



# War Against “Ecocide”: An Examination of Global Discourse and Controversies

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**Abstract:** Awareness of the environmental destruction caused by human activity has increased exponentially. Simultaneously, there have been several efforts to challenge, prevent, punish, and discourage such activities. One such movement involves the criminalization of environmental destruction, especially by deeming it as “ecocide,” an act that is equally serious as genocide. Proponents of this perspective suggest that it be instituted as the fifth entry in the list of serious crimes that are governed by the International Criminal Court. Amending the Rome Statute to stipulate environmental destruction as an international crime would enable the society to stand firmly against illegal acts and effectively prevent similar environmental destruction. However, the solution is not that simple, and several issues need to be considered. This paper examines the concept of ecocide and presents multiple perspectives that question or confirm the relevance of the term. Specifically, it critically evaluates key controversies surrounding the very concept of ecocide. It also examines the conceptual foundation of ecocide to determine if punishment for environmental destruction based on the international criminal justice system is appropriate, valid, and feasible. To list a few, the discussions here revolve around questions such as “can ecocide be seen as a crime?”, “who is the guilty party?”, “who bears the onus of human economic activity that leads to environmental destruction?”, and “When the rights of nature are in conflict with the rights of humanity, which one should prevail?”. The present paper attempts to address these questions by examining underlying perspectives such as ecocentrism, anthropocentrism, and plenary boundaries. Subsequently, the paper considers the potential technical issues concerning incorporating ecocide in the Rome Statute framework. Lastly, issues related to the structural inequality of the ICC as an international institution are discussed.

**Key Words:** Ecocide; Environmental Destruction; Climate Change; International Criminal Court.

## 1. INTRODUCTION

The occurrence of climate and environmental litigations has been surging rapidly in recent years. In 2017, 884 climate litigations were reported from 24 countries. Three years later, in 2020, at least 1,550 cases were filed in 38 countries<sup>1</sup>. According to data from Climate Change Laws of the World<sup>a</sup>, 58% of these cases had favorable outcomes in 2021<sup>2</sup>. These litigations were primarily filed against governments and businesses on the grounds of infringement of rights, which ranged from human rights—such as the right to life, happiness, and freedom—to the “rights of nature.”

The world’s first legal outcome in favor of climate action was made in the Netherlands in 2019. In this case lodged by Urgenda Foundation against the State of the Netherlands, the court emphasized that the state is obligated to protect citizens’ right to life; ruling that, by 2020, the government should reduce greenhouse gas emissions by 25% as compared to the emissions recorded in 1990. This landmark case was followed by a series of such rulings in Ireland (2020), France (2021), and Germany (2021), all of which held the state accountable for neglecting greenhouse gas reductions and for failing to fulfil its responsibility to protect citizens from the risk of climate change.

In South Korea, 19 teenagers representing Youth 4 Climate Action filed a constitutional petition against the National Assembly and government of the Republic of Korea in March 2020. They argued

<sup>a</sup>An institution that is jointly managed by the London School of Economics and Grantham Research Institute on Climate Change and the Environment.

that the parliament and the government did not exercise due efforts to respond to the climate crisis, violating younger generations’ rights to life, pursuit of happiness, a living worthy of human dignity, and other human rights guaranteed under the Constitution. Recent discussions over a constitutional reform are not unrelated thereto. The 1980 Korean constitution acknowledges environmental rights<sup>b</sup> as fundamental rights, but it effectively reserves the environmental rights to legislation, stating, “The substance of the environment right shall be determined by Act” in Article 35(2). It has been argued that to ensure the effectiveness of the environmental right, concrete details about the substance and exercise of the environmental right be included in the constitution<sup>3</sup>. Additionally, the state is urged to take one step further to establish its identity as an “environmental state” by expressly fulfilling the obligation to overcome the climate and biodiversity crises and to conserve environmental sustainability, as outlined in Article 14.

The plaintiff of a climate litigation may be a person whose rights are infringed (for example, the right to life, pursuit of happiness, or freedom), or an ecosystem (such as a river, a mountain, a specific species), on the grounds of infringement of the “rights of nature.” The rights of nature signify that natural objects such as rivers and mountains, have God-given or natural rights to survive and prosper, as humans do. In this sense, litigations on the rights of nature are distinguished from ones filed for the protection of human rights. The former call for a shift from the anthropocentric view of nature—that nature exists for humans’ utility—to an ecology-centered view of nature that considers nature to have intrinsic values as a member of the earth community.

Climate litigations on the rights of nature have been filed in many countries, including the USA, Canada, Mexico, France, Colombia, Pakistan, Bangladesh, Bolivia, India, and New Zealand<sup>5</sup>. Following the 2008 Referendum, Ecuador became the first state to acknowledge “Mother Earth” as a legal person and to stipulate the rights of nature in its constitution. Subsequently, several cases filed on the grounds of infringement of rights of rivers, mangroves, and jaguars had favorable outcomes in Ecuador. In New Zealand, the Maori people’s worldview, which considers rivers as ancestors, was accepted. Consequently, the legal personality of the Whanganui River was acknowledged in 2017. In the same year, the legal personality of the Ganges, the Yamuna, and relevant ecosystems was acknowledged in India<sup>6</sup>. The Supreme Court of Bangladesh acknowledged the rights of all rivers in its territory in 2019, and the Supreme Court of Justice of Colombia declared the Amazon as a legal entity.

Indeed, climate and environmental litigations vary in terms of legal entities claiming right infringement. Nevertheless, all such efforts aim to protect the Earth’s environment. With this shared purpose, these claims are becoming increasingly influential globally, with discussions over “ecocide” being at the pinnacle of such efforts. The term “ecocide” combines “eco” (derived from the Greek term “oikos,” meaning “home”) and “cide” (derived from the Latin term “occidere,” meaning “killing”), thus meaning “killing the environment.” With increasing awareness about the climate crisis globally, it has been suggested that ecocide be included in the list of the most serious crimes defined by the International Criminal Court (ICC)<sup>c</sup>. Under the Rome Statute of the International Criminal Court, the ICC developed an international criminal justice system to punish individuals for four most serious crimes of concern to the international community; namely, genocide, crimes against humanity, war crimes, and the crime of aggression. An amendment to the Rome Statute to declare ecocide as an international crime would imply that the destruction of the natural environment might be considered as serious a criminal act as genocide or crimes against humanity, and thus, punishable.

One may compare ecocide to the aforementioned litigations on the rights of nature. To put it simply, acceptance of the term ecocide as a criminal act would hold individuals accountable for serious environmental destruction. Currently, the rights of nature are primarily claimed in civil actions or constitutional petitions under domestic law, to safeguard the legal rights of the natural environment.

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<sup>b</sup>Article 35(1) of the Constitution expressly declares, “All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.”

<sup>c</sup>The ICC was established in July 2002, based on the provisions in the Rome Statute. It is the first standing international criminal court that can try individuals accused of committing the most serious crimes, i.e., genocide, crimes against humanity, war crimes, and the crime of aggression.

