/08/belgium-set-to-criminalise-ecocide-kind-sorta/>.

to criminalize ecocide in the future.<sup>89</sup> The number of jurisdictions that have addressed ecocide in their penal codes shows it is a serious enough crime to be added within the ICC's jurisdiction.

In addition, the Parliamentary Assembly of the Council of Europe voted to adopt Resolution 2477 and Recommendation 2246 on January 25<sup>th</sup> of 2023.<sup>90</sup> Both the Resolution and Recommendation call for recognition of ecocide on a state and international level.<sup>91</sup> More specifically, Resolution 2477 calls for the member states of the Council to build a legal framework for the “enhanced protection of the environment in armed conflicts” by “updating their legal arsenal to criminalize and effectively prosecute ecocide and taking concrete steps to amend the Rome Statute of the International Criminal Court in order to add ecocide as a new crime.”<sup>92</sup> Additionally, all five of the EU Parliament Committees tasked with providing opinions on the “Directive on Protection of the Environment Through Criminal Law” have voted in support of including a crime of ecocide within the directive.<sup>93</sup> The increasing support and recognition from the international community shows that the crime of ecocide is serious enough to be added to the ICC and needs to be addressed immediately.

Amending the Rome Statute to add ecocide as the fifth international crime under the ICC is the first step in acknowledging that this crime

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<sup>89</sup> *Ecocide / serious environmental crimes in national jurisdictions, supra* note 88; *Leading States, Key Dates, STOP ECOCIDE INT'L*, <https://www.stopecocide.earth/leading-states> (last visited Feb. 8, 2023).

<sup>90</sup> *Council of Europe Assembly Adopts Resolution to Codify Ecocide*, STOP ECOCIDE INT'L (Jan. 26, 2023), <https://www.stopecocide.earth/breaking-news-2023/council-of-europe-assembly-adopts-resolution-to-codify-ecocide>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> The EU Parliament has officially announced its support of the inclusion of ecocide-level crimes into the European Union's “Directive on Protection of the Environment Through Criminal Law.” Review by the European Council and the European Commission is required before anything can be finalized. *European Parliament Proposes Including “Ecocide” in EU Law*, STOP ECOCIDE INT'L (Mar. 29, 2023), <https://www.stopecocide.earth/breaking-news-2023/european-parliament-proposes-including-ecocide-in-eu-law#:~:text=Last%20Tuesday%2C%2021st%20March%2C%20the,be%20condemned%20under%20EU%20law%C2%B9;EU:4Outof5CommitteesNowSupportIncludingEcocideinEnvironmentalCrimeDirective>, STOP ECOCIDE INT'L (Feb. 7, 2023), <https://www.stopecocide.earth/breaking-news-2023/eu-4-out-of-5-committees-now-support-including-ecocide-in-environmental-crime-directive>.



directly encroaches on our innate human rights. Such violations of these rights demand accountability.

### *B. Varying Definitions of “Ecocide”*

One of the main arguments against amending the Rome Statute to include ecocide is the lack of a “firm” or “final” definition for the crime.<sup>94</sup> Admittedly, the term “ecocide” has been defined in several different ways over the years. For example, under France’s national law, ecocide is defined as causing “serious and lasting damage to health, flora, fauna or the quality of the air, soil, or water” whereas the Kyrgyz Republic defines the crime as “massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe.”<sup>95</sup> Two more versions of the definition can be found in Polly Higgins’ proposal and the article published by Richard Falk, both of which are discussed above.<sup>96</sup> These are only a few examples of the many ways the term ecocide has been defined over the past few decades.<sup>97</sup>

In June 2021, a panel comprised of twelve lawyers from around the world with varying expertise attempted to solve the issue of how to define

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<sup>94</sup> See Greene, *supra* note 2, at 42; Darryl Robinson, *Ecocide – Puzzles and Possibilities*, 20 J. INT’L CRIM. JUST. 313, 325-27 (2022).

<sup>95</sup> *France Writes Ecocide Into Law, in 2 Ways*, STOP ECOCIDE INT’L (Aug. 24, 2021), <https://www.stopecocide.earth/press-releases-summary/france-writes-ecocide-into-law-in-two-ways>; *Ecocide / serious environmental crimes in national jurisdictions*, *supra* note 88.

<sup>96</sup> See Sections D and B, respectively. Higgins et al., *supra* note 71; Falk, *supra* note 44, at 93.

<sup>97</sup> The following are a few more examples of different definitions for ecocide found within existing laws in national jurisdictions. The Criminal Code of the Russian Federation defines ecocide as “massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe.” The Criminal Code of the Republic of Kazakhstan provides the following definition for ecocide, “mass destruction of flora or fauna, poisoning the atmosphere, land or water resources, as well as the commission of other acts which caused or a capable of causation of an ecological catastrophe.” *Ecocide / serious environmental crimes in national jurisdictions*, *supra* note 88.

ecocide, by proposing a set legal definition for the crime.<sup>98</sup> “For the purpose of this Statute, ‘ecocide’ means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”<sup>99</sup> The panel crafted the definition hoping it might serve “as the basis of consideration for an amendment to the Rome Statute of the International Criminal Court.”<sup>100</sup> The ICC has yet to comment on the panel’s efforts<sup>101</sup>; nevertheless, providing a universal definition allows advocates to bring a stronger and more convincing case as to why ecocide should be added as the fifth international crime prosecutable under the jurisdiction of the ICC.

In March 2023, the European Law Institute (hereinafter “ELI”) put forth its own definition of ecocide in an attempt to provide an international precedent and signal its support for recognizing ecocide as an international crime.<sup>102</sup> The definition, which is located under Article 3 of the “Report on Ecocide,” states the following: “...any conduct as defined in paragraph four or five committed with intent which may cause or substantially contribute to causing severe and long-term damage or severe and irreparable or irreversible damage to an ecosystem or ecosystems in the natural environment.”<sup>103</sup> Paragraph four states that:

Any conduct (a) infringing Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union

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<sup>98</sup> Philippe Sands et al., *Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text* (June 2021), <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf>.

<sup>99</sup> *Legal Definition of Ecocide*, STOP ECOCIDE INT’L, <https://www.stopecocide.earth/legal-definition> (last visited Nov. 13, 2022).

<sup>100</sup> Sands et al., *supra* note 98.

<sup>101</sup> Josie Fischels, *How 165 Words Could Make Mass Environmental Destruction An International Crime*, NPR (June 27, 2021), <https://www.npr.org/2021/06/27/1010402568/ecocide-environment-destruction-international-crime-criminal-court>; Katie Surma & Yuliya Talmazan, *The push to make ‘ecocide’ an international crime takes a big step forward*, NBC NEWS (June 22, 2021), <https://www.nbcnews.com/news/world/push-make-ecocide-international-crime-takes-big-step-forward-n1272059>.

<sup>102</sup> *Model Rules for an EU Directive and a Council Decision: ELI Report on Ecocide*, EUR. L. INST. (Jan. 19, 2023), [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Report\\_on\\_Ecocide.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Ecocide.pdf).

<sup>103</sup> *Id.*

policy of protecting the environment as set out in the Treaty on the Functioning of the European Union, or (b) infringing a law, an administrative regulation of a Member State or a decision taken by a competent authority of a Member State which gives effect to such Union legislation under which Member States are required to ensure that it constitutes a criminal offence under domestic law shall be qualified as ecocide under domestic law if the conditions set forth in paragraphs 2 and 3 are met.<sup>104</sup>

In addition to paragraph four, the ELI also provides insight on the level of intent required, which is located under Article 3(3).<sup>105</sup> Similar to the definition provided by the expert panel, this effort shows that a unified definition of ecocide is possible.

This does not mean that either of these is the confirmed definition of ecocide that must be used in future endeavors. The definitions provided by both these entities are mere proposals, but they show that providing a set definition for ecocide is possible, despite what critics may argue.

### *C. Mens rea Aspect*

Opponents of adding ecocide as the fifth international crime under the ICC have argued that it is not possible because of the mens rea component. Article 30 of the Rome Statute states that, “unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.”<sup>106</sup> This statement suggests that crimes committed with a different mens rea (like recklessness or negligence) do not qualify for criminal liability under the Rome Statute. According to Article 30, in relation to a consequence, a person has intent where “that person means to cause that consequence or is aware that it will occur in the ordinary course of events.”<sup>107</sup> In addition, knowledge “means

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Rome Statute, *supra* note 67, art. 30.

<sup>107</sup> *Id.*

awareness that a circumstance exists, or a consequence will occur in the ordinary course of events.”<sup>108</sup>

The definition of ‘ecocide’ proposed by the independent expert panel requires reckless disregard and knowledge of a substantial likelihood to fulfill the mens rea component of the crime.<sup>109</sup> This means that the perpetrator need not intend to cause harm to the environment, rather, it is sufficient that he or she acted knowing there was a substantial likelihood of severe and either widespread or long-term damage.<sup>110</sup> Under section 3 of the commentary, the panel states why they chose this level of mens rea rather than those traditionally imposed under the Rome Statute.<sup>111</sup> They explain that the default mens rea contained within Article 30 of the Rome Statute is “too narrow” and “would not capture conduct with a high likelihood of resulting in severe and either widespread or long-term damage to the environment.”<sup>112</sup> By imposing a mens rea requirement of recklessness, the panel is confident that “only persons with significant culpability for grave damage to the environment will be held responsible.”<sup>113</sup> In addition, including a “specific intent” requirement would not make sense in the context of criminalizing ecocide, as most individuals do not act with the purpose of causing mass or severe environmental damage.<sup>114</sup> Similar to the definition proposed by the expert panel, the definition provided by the ELI also requires a mens rea of recklessness.<sup>115</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Legal Definition of Ecocide*, *supra* note 99.

<sup>110</sup> *Id.*; Anastacia Greene, *Mens Rea and the Proposed Legal Definition of Ecocide*, VÖLKERRECHTSBLOG (July 7, 2021), <https://voelkerrechtsblog.org/mens-rea-and-the-proposed-legal-definition-of-ecocide/>.

<sup>111</sup> *Legal Definition of Ecocide*, *supra* note 99, § III.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Darryl Robinson, *Your Guide to Ecocide: Part 1*, OPINIO JURIS (July 16, 2021), <http://opiniojuris.org/2021/07/16/your-guide-to-ecocide-part-1/>. For example, under a mens rea of recklessness it doesn’t matter that those in charge of the Exxon Valdez oil tanker didn’t mean to spill 11 million gallons of oil into the Prince William Sound in 1989. *Exxon Valdez*, NOAA, <https://darrp.noaa.gov/oil-spills/exxon-valdez> (Aug. 17, 2020); *Legal Definition of Ecocide*, *supra* note 99.