Amending the Rome Statute to stipulate environmental destruction as an international crime that involves the criminal law would enable the society to stand firmly against illegal acts and effectively prevent similar environmental destruction. However, many take a critical stance thereto. Several issues need to be considered, including the validity of the concept of ecocide, its effectiveness for the benefit and protection of the law, and the unequal social structure that is disadvantageous to people living in developing countries.

This paper examines the concept of ecocide and presents latest discussions over it. Additionally, it analyzes key controversies surrounding the stipulation of ecocide as an international crime to gauge the punishability of ecocide, and it examines the conceptual foundation of ecocide to determine if punishment for environmental destruction based on the international criminal justice system is appropriate and valid. Finally, by examining legal precedents and technical considerations, recommendations are made for making amendments to the Rome Statute.

## 2. FEND OFF ENVIRONMENTAL DESTRUCTION!

### The emergence of the ecocide discourse

The term “ecocide” was first introduced in the 1970s. Biologist Arthur W. Galston coined this term when he denounced the US armed forces for perfusing an enormous amount of Agent Orange, a deadly defoliant containing dioxine, all over the mountainous and farming areas in Vietnam as part of their military operations<sup>7</sup>. From 1961 to 1971, they unleashed 45 million liters of Agent Orange and 28 million liters of Agents White, Blue, Purple, Pink, and Green, which destroyed five million acres of highland forests and mangroves, and 500,000 acres of farming land. Dioxine contained therein had a fatal impact on human health. The defoliants caused birth defects in 150,000 children in Vietnam, and three million people experienced serious illness or death<sup>8</sup>. Galston asserted that an international treaty would be needed to tackle intentional environmental destructions like ecocide.

Such a notion was concretized by Swedish Prime Minister Olof Palme, at the 1972 UN Conference on the Human Environment. He criticized the USA for the use of Agent Orange and suggested that ecocide be declared as an international crime<sup>9</sup>. This suggestion was followed by discussions over including ecocide in the scope of the Rome Statute, only to fail to obtain international society’s agreement. At that time, countries such as India and China saw massive destruction of ecosystems as crimes against humanity<sup>10</sup>, and the USA expressed criticism about the vagueness surrounding the definition of ecocide. Eventually, ecocide did not make it to the Rome Statute. However, discussions made in that course served as a foundation for the development of an international discourse on ecocide.

Polly Higgins, a Scottish barrister, played an important role in the development of the ecocide discourse. From 2010, Higgins led the campaign to declare ecocide as a crime against peace<sup>11</sup>, and in 2017 the lawyer worked with legal professionals and environmental activists from all around the world to establish an international non-government organization, Stop Ecocide International. In 2012, a group of lawyers led by French international lawyer Valérie Cabanes established End Ecocide on Earth, a grassroots civil campaign in Europe, which launched the European Citizens Initiative to urge the European Parliament to criminalize ecocide.

Following these movements, in 2019, Maldives and Vanuatu made an official proposal to the international society that ecocide be criminalized. In particular, Maldivian statesman Ahmed Saleem asked the state parties of the ICC to consider victims of climate change within the framework of international criminal justice and highlighted the need to amend the Rome Statute<sup>12</sup>. In the same year, at the 20th International Congress of the Criminal Law Association held in Vatican City, Pope Francis expressed his support for ecocide being declared as the fifth international crime.

In addition to these international efforts, there have been several state-level discussions on ecocide. The most active debates have been reported from France. In 2015, a team of international lawyers led by law professor Laurent Neyret sent French justice minister Christiane Taubira a report entitled “From ecocrimes to ecocide.” This report recommended that ecocide needs to be afforded due consideration at the domestic and international levels<sup>13</sup>. Two lawmaking attempts followed in 2019, and in 2020 the Citizens’ Convention for Climate near-unanimously (99.3%) approved the inclusion of ecocide in the French criminal law. The Citizens’ Convention for Climate is a body comprising 150 randomly selected French citizens, established with a mission assigned by French President

Emmanuel Macron, to identify measures to achieve the nation’s greenhouse gas reduction goal. Macron accepted the citizens’ intent to include ecocide in the French criminal law and referred the process to law experts. He was the first among the heads of the G7 nations to express his support for declaring ecocide as an international crime. Following France, the UK, Sweden, Portugal, the Netherlands, and Canada, among others, are considering incorporating the concept of ecocide in their domestic law. Ecocide has already been included in the domestic criminal laws of Vietnam (Article 394), Russia (Article 358), Ukraine (Article 441), and Armenia (Article 394)<sup>14</sup>.

In addition to France, Belgium, Finland, Canada, Spain, and Luxemburg have officialized their support for the criminalization of ecocide as an international crime. In January 2021, the European Parliament passed a resolution that the European Union and its member states will facilitate the amendment of the Rome Statute to include ecocide<sup>15</sup>. This was followed by the adoption of recommendations of a report by the European Parliament Committee on Legal Affairs, which found businesses responsible for environmental damage, and a report by the European Parliament Committee on Foreign Affairs, which called for the inclusion of ecocide in the Rome Statute in consideration of the impact of climate change on human rights<sup>16,17</sup>.

The most important milestone in recent discussions on ecocide is a draft amendment to the Rome Statute proposed by the Independent Expert Panel for the legal Definition of Ecocide (IEP) on June 22, 2021. Led by the Stop Ecocide Foundation<sup>d</sup>, this project engaged 12 international lawyers from different countries, who spent six months developing the draft. The expert panel’s draft amendment to the Rome Statute textualized the ecocide discourse, which had until now remained limited to abstract debates, in concrete legal terms and brought it onto the table to trigger international debates surrounding ecocide.

### **The concept of “ecocide”: Ecocide–genocide nexus**

#### ***Ecocide rising from war***

The Russian invasion of Ukraine started on February 24, 2022. So far, ten water bodies, including dams, have been destroyed. In the western Ukrainian region of Lviv, the destruction of a fertilizer tank caused serious water pollution. Extensive pollution has been reported from 100 sites, including power plants, military facilities, and water treatment facilities<sup>18</sup>. In particular, the danger-charged atmosphere for ecocide reached its peak when the Zaporizhzhia Nuclear Power Station, the largest nuclear power station in Europe, fell under the captured territory. As a result of the Russian invasion, more than 100 cases of ecocide have been reported, said Ukrainian Parliamentary Commissioner for Human Rights, who noted that these actions violate not only national law that criminalizes ecocide but also international agreements to ban the use of methods or means of warfare that cause serious damage to the environment. He asserted that Ukraine will seek reparations for the damage inflicted by Russians’ environmental crimes<sup>19</sup>. It is prohibited under Article 35(3) of the Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)<sup>e</sup>, which prohibits states from employing “methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment”<sup>20</sup>.

Critics of the proposition that the Russia-Ukraine war has given rise to ecocide allude to the fact that the coinage of the term “ecocide” in 1970 was foreshadowed by the Vietnam War. Initially, the concept of ecocide was formed around the environmental destruction caused by warfare. Galston first mentioned the term “ecocide” at a conference on war and the responsibility of the state. Even before

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<sup>d</sup>Stop Ecocide Foundation is a public trust established in 2019, which that serves as the decision maker for Stop Ecocide International and is responsible for fundraising activities. The Executive Director of Stop Ecocide International chairs the board. The head office is located in the Netherlands. See [www.stopecocide.org/sef](http://www.stopecocide.org/sef).

<sup>e</sup>The Geneva Conventions consist of a series of international treaties to protect victims of armed conflicts. The conventions form the core of international humanitarian law. They comprise four conventions adopted in 1949 and two protocols added in 1977. The governments of 196 states have ratified the Geneva Conventions (the Republic of Korea became the 116th contracting party on August 16, 1966). For more information, see the website of the International Committee of the Red Cross.



this term was coined by Galston, there were attempts to regulate environmental destruction as a crime under international law, primarily led by international organizations, including the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the UN International Law Commission. As an extension thereof, the concept of ecocide was conceived with the historical backdrop of the Vietnam War.

The Swedish Prime Minister’s keynote speech at the 1972 UN Conference on the Human Environment, which urged the international society to declare the Vietnam War as ecocide triggered international discussions on this topic. The Convention on Ecocidal War held in Stockholm was one of these events that followed suit<sup>21</sup>. Richard A. Falk, a specialist in international law on war crimes, attended this convention and subsequently drafted the international convention on ecocide (1973). He highlighted the need for the UN to formulate a new international law to regulate environmental crimes. However, despite these recommendations, ecocide continued to be associated with military actions committed during wartime. The serious environmental destructions of today, for example, greenhouse gas emissions and marine plastic waste discharges, are mostly committed out of wartime. This clearly shows the limitations of the ecocide debates that occurred in the 1970s.

### *The concept of “ecocide”*

The proliferation of neoliberalism in the 1980s, and the rapid liberalization and globalization of enterprises in the 1990s taught us that, even in times of peace, humans’ free economic activities could cause serious damage to the environment. Simultaneously, the development of ecocentrism promoted people’s awareness that nature has intrinsic values and that it deserves protection. These changing views also brought change to the ecocide discourse. More recent debates, such as those developed by Polly Higgins in 2010, emphasize that environmental destruction in times of peace could be considered as a serious crime even in the apparent absence of casualties.

The international society does not agree upon a common definition of ecocide. As recommended by the European Law Institute, one may roughly define ecocide as “devastation and destruction of the environment to the detriment of life.” Still, ecocide should be distinguished from general actions detrimental to the environment, and as with other international crimes over which the ICC can claim jurisdiction, the threshold should be set high. The definition of crimes against humanity requires “widespread or systematic” acts to limit the scope of application of the law. However, applying a similar approach to ecocide would not cover one-off events such as oil spills from tankers. In their recent draft amendment to the Rome Statute, the IEP defined ecocide as follows:

“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.”

For this definition, the IEP referred to the existing provision in Article 8(2)(b)(iv) of the Rome Statute<sup>f</sup> and presented two thresholds for prohibited conduct. First, “severe and either widespread or long-term damage,” and second, “unlawful or wanton” acts. The latter was added in consideration of the fact that severe and eitherwidespread or long-term damage may also arise from lawful, socially beneficial, and justifiable operations to reduce impact on the environment.

Several crimes could be addressed by a law on ecocide. Examples include practices such as deep sea bottom trawling, which destroy entire ecosystems by dredging the ocean floor; oil spills from tankers; plastic production and waste accountable for all-pervasive “plastic soup”; industrial livestock farming, which is a major reason for Amazon deforestation; copper, iron, gold, and other mineral mining; oil drilling detrimental to forests; palm oil production in Malaysia and Indonesia; tar sand excavation and processing in Alberta, Canada; fracking for oil and gas extraction; textile chemicals leading to water pollution; excessive use of nitrogen fertilizers that cause soil pollution; radioactive contamination; nuclear testing; and use of fossil fuels leading to greenhouse gas emissions<sup>28</sup>.

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<sup>f</sup>“Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the non-human environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”

*The ecocide–genocide nexus<sup>g</sup>*

The notion and term “ecocide” are modelled after that of genocide. In the Convention on the Prevention and Punishment of the Crime of Genocide, that entered into effect in 1951<sup>h</sup> (“Genocide Convention”), genocide is defined as

“... acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group ...”

Concerning the relation between ecocide and genocide, Galston explained:

“Environmental destruction can have a genocidal impact and also that the environment can be seen as a victim of ecocide in the same way a social group of people can be seen as victims of genocide.”

Although the draft international convention on ecocide proposed by Falk to the UN in 1973 was not adopted, the Subcommission on Prevention of Discrimination and Protection of Minorities considered it as a way to ensure the effectiveness of the Genocide Convention on grounds that doing harm to the settlement of an ethnic group would constitute ethnic genocide. Hence, ecocide should be deemed a form of genocide and be included in the Genocide Convention. However, these discussions did not go further<sup>22</sup>.

The ecocide–genocide nexus received attention again in the 2000s. In 2007, the Australian government enacted the Northern Territory National Emergency Response Act that stipulated compulsory acquisition of land with the aim to extract minerals in aborigine settlements. In the same year, it also signed the Global Nuclear Energy Partnership (GNEP) led by the USA. This initiative was structured to allow Australia to mine and concentrate uranium and export it to other countries, and radioactive waste to be imported back and permanently stored in Australian deserts. The aborigine settlements in Australia’s Northern Territory have 30% of the world’s uranium deposits. Increasing uranium mining thus posed a serious threat to the survival of the aborigine people in this region. An indigenous leader-politician described it as “the beginning of the end of Aboriginal culture – it is in some ways genocide”<sup>23</sup>.

The case is no different for indigenous people in the tar sand field in northern Canada’s Alberta region. Tar sand extraction seriously damaged their land and had an irreversible negative impact on their health and culture. The indigenous community condemned the government and state for degrading their land, and effectively committing genocide.

Facing serious damage to their settlements caused by governments’ and enterprises’ mining and oil extraction activities and being forced to leave their homes, the native people in Australia and North America denounced that the governments and enterprises were destroying their land and culture and committing genocide. Environmental activists applied the concept of ecocide to this thoughtless resource development and resulting serious environmental destruction in indigenous settlements. The rebirth of the ecocide discourse, led by Higgins in 2010, started with the awareness of environmental destruction threatening native peoples’ survival. Ecocide campaign groups<sup>i</sup>, including Higgins, argued that environmental destruction was seriously detrimental not only to native people’s physical wellbeing but also to their spiritual and cultural health, and that environmental destruction would mean genocide to them.

Recently, indigenous groups in Brazil brought accusations against their president to the ICC. They argued that Bolsonaro and his administration were threatening their and all humankind’s survival by destroying the Amazon and setting fire to illegal mine development. French President Macron too raised his voice that the destruction of the Amazon would be ecocide.

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<sup>g</sup>Nexus means combination or connection. In this context, the word was used to highlight the close inter-relation between ecocide and genocide.