<sup>115</sup> More specifically, the ELI Report on Ecocide states that, “...a person has intent where: a) In relation to conduct, that person means to engage in that conduct; and b) In relation to a consequence, that person means to cause the consequence or is aware of could not be

Opponents to adding ecocide within the jurisdiction of the ICC argue that this lowered mens rea differs too greatly from what is required for culpability under the other crimes and that it is directly at odds with what is outlined in Article 30 of the Rome Statute.<sup>116</sup> Additionally, some advocates in favor of an ecocide amendment are skeptical and find the proposed definitions “deeply confusing” and “unworkable” in practice.<sup>117</sup>

Regarding the argument over the mens rea, Article 30(1) provides the recommended mental element after explicitly stating “unless otherwise provided.”<sup>118</sup> This phrasing suggests that an article can provide an alternative mental element (whether it be more or less stringent) and that crimes are not limited to the mens rea described in Article 30.<sup>119</sup> Therefore, the lowered mens rea outlined within the proposed definitions of ecocide would be an acceptable addition to the Rome Statute. Admittedly, this lowered mens rea may make any ecocide provision more difficult to pass, but the phrasing of Article 30 clearly states that there are exceptions to the default provided.<sup>120</sup> Imposing the mens rea adopted by the other core crimes would be illogical for an ecocide amendment. As discussed above, using a mens rea of recklessness ensures that all individuals responsible for environmental harm are held liable, not just those with the specific intent

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unaware of the substantial likelihood that it may occur.” *The European Law Institute Publishes ELI Report on Ecocide: Model Rules for an EU Directive and a Council Decision*, EUR. L. INST. (Feb. 20, 2023), <https://www.europeanlawinstitute.eu/news-events/news-contd/news/the-european-law-institute-publishes-eli-report-on-ecocide-model-rules-for-an-eu-directive-and-a-co/>.

<sup>116</sup> Greene, *supra* note 110; Sarthak Gupta, *The Proposed Definition of “Ecocide”: An Attempt to Constitute Fifth International Crime?*, JURIST (July 15, 2021), <https://www.jurist.org/commentary/2021/07/sarthak-gupta-ecocide-fifth-international-crime/>; Michael Lam Ching Wang, *Prosecuting Ecocide via a New International Environmental Criminal Court*, LSE L. REV. BLOG (Feb. 1, 2022), <https://blog.lselawreview.com/2022/02/01/prosecuting-ecocide-via-a-new-international-environmental-criminal-court/>.

<sup>117</sup> Kevin Jon Heller, *Skeptical Thoughts on the Proposed Crime of “Ecocide” (That Isn’t)*, OPINIO JURIS (June 23, 2021), <http://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/>. Other advocates have also voiced concerns about the possible interpretations of the word “knowledge” within the proposed definition. Liana Georgieva Minkova, *The Fifth International Crime: Reflections on the Definition of “Ecocide,”* 25 J. GENOCIDE RSCH. 62 (2021).

<sup>118</sup> Rome Statute, *supra* note 67, art. 30.

<sup>119</sup> Greene, *supra* note 110.

<sup>120</sup> *Id.*

to cause damage.<sup>121</sup> The Rome Statute is not explicitly limited to a certain type of crime and though the lowered mens rea is different from what is considered the “status quo,” an ecocide provision should not be excluded solely based on this difference.

Addressing the argument over a workable definition mentioned above, it should be noted that the proposed definitions provided by these entities are just that, proposals.<sup>122</sup> The proposals are an attempt to provide a universal definition for what is widely acknowledged to be an incredibly complex and extensive concept.<sup>123</sup> In section one of the proposed definition, the panel indicates that they hope the definition “might serve as the *basis of consideration* for an amendment to the Rome Statute of the International Criminal Court” (emphasis added).<sup>124</sup> This quote further emphasizes that the definitions provided by both the panel and the ELI are merely proposals that allow for adjustments and edits as the ICC sees fit.

Even if either of the definitions provided above were to be the one used in a future amendment to the Rome Statute, that does not mean the definition is set in stone. The Rome Statute is a living document that has been amended several times over the past few years.<sup>125</sup> Twelve individuals worked for six months to provide a definition for a word that has countless meanings and encompasses a multitude of differing examples.<sup>126</sup> Additionally, as shown by the ELI, other entities are also joining the fight by providing their own definitions of ecocide for the ICC’s consideration.<sup>127</sup> These are only two of several attempts to provide a universal definition for ecocide and they likely will not be the last. Nonetheless, the lowered mens rea of the proposed definitions is not as problematic as opponents and skeptical advocates make it out to be, and this factor alone should not

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<sup>121</sup> *Legal Definition of Ecocide*, *supra* note 99, § III.

<sup>122</sup> Sands et al., *supra* note 98; *Model Rules for an EU Directive and a Council Decision: ELI Report on Ecocide*, *supra* note 102.

<sup>123</sup> *Id.*

<sup>124</sup> *Legal Definition of Ecocide*, *supra* note 99, § I.

<sup>125</sup> *Rome Statute and other agreements*, INT’L CRIM. CT., <https://asp.icc-cpi.int/RomeStatute> (Oct. 31, 2023).

<sup>126</sup> Sands et al., *supra* note 98.

<sup>127</sup> *Model Rules for an EU Directive and a Council Decision: ELI Report on Ecocide*, *supra* note 102.

prevent the inclusion of a much needed (and much anticipated) ecocide provision.