<sup>h</sup>Adopted at the third UN General Assembly in 1948 and announced in 1951 to criminalize genocide under international law.

<sup>i</sup>Survival International, Forest Peoples’ Alliance, Raven Trust, Cultural Survival, etc.

Meanwhile, it should be noted that though the ecocide–genocide nexus seems to be limited to minority groups in certain areas, it may soon involve all humanity. According to a study, the pace at which global warming is currently progressing would lead to 83 million deaths by the end of the century<sup>24</sup>. Indeed, this is the toll we would pay for various industrial and economic activities by humans, not to mention damages to the Amazon. From the ecocide–genocide perspective, it seems clear that humanity should develop much more effective regulations to mitigate environmental crimes.

### **The last bastion for environmental protection**

At the outset, no action intends to destroy the environment and bring climate crises. Most of them could involve good intentions to, for example, pursue the prosperity and development of humanity and eradicate poverty. Unfortunately, even lawful and considerate economic activities may result in unintended but serious damages to the environment. As such, to protect innocent victims and to avoid limiting sound economic activities, prudential considerations should be given when applying criminal law to environmental crimes. As such, should criminal law then be reserved as the last resort?

### **Environmental criminal law as the last resort**

One may morally or emotionally criminalize environmental destruction, but the principle of legality applies when determining what crimes are punishable by law. In South Korea, for instance, punishment for the destruction of the environment or environmental pollution is based on individual administrative laws such as the Clean Air Conservation Act, the Water Environment Conservation Act, and the Soil Environment Conservation Act, and a special criminal law, the Act on Control and Aggravated Punishment of Environmental Offences. These environmental administrative laws are preventive in nature, with the aim to regulate the discharge of pollutants. Violations of obligations under these administrative laws are mostly subject to administrative dispositions such as imposition of fines. Deemed an environmental criminal law in effect, the Act on Control and Aggravated Punishment of Environmental Offences has provisions to punish serious environmental pollution or environmental destruction with fines and/or imprisonment, but it does not cover the entire scope of related transgressions and merely focuses on cracking down on environmental pollution. Effectively, it is not far from an environmental administrative law<sup>25</sup>.

Environmental criminal law in Korea has a dualistic and complicated structure of environmental administrative laws and a special criminal law, and different environmental administrative laws have different provisions on the elements of and sanctions against environmental crimes. This serves as an obstacle to raising awareness among the public about what constitutes environmental crimes, and consequently, limits the implementation of the laws. Against this backdrop, there are multi-angular discussions, primarily in academia, over providing environmental crimes in the penal code, to treat them as a part of general crimes such as robbery and murder<sup>26, 27</sup>. As mentioned earlier, France, the UK, Sweden, Portugal, the Netherlands, and Canada are considering the introduction of the concept of ecocide in their domestic criminal law.

Although many countries, including Korea, have discussed the inclusion of environmental crimes in their penal code, the debate is still ongoing. Involving criminal law in environmental crimes requires multi-faceted considerations in relation to the normative and functional limitations of criminal law. For a state, criminal law is the most powerful compulsory measure of social control, and involving criminal law implies depriving of and limiting freedom. Therefore, criminal law requires more impartial justification than any other legal systems. In this context, criminal law may find grounds for justification from its nature as *Ultima Ratio* and self-limitation. Criminalizing ecocide under international law should be preceded by contemplation on the reason why the ICC’s jurisdiction is limited to the four “most serious crimes”; namely, genocide, crimes against humanity, war crimes, and the crime of aggression.

### ***Why is a new criminal provision needed?***

The Rome Statute on the ICC came into effect in 2002. It prohibits “causing serious bodily or mental harm to members of the group” as genocide, “deportation or forcible transfer of population” or “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” as crimes against humanity, and “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be

clearly excessive in relation to the concrete and direct overall military advantage anticipated” as war crimes<sup>28</sup>.

Considering these definitions, categorizing environmental destruction as genocide would require demonstration that such environmental destruction was committed with intent to harm a group of humans. Alternatively, including it as a crime against humanity would mean arguing that the environmental destruction was a “widespread or systematic” inhumane act against “civilian residents.” The accusation of genocide and crimes against humanity primarily revolves around damages to humans, hence damages to the environment itself would be out of the scope. Finally, war crimes entail environmental crimes committed during wartime. However, this would exclude prevailing environmental crimes committed in times of peace.

Thus, the current ICC rules have limitations in dealing with the internationally serious issue of environmental crimes. Furthermore, with changing times, the types of environmental crimes are becoming increasingly diverse. Therefore, the need for proactive legal reform is widely acknowledged. Against this backdrop, the IEP published the draft amendment to the Rome Statute in 2021. In the introduction, the IEP pointed out that most severe environmental damage occurs during times of peace, a situation that currently falls outside the jurisdiction of the ICC. It also explained that proceeding to agree on a crime of ecocide could support a more effective legal framework for our common future on a shared planet.

Despite the relevance of this point, the ecocide discourse is fraught by several opposing perspectives, leading to reservations regarding the acceptance of the concept and its criminality. The next section examines some of the core issues surrounding the ecocide discourse.

### 3. ISSUES SURROUNDING THE ECOCIDE DISCOURSE

There are potentially a multitude of issues concerning the criminalization of ecocide as an international crime. The discussions here revolve around the question “can ecocide be seen as a crime?” This entails delving into issues on the ecocide concept from the perspectives of the confrontation between ecocentrism and anthropocentrism, and plenary boundaries. The second focal point is the potential technical issues concerning incorporating ecocide in the Rome Statute framework. Lastly, issues related to the structural inequality of the ICC as an international institution are discussed.

#### Issues surrounding the concept of ecocide

##### *Collision of the ecocentrism and anthropocentrism views of nature*

The ecocide movement aims to bring about an amendment to the ICC rules to prevent environmental destruction not only in wartime but also in times of peace, and to regulate acts causing damage to the environment without casualties. In particular, Stop Ecocide and the IEP, two leading organizations in the ecocide movement, have recently revealed they do not wish to achieve the inclusion of ecocide in the scope of crimes against humanity (for example, the 12th type of crimes against humanity) within the four-crime framework of the Rome Statute. Instead, they intend to establish new provisions that define it as the fifth international crime. While the current ICC provisions on genocide intend to protect human rights by criminalizing acts of killing certain groups, ecocide intends to protect the earth and its environment by extending the scope of such destructive acts to nature.

As highlighted in the IEP’s introduction, those supporting the criminalization of ecocide warned that “the emission of greenhouse gases and the destruction of ecosystems at current rates will have catastrophic consequences for our common environment” and called for stern actions under international law against “environmental destruction causing damages to an entire ecosystem or species or a large number of human beings.” Indeed, they are calling for the resetting the human–nature relationship. However, this ecocentrism approach has been criticized in that it is idealistic and lacks practicality. Largely, discussions on ecocide still remain in the realm of the anthropocentrism perspective of nature.