#### *D. Limited Parties to the Rome Statute*

Article 4 of the Rome Statute states that the ICC may only exercise jurisdiction over State Parties or, in other words, nations that have ratified, accepted, or acceded to the Rome Statute.<sup>128</sup> Although there are currently 123 countries that are State Parties to the Rome Statute, some of the world's highest polluting countries are not under the jurisdiction of the ICC including China, the United States, India, and Russia.<sup>129</sup>

In 2019, China was responsible for 30% of all global emissions of CO<sub>2</sub> amounting to more than 10,065 million tons released.<sup>130</sup> The United States followed with 5,416 million tons and then India with 2,654 million tons.<sup>131</sup> In 2021, it was reported that India had dumped approximately 126.5 million kg of plastic into the ocean with China and Indonesia falling close behind with 70.7 million kg and 56.3 kg, respectively.<sup>132</sup> According to a 2019 study, Canada was the country that generated the most waste with a total of 36.1 metric tons.<sup>133</sup> Bulgaria generated approximately 26.7 metric tons of trash

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<sup>128</sup> *Id.* art. 4; *State Party*, CORNELL, [https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def\\_id=19-USC-1365850711-1609753964&term\\_occur=999&term\\_src=#:~:text=\(9\)%20The%20term%20%E2%80%9CState,or%20acceded%20to%20the%20Convention.](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=19-USC-1365850711-1609753964&term_occur=999&term_src=#:~:text=(9)%20The%20term%20%E2%80%9CState,or%20acceded%20to%20the%20Convention.)

<sup>129</sup> *The States Parties to the Rome Statute*, INT'L CRIM. CT., <https://asp.icc-cpi.int/states-parties#:~:text=123%20countries%20are%20States%20Parties,Western%20European%20and%20other%20States> (last visited Jan. 18, 2023).

<sup>130</sup> *Which countries are the world's biggest carbon polluters?*, CLIMATE TRADE (May 17, 2021), <https://climatetrade.com/which-countries-are-the-worlds-biggest-carbon-polluters/>.

<sup>131</sup> *Id.*

<sup>132</sup> Sabrina Fearon Melville, *Ranked: The top 10 countries that dump the most plastic into the ocean*, EURO NEWS, <https://www.euronews.com/green/2021/06/22/ranked-the-top-10-countries-that-dump-the-most-plastic-into-the-ocean#:~:text=But%20which%20countries%20dump%20the,plastic%20per%20year%20being%20dumped> (June 22, 2021).

<sup>133</sup> Hristina Byrnes and Thomas C. Frohlich, *Canada produces the most waste in the world. The US ranks third*, USA TODAY, <https://www.usatoday.com/story/money/2019/07/12/canada-united-states-worlds-biggest-producers-of-waste/39534923/> (July 12, 2019).

while the United States generated 25.9 metric tons.<sup>134</sup> Of the six countries listed above that have contributed greatly to various types of pollution, only two fall within the jurisdiction of the ICC, Canada and Bulgaria.<sup>135</sup>

The lack of jurisdiction over major polluters is another argument often put forth by those opposed to the inclusion of ecocide within the jurisdiction of the ICC.<sup>136</sup> Opponents to an ecocide amendment look at these statistics and question how an added ecocide amendment can be effective if the biggest culprits are out of reach.<sup>137</sup> But several countries outside the jurisdiction of the ICC have committed war crimes and crimes against humanity at one time in history including the United States, Russia, and China.<sup>138</sup> Should the ICC cease all investigations and drop all charges

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<sup>134</sup> *Id.*

<sup>135</sup> *The States Parties to the Rome Statute*, *supra* note 129.

<sup>136</sup> Greene, *supra* note 2, at 41.

<sup>137</sup> *Id.*

<sup>138</sup> *International Tribunal finds U.S. guilty of crimes against humanity*, WORKERS WORLD (Nov. 1, 2021), <https://www.workers.org/2021/11/59858/>; Robert Higgs, *Has the U.S. Government Committed War Crimes in Afghanistan and Iraq?*, INDEP. INST. (May 23, 2004), <https://www.independent.org/news/article.asp?id=1311>; Talia Ralph, *5 major atrocities in US military history*, THE WORLD (Mar. 12, 2012), <https://theworld.org/stories/2012-03-12/5-major-atrocities-us-military-history>; *US commits serious crimes of violating human rights in the Middle East and beyond*, CHINA DAILY, <https://global.chinadaily.com.cn/a/202208/10/WS62f2eca8a310fd2b29e71442.html> (Aug. 10, 2022); Chris Hedges, *The dangerous myth of American innocence: Only our enemies commit "war crimes,"* SALON (Mar. 24, 2022), <https://www.salon.com/2022/03/24/the-myth-of-american-innocence-only-our-enemies-commit-war-crimes/>; *War crimes have been committed in Ukraine conflict, top UN human rights inquiry reveals*, UNITED NATIONS (Sept. 23, 2022), <https://news.un.org/en/story/2022/09/1127691>; *Ukraine: Apparent War Crimes in Russia-Controlled Areas*, HUM. RTS. WATCH (Apr. 3, 2022), <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>; Tim Mak, *There have been 50,000 alleged war crimes in Ukraine*, NPR (Dec. 10, 2022), <https://www.npr.org/2022/12/10/1138710652/russian-war-crimes-ukraine-investigation>; *The Russian Military's History of Atrocities*, U.S. EMBASSY IN GEOR. (June 6, 2022), <https://ge.usembassy.gov/the-russian-militarys-history-of-atrocities/>; Sophie Richardson, *A UN Report Implicates the Chinese Government in Crimes Against Humanity*, JUST SEC. (Sept. 8, 2022), <https://www.justsecurity.org/82978/a-un-report-implicates-the-chinese-government-in-crimes-against-humanity-what-comes-next/#:~:text=The%20report%27s%20findings%20confirm%20owide,have%20committed%20crimes%20against%20humanity>; Emma Farge, *U.N. says China may have committed crimes against humanity in Xinjiang*, REUTERS (Sept. 1, 2022), <https://www.reuters.com/world/china/outgoing-un-human-rights-chief-says-serious-human-rights-violations-committed-2022-08-31/>; Michael Caster, *China's crimes against humanity you've never heard of*, CNN (July 26, 2018),



involving these crimes just because they are also being committed in countries outside its jurisdiction? No. The ICC might not be able to prosecute a number of the world's largest polluters, but that does not mean adding the crime within its jurisdiction will not make a difference. Ecocide should still be added within the jurisdiction of the ICC because it will make a statement about the importance of prosecuting environmental crimes and help set an example for other entities who might want to do the same. In addition, it will help alleviate some of the environmental harm currently happening and act as a deterrent.

### *E. Limited Liability Under the ICC*

Article 25 of the Rome Statute states that “The Court shall have jurisdiction over natural persons pursuant to this Statute.”<sup>139</sup> Accordingly, the ICC is only able to bring cases against individuals.<sup>140</sup> This may be an issue considering both States and corporations can be directly involved in committing ecocide.<sup>141</sup>

For example, there has been considerable environmental damage as a result of Russia's invasion of Ukraine.<sup>142</sup> Ukrainian experts have valued the damage at approximately \$46 billion and it is still rising due to “direct war

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<https://www.cnn.com/2018/07/26/opinions/xinjiang-china-caster-intl/index.html>;  
Eweline U. Ochab, *Uyghur Tribunal: China Commits Genocide, Crimes Against Humanity And Torture Against The Uyghurs*, FORBES (Dec. 9, 2021), <https://www.forbes.com/sites/ewelinaochab/2021/12/09/uyghur-tribunal-china-commits-genocide-crimes-against-humanity-and-torture-against-the-uyghurs/?sh=2c2cc8d24d69>.

<sup>139</sup> Rome Statute, *supra* note 67, art. 25.

<sup>140</sup> Greene, *supra* note 2, at 41.

<sup>141</sup> *Id.*; Jérôme de Hemptinne, *Ecocide: an Ambiguous Crime?*, EJIL: TALK! - BLOG OF THE EUR. J. OF INT'L L. (Aug. 29, 2022), [https://www.ejiltalk.org/ecocide-an-ambiguous-crime/?utm\\_source=dlvr.it&utm\\_medium=twitter](https://www.ejiltalk.org/ecocide-an-ambiguous-crime/?utm_source=dlvr.it&utm_medium=twitter); Vrishank Singhania, *The Proposed Crime of Ecocide – Ignoring the Question of Liability*, OPINIO JURIS (Feb. 16, 2022), [http://opiniojuris.org/2022/02/16/the-proposed-crime-of-ecocide-ignoring-the-question-of-liability/?utm\\_source=dlvr.it&utm\\_medium=twitter](http://opiniojuris.org/2022/02/16/the-proposed-crime-of-ecocide-ignoring-the-question-of-liability/?utm_source=dlvr.it&utm_medium=twitter).

<sup>142</sup> Jiavi Zhou & Ian Anthony, *Environmental Accountability, Justice & Reconstruction in Russian War on Ukraine*, INTER PRESS SERV. (Jan. 31, 2023), <https://www.ipsnews.net/2023/01/environmental-accountability-justice-reconstruction-russian-war-ukraine/>.

damage to air, forests, soil and water; remnants and pollution from the use of weapons and military equipment; and contamination from the shelling of thousands of facilities holding toxic and hazardous materials.”<sup>143</sup> If the ICC were to adopt an amendment criminalizing ecocide, how can crimes such as these be penalized by the Court when an entire State is technically responsible? This question can also apply to situations in which large corporations contribute to or cause environmental damage. Possible examples include the BP Gulf of Mexico oil spill that occurred in 2010 or the Ohio train derailment in 2023.<sup>144</sup> The entire company cannot be punished, so how can anyone be held accountable?

A solution could be to charge individual heads of states or those in charge of the corporations, namely CEOs or directors.<sup>145</sup> These individuals are often involved in major decisions and likely play a major role in the actions of these entities.<sup>146</sup> Similarly, leaders of states have been charged with crimes under the ICC before.<sup>147</sup> Charging CEOs or directors with crimes under the ICC would not be much different. This could likely be done

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<sup>143</sup> *Id.*

<sup>144</sup> *Deepwater Horizon – BP Gulf of Mexico Oil Spill*, EPA, <https://www.epa.gov/enforcement/deepwater-horizon-bp-gulf-mexico-oil-spill#:~:text=On%20April%2020%2C%202010%2C%20the,of%20marine%20oil%20drilling%20operations> (Aug. 14, 2023); Joe Hernandez, *The EPA steps in to take over the East Palestine train derailment cleanup*, NPR, <https://www.npr.org/2023/02/21/1158532207/epa-east-palestine-train-derailment> (Feb. 21, 2023).

<sup>145</sup> Greene, *supra* note 2, at 41.