As noted, environmental destruction today is largely attributable to daily economic activities of humans. We have extensively exploited natural environments to obtain resources such as food, fuel, wood, and minerals, which have had damaging effects on the environment, including greenhouse gas emissions. That being said, these activities have been essential to the survival of humanity. It would



be impossible to sustain such a way of life without exploiting nature. However, this concept of necessary evil raises several questions. To what extent are humans allowed to harm the environment to sustain their cultural life without seriously damaging it? How do we define the tolerable degree of damage? Can serious environmental destruction be justified if it gives humans greater benefits?

These questions eventually lead us to the old debate in environmental philosophy about the confrontation between ecocentrism and anthropocentrism, which are two conflicting viewpoints on the human–nature relationship. Neither of the views are right or wrong. Rather, they are based on different types of value judgments. Irrespective of the perspective assumed, the problem here would be that the ecocide discourse encounters errors when it tries to introduce law to the realm of value judgment to set rules of conduct, as discussed below.

### *Limitations of the ecocentrism view of nature*

In ecocentrism, humans are not considered independent from nature but are viewed as an integral part of it. All lives are valued as equal members of the community of life. Ecocentrism is post-anthropocentric. It does not acknowledge the privileged moral standing of humans and rejects the human-ruling worldview. As explained by Aldo Leopold, an ecosystem has its own “integrity and stability” and it pursues a constant balance point, for which human intervention and interference should be minimized. Thus, the ecocentric view emphasizes the stability of the community of life as a whole, thus purporting a totalitarian disposition that the good for individual beings can be sacrificed for that of the whole.

However, equating natural facts about the ecosystem with determination of what is right and wrong represents a typical “naturalistic error”<sup>29</sup>. In other words, by deducing ethical values from ecological facts, i.e., the belief that preserving the stability and integrity of the community of life is right, and that doing otherwise is wrong, ecocentrism commits an inferential error. As we all know, the ecosystem constantly changes over time and given environmental conditions. Then, what is the integrity and stability of this dynamic ecosystem? From the ecocentrism perspective, one may argue that humans should keep nature intact as they cannot fully comprehend the complicated natural system. However, that is impossible to achieve as humans do not fully understand the integrity and stability of the ecosystem. In a sense, why should human value and pursue this unknown and unknowable integrity and stability of nature?

Moreover, deep ecology, a further advanced form of ecocentrism, takes one step further from preserving the integrity of nature and allows human interference only to the extent that humans meet their minimum, essential, and fundamental needs. Deep ecology rejects the dichotomy that distinguishes human beings from non-human beings and sees humans as equal members of the community of life. Therefore, it is believed that humans should not intervene in the natural system unless they need to do so to meet their essential needs. Relatedly, this perspective also acknowledges that there are fundamental needs to cut down the human population for the prosperity of the community of life<sup>30</sup>.

As such, ecocentrism (or deep ecology) claims that human intervention in nature be kept at a minimal level to preserve the integrity of the ecosystem. However, the point is that no one can precisely define the optimal level that is required to preserve the integrity of the ecosystem in a given situation. Developing objective standards on the use of the environment to an extent while simultaneously not damaging the integrity of the community of life would require an understanding of the integrity and stability of the ecosystem. Evidently, true knowledge of this does not exist. Thus, in the event of serious damage to the environment, one would not be able to have an objective understanding of the extent of the harm caused to the integrity of the ecosystem and nature.

A more fundamental drawback is that ecocentrism cannot explain why humans, being mere and equal members of the ecosystem, should minimize their intervention in the pursuit of the integrity of the ecosystem<sup>1</sup>. It is attributable to its attempt to draw rules of conduct from ecocentric ethical and

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<sup>1</sup>Considerations should also be given if an ecosystem itself can have intrinsic value. The individualism perspective that each individual living organism has intrinsic value is in conflict with the ecocentrism perspective where the integrity of the community of life has the foremost priority. It might be plausible if the

moral values. From the ecocentrism perspective, ecocide is no doubt a very serious problem, but it does not give us the fundamental answer to the question why humans, ruling out their moral superiority, should prevent environmental destruction and protect nature, nor can it present criteria to determine what serious environmental destruction is.

These contradictions come to the surface in IEP’s draft amendment. As explained earlier, the draft presents two thresholds for ecocidal crimes, the first being conduct causing “severe and either widespread or long-term damage to the environment” and the second being that the conduct is “unlawful or wanton.” Recognizing that the first threshold may be overly inclusive, the panel explained the background against which they added the second threshold as follows:

“There are activities that are legal, socially beneficial and responsibly operated to minimize impacts that nonetheless cause (or are likely to cause) severe and either widespread or long-term damage to the environment.”

Further, they elaborated the justification of the second threshold by stating:

“This additional threshold draws upon environmental law principles, which balance social and economic benefits with environmental harms through the concept of sustainable development.”

This implies that severe environmental destruction may not be an issue if it is “socially beneficial” and if its “socioeconomic benefits” are greater than the environmental damage caused. This unveils the contradiction of the pro-ecocide debates led by the IEP that they take an ostensible ecocentrism viewpoint but are au fond anthropocentric. Even if we are successful in criminalizing ecocide under international law, such cost–benefit analysis-based value judgments may lead to inconsistencies in dealing with incidents of the same kind, eventually rendering the benefit and protection of the law unstable. If so, would it be more realistic to include ecocide as a subcategory of crimes against humanity, rather than declaring it as the fifth international crime<sup>31</sup>?

### ***Error of “species thinking”***

The ecocide discourse resonates with concerns that the destruction of the ecosystem and greenhouse gas emissions by humans has catastrophic effects on the earth. In this sense, the ecocide discourse shares the context with the discourse of Anthropocene. As lumbering and thoughtless catching of bioresources, excessive exploitation of natural resources, reckless use of plastics and chemicals, and human activities such as mass production and overspending have resulted in drastic changes in the environment and the extinction of several species, Anthropocene is a new, human-made geologic epoch distinguished from natural geological time scales. Both ecocide and Anthropocene discourses share the same critical view that humans are causing severe harm to the earth and that this environmental destruction by humans may bring on a catastrophe to the planet’s natural ecosystem. As the catastrophic epoch of Anthropocene has started, ecocide attempts to hold the culprit, i.e., humans, accountable.

However, several individuals express critical views on Anthropocene. Specifically, if Anthropocene and ecocide share the same view on the relationship between humans and the earth, criticism of Anthropocene may be equally applicable to the ecocide discourse. Below are the arguments of Dipesh Chakrabarty, who is at the forefront of criticism of Anthropocene.

Chakrabarty raised a fundamental question about the influence of humans as a “geological force” to bring change to the planet Earth. He made a point that the human history is only a fraction of the planet’s 4.5-billion-year-long history, and that humanity has carried on carbon-intensive economic activities only for a century. It would be overly human-centered thinking to assume that humanity could have impact big enough to create a new geological epoch within such a short period of time in the immemorial history of the Earth. Chakrabarty argued that in a planetary timescale, Anthropocene would be nothing but an instant moment. He said that the ecological footprint of humanity could not be understood without involving lives of other species and, after all, humans are just a species, although dominant. He criticized that the Anthropocene discourse is based on an erroneous view of

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ecosystem as a whole has a teleonomic purpose, but no philosophies provide proper explanations about the purpose (telos) of the earthcite (Joseph R. DesJardins, 2017).

human-centered “species thinking” as it overlooks the histories and functions of other non-human species<sup>32</sup>.

According to Chakrabarty, the Anthropocene epoch pertains to changes in the earth system as a whole and has nothing to do with the moral responsibility of humans. Climate change and other environmental crises we face are “humanity’s ecological overshoot” as a result of the acceleration of the capitalistic economic system, coupled with rapid increases in population. In a planetary timescale, the ecosystem did not have sufficient “evolutionary time” to adapt itself to these changes, and this phenomenon is not caused by economic activities engaged by humanity for merely 500 years. In other words, given the long history of the Earth, we should not necessarily overestimate our influence and promote ourselves as a “geological force.”

Looking at ecocide from this critical viewpoint calls into question the definition of “severe damage to the environment” over which the ICC could claim jurisdiction. The temporal and spatial scale of nature is far beyond that of humans. Therefore, it would be a Herculean task for humans to judge the severity of environmental damages in their own temporal and spatial scale. Nature continues to change. As Chakrabarty pointed out, the natural system might just need “evolutionary time” and the earth system might make nothing of the environmental destruction caused by humans.

### *History of natural destruction of nature: Are humans obliged to protect the environment?*

According to the ecocentrism view, nature may be partially unstable, but it maintains a general equilibrium and always pursues a stable point, or equipoint. However, one cannot but doubt the homeostasis of the natural ecosystem when one considers the fact that there have been five mass extinctions in the earth’s history, and 90% of living things that have ever existed on earth have become extinct. Kurt Bayertz is known for his criticism of the ecocentrism view of nature, namely, the assumption that nature in itself has purposes and values. According to Bayertz, the history of nature has included a series of natural calamities and the concept of overall equilibrium of nature does not exist. As nature has no purposes or intrinsic values, humans have no moral or normative obligations to protect the natural environment. This does not mean that humans have the permission to destroy nature. The point of Bayertz’s argument is that the grounds for the justification of human acts cannot be based in the assumed inherent value of nature and that humans’ moral responsibility should only be based on norms and values created by them<sup>33</sup>.

Inherently, nature has gone through self-destruction and creation. As Bayertz pointed out, some organic bodies started photosynthesis in the absence of oxygen in the atmosphere two billion years ago, and toxic oxygen generated therefrom led to the extinction of several other organic bodies. Simultaneously, it triggered the evolution of species that live on oxygen. This example implies that, even if humans’ environmental destruction incites the downfall of today’s earth ecosystem, nature will continue to exist and evolve into life in other forms.

Combining Bayertz’s argument with the ecocide discourse one can conclude that humans have no normative obligations to protect the environment. Hence, there are no ecological or natural grounds for the criminalization of ecocide. If we nonetheless regulate ecocide under international law, it should only be based on norms and values established by humanity. In other words, it should be made clear that the criminalization of ecocide as an international crime should not be to protect the ecosystem itself, as per pro-ecocide arguments, but to protect human existence.

In this context, it is interesting to consider the planetary boundaries perspective, which holds all of us jointly accountable for our actions as a society. It is a geosystem concept that refers to environmental areas that must be protected for humanity to continue to survive and life safely on earth. The term was coined by a team of 29 earth and environmental scientists, including Johan Rockström (Stockholm Resilience Centre), Will Steffen (Australian National University), and Paul Crutzen, an atmospheric scientist who coined the term Anthropocene, in their 2009 paper in *Nature*. According to them, the following nine areas of the earth system form the planetary boundaries<sup>34</sup>:

- Climate change
- Ocean acidification
- Stratospheric ozone depletion

- Nitrogen and phosphorus oversupply
- Freshwater consumption
- Land system change including deforestation
- Biodiversity loss
- Air pollution
- Chemical pollution

The team updated the planetary boundaries concept in 2015, where they highlighted that these nine areas are not static and independent; rather, they interact and have dynamic relations with each other<sup>35</sup>. They also explained that, out of the nine boundaries, climate change and biodiversity form the core boundaries connected to all other boundaries. As per the planetary boundaries concept, these nine boundaries must be protected for the survival and prosperity of humanity. Intrusion on other boundaries may cause severe interruption in the earth system in part or in whole, leading to changes in the overall earth system and threats to human survival.

Deeming the earth as a system of interconnected elements, the planetary boundaries concept is widespread globally, adopted as a key agendum in academia, policy studies, and environmental movements. For instance, the European Parliament organized the seventh Environmental Action Programme in 2013, which the concept of planetary boundaries forming the core theme of the event. The concept was also presented at the World Economy Forum held in Davos in January 2015. France, in a government report published in 2019, accepted the planetary boundaries concept<sup>36</sup>.

(Sources : Steffen, W. et al. 201537)

The geosystem approach explained with the planetary boundaries also appears in the IEP’s draft amendment, where the IEP defined “environment” as follows:

“Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.”

As evident from the above statement, the IEP adopted a geosystem science-based definition where different environmental areas of the Earth are interconnected. This is corroborated by the use of other terms such as “severe,” “widespread,” and “long-term.” The IEP sees ecocide as very serious adverse changes, disruption, or harm to “any element of the environment” suffered by “an entire ecosystem or species,” thus acknowledging ecological interconnection<sup>38</sup>.

The concept of planetary boundaries may seem like scientific grounds in favor of ecocide, but in fact these concepts may be contradictory. As discussed earlier, from the planetary boundaries perspective, the Earth is a system involving interconnected processes; meaning, a process can have significant impact on the entire system. When applied to law, this implies that we all may be held accountable for environmental destruction. Today, environmental destruction has resulted from the accumulation of people’s daily economic activities, and under the modern production and consumption structure, most people are not free from the onus of this destruction<sup>39</sup>. If that is true, then how is criminalizing ecocide in international law justified if the whole of humanity is to blame?

### **Issues surrounding the amendment of the Rome Statute**

#### ***It was right then but wrong now: Dependency on science and resulting vulnerability***

As a series of climate litigations emerge, there is increasing interest in the use of scientific data to demonstrate the causal relationship between acts of environmental destruction and their impact. A study that analyzed 73 climate litigations filed in six continents showed that while the court delivered several rulings based on the scientific evidence submitted by the parties, in some cases, such evidence was not fully based on the latest findings from climate science, and hence, they failed to demonstrate the causality<sup>40</sup>. Other issues that limit the determination of causality include the fact that climate change occurs as a complex function of several factors that are hard to separate. Further, there are countless sources of greenhouse gases, and once emitted, these gases mixed up in the atmosphere, rendering it impossible to specifically identify the person responsible for the emissions, and/or the extent of damage caused.