<sup>146</sup> Adam Hayes et al., *Chief Executive Officer (CEO): What They Do vs. Other Chief Roles*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/ceo.asp#:~:text=The%20CEO%20is%20responsible%20for,public%20face%20of%20the%20organization> (Apr. 12, 2023). Possible examples include Anthony Bryan Hayward, who was the CEO of BP during the 2010 Deepwater Horizon oil spill or Ulf Mark Schneider, CEO of Nestlé, a company that was named one of the top plastic-polluting corporations of 2022. *BP CEO apologizes for “thoughtless” oil spill comments*, REUTERS (June 2, 2010), <https://www.reuters.com/article/us-oil-spill-bp-apology/bp-ceo-apologizes-for-thoughtless-oil-spill-comment-idUSTRE6515NQ20100602>; *The top plastic polluters 2022*, WASTE MGMT. WORLD (Nov. 7, 2023), <https://waste-management-world.com/materials/the-top-plastic-polluters/>.

<sup>147</sup> A warrant for the arrest of Omar Hassan Ahmad Al Bashir, previous President of the Republic of Sudan, was filed in 2009 and again in 2010 for a number of crimes committed between 2003 and 2008 in Darfur, Sudan. Former President of Côte d'Ivoire, Laurent Gbagbo, was charged with four counts of crimes against humanity in 2011. *Defendants*, INT'L CRIM. CT., [https://www.icc-cpi.int/defendants?defendant\\_fulltext=&field\\_case\\_name\\_colloquial=All&page=0](https://www.icc-cpi.int/defendants?defendant_fulltext=&field_case_name_colloquial=All&page=0) (last visited Feb. 8, 2023).

under the following modes of liability often used by the ICC: perpetration through another, superior responsibility, or ordering.<sup>148</sup>

Holding individuals in positions of power criminally liable for environmental damage caused by their actions would set an important precedent that environmental damage is not something the international community takes lightly, regardless of who is at fault.

### *F. Lack of Historic Basis for Ecocide*

As discussed above, each of the crimes within the jurisdiction of the ICC has a historic basis.<sup>149</sup> Two of the core crimes, crimes against humanity and genocide, were created in the aftermath of World War II.<sup>150</sup> The tribunals formed as a result of the atrocities that occurred in the territory of former Yugoslavia and Rwanda led to the establishment of the remaining core crimes.<sup>151</sup> Each of the core crimes were recognized in United Nations conventions and international tribunals prior to the establishment of the ICC.<sup>152</sup> Instead of creating new crimes, the Rome Statute merely adopted

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<sup>148</sup> All these modes of liability have to do with an individual commanding or authorizing the commission of a crime. Perpetration through another means the perpetrator “intended to use such person or persons as instruments or tools to commit the relevant crime.” More specifically, “the perpetrator intended to order the commission of the crime, or was aware of the substantial likelihood that the commission of the crime would be a consequence of his or her acts.” Superior responsibility involves the perpetrator failing to take necessary and reasonable precautions to ensure his subordinates do not commit a crime. Ordering occurs when the perpetrator gives an express or implied order to a subordinate and a crime is committed. Another possibility could be inducing where an individual “commanded, authorized, urged, incited, requested, or advised another person to commit the crime.” Superior responsibility is likely the best mode of liability to use in the context of holding state heads or CEOs accountable for ecocide. This is because in many instances of ecocide, the destruction of the environment is not intentional but rather a consequence of other actions taken. *Arts. 25 and 28 Modes of liability*, CASE MATRIX NETWORK, <https://www.casematrixnetwork.org/cmn-knowledge-hub/elements-digest/mol/> (last visited Mar. 29, 2023).

<sup>149</sup> *War Crimes on Trial: The Nuremberg and Tokyo Trials*, *supra* note 15; *Ad Hoc International Criminal Tribunals*, *supra* note 22.

<sup>150</sup> *Id.*

<sup>151</sup> *Ad Hoc International Criminal Tribunals*, *supra* note 22.

<sup>152</sup> Greene, *supra* note 2, at 35-36. The United Nations General Assembly was the first to recognize genocide as a crime in 1946. It was later codified as an independent crime in 1948 through the Convention on the Prevention and Punishment of the Crime of

already established and widely acknowledged crimes in the international community.<sup>153</sup> Individuals against an ecocide amendment to the Rome Statute have argued that unlike the core crimes, ecocide has no historic basis and would “stick out like a sore thumb.”<sup>154</sup>

Admittedly, ecocide does not have the same historic basis as the other core crimes, but to say it has no historic basis is incorrect. Fortunately, there is no requirement in the Rome Statute that states a core crime must have a specific historic basis or be customary international law before it is added through an amendment.<sup>155</sup> Unlike the core crimes of the ICC, ecocide has yet to be recognized by a United Nations convention or an international tribunal.<sup>156</sup> Nonetheless, the concept of ecocide is well-established and has been around for over fifty years.

The term ecocide was first coined by Arthur Galson in 1970.<sup>157</sup> The first country to include the crime of ecocide within its penal code was Vietnam in 1990.<sup>158</sup> Ecocide may not be established as an already existing crime within the international community, but there are several countries that have included a crime of ecocide on a domestic level including Uzbekistan

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Genocide. The concept of war crimes first developed in the early 20<sup>th</sup> century. The Hague Conventions adopted in 1899 and 1907 as well as countless other treaties since then have addressed war crimes. It is not entirely clear when crimes against humanity was first created but the concept has been well established under international customary law since at least 1993 when the International Criminal Tribunal for the former Yugoslavia took place. Finally, the crime of aggression was first recognized as an international crime in the Charter of the International Military Tribunal at Nuremberg in 1945. *Genocide: Background*, UNITED NATIONS, <https://www.un.org/en/genocideprevention/genocide.shtml> (last visited Feb. 8, 2023); *War Crimes: Background*, UNITED NATIONS, <https://www.un.org/en/genocideprevention/war-crimes.shtml> (last visited Feb. 8, 2023); *Crimes Against Humanity: Background*, UNITED NATIONS, <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> (last visited Feb. 8, 2023); *Crime of Aggression*, INT’L CRIMES DATABASE, <https://www.internationalcrimesdatabase.org/Crimes/CrimeOfAggression> (last visited Feb. 8, 2023).