The findings from the abovementioned study imply that those involved in cases dealing with environmental crimes, including the court, are unavoidably dependent on science, and that may be a big loophole in the legal system. If a decision on a criminal case depends on the advancement of science and technology and/or the discovery of scientific facts, the ruling is likely to change depending on time, parties involved, and nature of cases. This would mean inconsistency in dealing with the same cases, resulting in worsening vulnerabilities in the benefit and protection of law.

### ***Who are guilty?***

Climate change and the environmental crises we are facing today are results of the accumulation of insignificant acts over time, rather than something caused by a one-off event. The timeframe here may be as short as a decade or two, or as long as several centuries. As discussed earlier, numerous factors and many players are involved in environmental destruction. Hence, it is very difficult to specify who should be responsible and to what extent. Another issue one may draw therefrom is that the ICC can claim jurisdiction only over natural persons. Article 25 of the Rome Statute provides that “[a] person who commits a crime with the jurisdiction of the Court shall be individually responsible and liable for punishment...” However, these days, environmental destruction often arise from free economic activities of businesses in the capitalistic market economy, rather than being caused by individuals. This implies that there is no objective foundation to hold individuals accountable for environmental damages, significantly limiting the effectiveness and functionality of ecocide in the international criminal justice system.

While the issue surrounding the legal accountability of environmental crimes is one thing, there is another issue related to impracticability to gauge the severity of a crime, i.e., how serious a crime is. The adverse impact of environmental damages may be limited to a stream but given the complexity of the natural system it may spread to an extent that is beyond human knowledge and understanding. Here, refer back to the issues raised in relation to the very concept of ecocide discussed earlier in this paper. For the ICC to govern environmental crimes, it should be able to pinpoint the scope and severity of environmental damages accrued, which would require a criteria span. Criminal law requires clarification about the object of protection and what legal interest of the object has been infringed. However, the environment spans wide physical areas, making it difficult to comprehend the actual effect of the environmental damages and to determine the severity of the infringement of their legal interest. For instance, if a factory discharges pollutants leading to serious pollution of a river. In this case, will the infringement of legal interest be constituted if the pollution is limited to a specific part of the river, not its entirety? If partial pollution is considered infringement, how partial should it be? Furthermore, would partial pollution be considered less severe as compared to the pollution of its entirety? When it comes to environmental crimes, it is difficult to demonstrate causal relations between individual conducts and environmental infringement and precisely define the scope of each actor’s responsibility. Hence, there are several challenges to the application of criminal law to environmental crimes in real world settings. The same applies to the ecocide discourse.

### ***Intent to destroy the environment***

The concept of ecocide is grounded on the notion that serious environmental crimes should be treated as strictly as is genocide. As discussed earlier, the constitution of a genocide crime requires “intent to destroy,” namely, deliberate acts committed to destroy humanity or part of it in whole or in part. Treating environmental crimes the same as genocide would mean that the environmental crimes were not a mistake or accident but that they were acts committed “with intent to destroy, in whole or in part, an environment.” There are no grounds on which environmental destruction caused by unintentional acts can be treated a serious crime as genocide, however severe or devastating the effects of such actions are.

One should think of the presence of “intent to destroy” in the first place when it comes to environmental crimes. Given that practically no one would commit an environmental crime with intent to destroy, there are no justifiable grounds to define ecocide as the fifth international crime. Relevant here, is the previous discussion on the contradicting ecocentric and anthropocentric views of nature, which calls to question the application of natural facts to ethicolegal decisions.

Furthermore, the IEP suggested that the criminal intent (Mens Rea) provision in Article 30 of the Rome Statute be amended as “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,” finding the original provision (“that person means to cause that consequence or is aware that it will occur in the ordinary course of events”) too strict to deal with environmental crimes. In other words, “intent to ignore potential harm” can be an important ground for determining intent to harm<sup>41</sup>. The Mens Rea provision proposed by the IEP has a lower threshold than the existing provision in the Rome Statute, based upon which punishment against ecocide would be stricter than that against genocide.

In addition, the IEP’s Mens Rea provision may also make it difficult to impose punishment in proportion to the severity of environmental damages. Today, environmental destruction often results from the accumulation of lawful acts, rather than an act that was intended to be “unlawful” from the beginning. Even if the Rome Statute was amended to punish acts of environmental destruction arising from “unlawful or wanton” acts, it would not have practical effect as a legal institution to prevent and punish acts of environmental destruction, as any acts would not constitute ecocide unless proven unlawful or wanton. If so, there may be cases where no one can be held accountable for acts causing severe environmental damages, or vice versa. Thus, the inconsistency between acts of environmental destruction and punishability may bring instability to the legal system.

### **Issues surrounding the ICC**

#### ***Inequality worsening through the ICC***

While it is important to hold serious environmental criminals accountable by criminalizing ecocide as an international crime, it is equally important to ensure that the process and outcomes emerging therefrom do not obstruct racial and climate justice. From this perspective, one should reflect on the criticism that the ICC, as an international institution, is conniving and overlooking racism and developing country–advanced country inequality, aggravating and snowballing the global inequality structure. The emphasis here is not on whether the ICC is racist or not, but on how prevailing and persistent racial inequality in overall society and international organizations is affecting the ICC<sup>42</sup>. As of June 2022, 47 defendants are listed on the ICC website, and all of them are black or Arab-African<sup>43</sup>. Furthermore, the 123 state parties that have joined the Rome Statute do not include some of the largest emission sources (the USA, India, and China). The criticism often posed against the ICC is that it hinders inclusive and fair development and villainizes developing countries<sup>44</sup>. If the ICC is criticizable for snowballing the structural inequality such as racism and disputes between powerful and small nations, ecocide, as a new international crime, may further aggravate such inequality concerning environmental crimes.

## **4. CONCLUSION**

The term “ecocide” is dramatic in that it stirs up a stronger wake-up call than “environmental damage” or “ecosystem destruction.” While the term “environmental destruction” does not overtly acknowledge that humanity is part of the environment, ecocide vividly shows that humanity and the entire ecosystem are facing ecological crises. Similar to the strong hatred against perpetrators of genocide, the concept of ecocide urges us to view those causing environmental pollution as ecological slaughterers. The ecocide discourse conveys a sense of despair and urgency. It comes from the ethical emission of humanity to respect and safeguard the Earth’s natural environment. As people are increasingly aware of such ethical universality and the sense of crisis about Anthropocene, they are increasingly supportive of ecocide. Now the ecocide discourse can no longer be disregarded as a radical and biased voice from the fringe.

The key to the ecocide discourse is that humans should not cause any more harm to the natural environment. It also acknowledges the need for legal instruments to ensure strict compliance with this principle. In this context, several movements have pushed for the criminalization of ecocide under international law where the ICC can claim jurisdiction. It reveals the sense of urgency to tackle environmental destruction and protect the Earth’s environment by resorting to the last bastion of the ICC.