<sup>153</sup> Greene, *supra* note 2, at 35-36.

<sup>154</sup> *Id.*

<sup>155</sup> See Rome Statute, *supra* note 67.

<sup>156</sup> Greene, *supra* note 2, at 36.

<sup>157</sup> *Id.*

<sup>158</sup> Maud Sarliève, *Ecocide: Past, Present, and Future Challenges*, SPRINGER LINK (June 29, 2020), [https://link.springer.com/referenceworkentry/10.1007/978-3-319-71065-5\\_110-1](https://link.springer.com/referenceworkentry/10.1007/978-3-319-71065-5_110-1).

(1994), Russia (1996), Kazakhstan (1997), Kyrgyzstan (1997), Tajikistan (1998), Belarus (1999), Georgia (1999), Ukraine (2001), Moldova (2002), Armenia (2003), Ecuador (2008), and France (2021).<sup>159</sup> Since its conception in 1970, ecocide has been the subject of countless books, journal articles, and news pieces as well.<sup>160</sup> This may not be the “official” recognition that the other core crimes have received over the years, but it clearly shows that ecocide is well recognized and a hotly debated subject among the international community. Although ecocide may not follow the

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<sup>159</sup> *Ecocide / serious environmental crimes in national jurisdictions*, *supra* note 88.

<sup>160</sup> Greene, *supra* note 2; Mwanza, *supra* note 8; Mark Allan Gray, *The International Crime of Ecocide*, 26 CAL. W. INT’L L.J. 215 (1996); Eliana Cusato, *From Ecocide to Voluntary Remediation Projects: Legal Responses to ‘Environmental Warfare’ in Vietnam and the Spectre of Colonialism*, 19 MELBOURNE J. INT’L L. 33 (2018); Rajendra Ramlogan, *Creating International Crimes to Ensure Effective Protection of the Environment*, 22 TEMPLE INT’L & COMPAR. L.J. 345 (2008); Hamilton, *supra* note 25; SHORT, *supra* note 34; WHITE & HECKENBERG, *supra* note 57; ALEXANDER DUNLAP & ANDREA BROCK, ENFORCING ECOCIDE: POWER, POLICING & PLANETARY MILITARIZATION (1<sup>st</sup> ed. 2022); JERRY KROTH, ECOCIDE: WHY RADICAL INTERVENTIONS ARE NEEDED NOW TO STOP CLIMATE APOCALYPSE (2020); DAVID WHYTE, ECOCIDE: KILL THE CORPORATION BEFORE IT KILLS US (1<sup>st</sup> ed. 2020); POLLY HIGGINS, ERADICATION ECOCIDE: LAWS AND GOVERNANCE TO STOP THE DESTRUCTION OF THE PLANET (2<sup>nd</sup> ed. 2016); CARLITA SHAW, THE SILENT ECOCIDE: THE ENVIRONMENTAL CRISIS IS A CRISIS OF HUMAN CONSCIOUSNESS (2015); DAVID ZIERLER, THE INVENTION OF ECOCIDE: AGENT ORANGE, VIETNAM, AND THE SCIENTISTS WHO CHANGED THE WAY WE THINK ABOUT THE ENVIRONMENT (2011); FRANZ BROSWIMMER, ECOCIDE: A SHORT HISTORY OF THE MASS EXTINCTION OF SPECIES (2002); Mark Hillsdon, *Society Watch: Drive to make ecocide an international crime gains momentum*, REUTERS (Feb. 20, 2023), <https://www.reuters.com/business/sustainable-business/society-watch-drive-make-ecocide-an-international-crime-gains-momentum-2023-02-20/>; Graham Lawton, *Ecocide may be on its way to becoming a new international crime*, NEWSIDENTIST (May 5, 2021), <https://www.newscientist.com/article/mg25033331-600-ecocide-may-be-on-its-way-to-becoming-a-new-international-crime/>; Sam Meredith, *Ecocide: How a fast-growing movement plans to put environmental destruction on a par with war crimes*, CNBC (June 22, 2021), <https://www.cnbc.com/2021/06/22/how-a-growing-movement-plans-to-put-ecocide-on-a-par-with-war-crimes.html>; *Is it time for “ecocide” to become an international crime?*, ECONOMIST (Feb. 28, 2021), [https://www.economist.com/international/2021/02/28/is-it-time-for-ecocide-to-become-an-international-crime?utm\\_medium=cpc.adword.pd&utm\\_source=google&ppccampaignID=17210591673&ppcadID=&utm\\_campaign=a.22brand\\_pmax&utm\\_content=conversion.direct-response.anonymous&gclid=CjoKCQIAx6ugBhCcARIsAGNmMbgXINcoUGSvzWg\\_OcZE Fjm4XlxAg3wpr2fY9RroZfVnoJpLNtBKI-dQaAgj\\_EALw\\_wcB&gclid=aw.ds](https://www.economist.com/international/2021/02/28/is-it-time-for-ecocide-to-become-an-international-crime?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gclid=CjoKCQIAx6ugBhCcARIsAGNmMbgXINcoUGSvzWg_OcZE Fjm4XlxAg3wpr2fY9RroZfVnoJpLNtBKI-dQaAgj_EALw_wcB&gclid=aw.ds); Ramon Antonio Vargas, *‘A powerful solution’: activists push to make ecocide an international crime*, THE GUARDIAN (Sept. 26, 2022), <https://www.theguardian.com/environment/2022/sep/26/activists-push-make-ecocide-international-crime>.

traditional historic basis, especially within the context of the Rome Statute and the other core crimes, this does not take away from its seriousness and the urgency for recognition within the international community.

### III. ONGOING (AND EVER-INCREASING) THREATS TO THE ENVIRONMENT

As discussed above, there is no shortage of examples of ecocide.<sup>161</sup> With the environment facing more stressors than ever before, there has never been a better time to add an ecocide amendment to the Rome Statute. Unfortunately, climate change, air pollution, soil degradation, deforestation, plastic pollution, and biodiversity loss are only some of the countless environmental issues to be concerned about in 2023.<sup>162</sup>

According to a report by the World Meteorological Organization, greenhouse gas concentrations “continue to rise to record highs” and the “past seven years were the warmest on record.”<sup>163</sup> In 2022, the American Lung Association reported that over 137 million people, over 40% of Americans, “are living in places with failing grades for unhealthy levels of particle pollution or ozone.”<sup>164</sup> About one third of the world’s soil is already degraded, making land less productive and putting the food system at risk.<sup>165</sup> Over 420 million hectares of forest have been lost as a result of human activity since 1990.<sup>166</sup> The world is currently producing “twice as much plastic waste as two decades ago, with the bulk of it ending up in

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<sup>161</sup> See Section I(C) (Examples of Ecocide), pg. 11.

<sup>162</sup> *Tackling Threats That Impact The Earth*, WWF, <https://www.worldwildlife.org/threats> (last visited Oct. 15, 2023); Deena Robinson, *15 Biggest Environmental Problems of 2023*, EARTH.ORG (Sept. 16, 2023), <https://earth.org/the-biggest-environmental-problems-of-our-lifetime/>.

<sup>163</sup> *United in Science: We are Heading in the Wrong Direction*, UNFCCC (Sept. 13, 2022), <https://unfccc.int/news/united-in-science-we-are-heading-in-the-wrong-direction>.

<sup>164</sup> *Key Findings*, AM. LUNG ASS’N (2022), <https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022.pdf>.

<sup>165</sup> Jennifer Marston, *By the numbers: the state of the world’s soil in 2022*, AGRIC. FOR NUTRITION (Dec. 8, 2022), <https://agfundernews.com/by-the-numbers-the-state-of-the-worlds-soil-in-2022>.

<sup>166</sup> This includes making space to grow crops and livestock and clearing for logging. Olivia Lai, *10 Deforestation Facts You Should Know About*, EARTH.ORG (Aug. 8, 2023), <https://earth.org/deforestation-facts/>.

landfill, incinerated, or leaking into the environment...”<sup>167</sup> Over 1 million animal and plant species are now threatened with extinction, more than ever before in human history.<sup>168</sup> If these staggering statistics don’t put into perspective the urgency and importance of this issue, I don’t know what will.

Without accountability within the international community or major recognition in some capacity, issues such as these will continue to grow and eventually reach the point where they are no longer manageable (if they haven’t already reached that point). Amending the Rome Statute and criminalizing ecocide is a critical part of attempting to mend these various environmental issues our world is currently facing. Moreover, punishing those who commit ecocide will show the international community that the environment is an important issue and not something to be trifled with.

## CONCLUSION

The Rome Statute should be amended, and ecocide should be added as the fifth crime under the jurisdiction of the International Criminal Court. It is unacceptable that ecocide continues to go unpunished in the international community despite existing as a concept for over fifty years.<sup>169</sup> Ecocide is a serious crime, and it should be treated as such. Adding an ecocide amendment to the Rome Statute is about much more than just preventing further harm to the environment. Adding ecocide within the jurisdiction of the ICC would ensure a healthy environment for those around the world and prevent further encroachment of that innate human right. As shown by the

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<sup>167</sup> *Plastic pollution is growing relentlessly as waste management and recycling fall short, says OECD*, OECD (Feb. 22, 2022), <https://www.oecd.org/newsroom/plastic-pollution-is-growing-relentlessly-as-waste-management-and-recycling-fall-short.htm#:~:text=22%2F02%2F2022%20%2D%20The,to%20a%20new%20OECD%20report>.

<sup>168</sup> *UN Report: Nature’s Dangerous Decline ‘Unprecedented’; Species Extinction Rates ‘Accelerating,’* UNITED NATIONS (May 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>.

<sup>169</sup> Greene, *supra* note 2, at 8.

countless examples discussed throughout this paper, ecocide is not a new concept and it's not going away anytime soon.<sup>170</sup>

The ICC is the ideal forum for the crime of ecocide, as it already punishes significant crimes against humanity and is well respected within the international community.<sup>171</sup> No one is saying adding this amendment is going to be easy, but until something is done to impose criminal liability for ecocide, unchecked environmental damage will continue to occur. The crime of ecocide needs to be addressed by the international community before it spirals even more out of control.

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<sup>170</sup> Greene, *supra* note 2, at 8; WHITE & HECKENBERG, *supra* note 57, at 54-55; *Examples of Ecocide*, *supra* note 57; Perga, *supra* note 57.

<sup>171</sup> *About the Court*, *supra* note 7.