However, it is unclear whether ecocide is really something that falls under the jurisdiction of the international criminal justice system. When the rights of nature are in conflict with the rights of humanity, which one should prevail? On considering the various issues examined in this paper, one arrives at the conclusion that no one has the right answer to that question. The discourse is fraught by

several opposing positions and value judgements. The IEP faced strong criticism for suggesting in the draft amendment that ecocide might be permissible depending on whether it meets the needs of humanity. While still living in an extractive economy<sup>k</sup> without declaring a separation from fossil fuels, involving criminal law in acts of environmental destruction may be seen as the reversal of conduct and the ideal situation. However, it is evident from the current discussions that it would be much more realistic to approach regulations over environmental destruction as a way to guarantee both, rights of humans and the quality of their lives.

An emblematic criminal law can be a target of criticism in that it entails nothing but a moral plea without effectiveness. Even though we want to punish and prevent acts of environmental destruction, we do not have to pull out the last resort of criminal law right now. Instead, we should collectively attempt to reform the existing systems to bring changes to the economic and social structures that contribute to environmental destruction. The ecocide discourse leaves a very important message for modern society. Irrespective of whether it is criminalized as a crime over which the ICC would have jurisdiction, the current trends in environmental destruction serve as a strong warning for all members of society, including businesses that carry out economic activities. As a society, we need to re-examine what relationship we should build with nature? Indeed, the ecocide discourse leaves us with a burning question, isn't it time that we reset the human–nature relationship?

### REFERENCES

- [1] Parker, G. (2022, February 28). Growing wave of climate cases piles pressure on private sector. Eco-Business. Retrieved October 17, 2022, from <https://www.eco-business.com/news/growing-wave-of-climate-cases-piles-pressure-on-private-sector/>
- [2] Setzer, J., & Higham, C. (2021, July 5). Global trends in climate litigation: 2021 snapshot. Grantham Research Institute on climate change and the environment. Retrieved October 17, 2022, from <https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-litigation-2021-snapshot/>
- [3] Kang, C. (2020, October 27). heonbeophwangyeongwon...40nyeon jeon 'jangsigyong'eseohwangyeongjeongchaekbaljeonmitgeoreumdwaetda. The JoongAng. Retrieved October 17, 2022, from <https://www.joongang.co.kr/article/23905303#home>
- [4] Chae, D. (2021, July 9). "heonbeop 1joe gihudaeungmithwangyeonguimuneocha". Environment & Energy News. Retrieved October 17, 2022, from <https://www.e2news.com/news/articleView.html?idxno=234292>
- [5] Weisbrod, K. (2021, September 21). Does nature have rights? A burgeoning legal movement says rivers, forests and wildlife have standing, too. Inside Climate News. Retrieved October 17, 2022, from <https://insideclimatenews.org/news/19092021/rights-of-nature-legal-movement/>
- [6] Margil, M., Bajpai, S., & Kothari, A. (2017, April 21). Now rivers have the same legal status as people, we must uphold their rights. The Guardian. Retrieved October 17, 2022, from <https://www.theguardian.com/global-development-professionals-network/2017/apr/21/rivers-legal-human-rights-ganges-whanganui>
- [7] Ecocide and “Planetary Boundaries”: Strong words provoke major debate. (2021, September 3). Retrieved October 17, 2022, from iD4D Sustainable Development News.
- [8] What is Agent Orange?. Retrieved October 17, 2022, from [www.aspeninstitute.org/](http://www.aspeninstitute.org/)
- [9] Independent Expert Panel for the Legal Definition of Ecocide. (2021, June). Commentary and Core Text. Retrieved from Stop Ecocide Foundation. [www.stopecocide.earth/legal-definition](http://www.stopecocide.earth/legal-definition).
- [10] García, Bibiana. (2020, February 27). The History of Ecocide, a New Crime Against Humanity. Retrieved October 17, 2022, from OpenMind: BBVA. [www.bbvaopenmind.com/en/science/environment/the-history-of-ecocide-a-new-crime-against-humanity/](http://www.bbvaopenmind.com/en/science/environment/the-history-of-ecocide-a-new-crime-against-humanity/).
- [11] Ecocide, origin of an environmental struggle. (2021, September 3). Retrieved October 17, 2022, from iD4D Sustainable Development News.
- [12] Phillips, Sara, K. (2021, July 9). Unpacking “ecocide”: a note of caution for international criminalization. Retrieved October 17, 2022, from Stockholm Environment Institute. [www.sei.org/perspectives/unpacking-ecocide-international-law/](http://www.sei.org/perspectives/unpacking-ecocide-international-law/).
- [13] Ecocide, origin of an environmental struggle. (2021, September 3). Retrieved October 17, 2022, from iD4D Sustainable Development News.

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<sup>k</sup>An extractive economy refers to an economic system where wealth is built on the extraction of resources such as coal and petroleum, capital, and labor. An extractive economy is resource-dependent, in contrast to a regenerative economy.

- [14] O'Brien, Emma. (2021, June 6). An international crime of “ecocide”: what’s the story? - EJIL:Talk!. Retrieved October 17, 2022, from Blog of the European Journal of International Law.
- [15] Stop Ecocide International. (2021, January 21). European Parliament Urges Support for Making Ecocide an International Crime. Retrieved October 17, 2022, from [www.stopecocide.earth/press-releases-summary/europeanparliament-urges-support-for-making-ecocide-an-international-crime](http://www.stopecocide.earth/press-releases-summary/europeanparliament-urges-support-for-making-ecocide-an-international-crime).
- [16] European Parliament. (2021, May 20). European Parliament resolution of 20 May 2021 on the liability of companies for environmental damage. Retrieved October 17, 2022, from [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0259\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0259_EN.html)
- [17] European Parliament. (2021, May 19). European Parliament resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter. Retrieved October 17, 2022, from [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245_EN.html)
- [18] Kim, S. (2022, April 25). gangmulsok ammonia 163bae chisosatda...ukeurajeonhuyujeunggongpo. The JoongAng. Retrieved October 17, 2022, from <https://www.joongang.co.kr/article/25066350>
- [19] Ukrinform. (2022, April 28). In Ukraine, over 100 cases of ecocide recorded, caused by Russian attacks. Ukrinform. Retrieved October 17, 2022, from <https://www.ukrinform.net/rubric-ato/3469822-in-ukraine-over-100-cases-of-ecocide-recorded-caused-by-russian-attacks.html>
- [20] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Conflict. (1949). Retrieved from [www.law.go.kr/LSW/trtyMInfoP.do?trtySeq=324](http://www.law.go.kr/LSW/trtyMInfoP.do?trtySeq=324).
- [21] Crook, Martin. & Short, Damien. (2014). Marx, Lemkin and the genocide–ecocide nexus. *The International Journal of Human Rights*, 18:3, pp.298 - 319, doi:10.1080/13642987.2014.914703.
- [22] Ibid.
- [23] Intervention plan 'in some ways genocide'. (2007, August 7). Retrieved October 17, 2022, from ABC News. [www.abc.net.au/news/2007-08-07/intervention-plan-in-some-ways-genocide/2523968](http://www.abc.net.au/news/2007-08-07/intervention-plan-in-some-ways-genocide/2523968).
- [24] Bressler, R. Daniel. (2021). The mortality cost of carbon, *Nature Communications*, 12, 4467.
- [25] Hur, Iltae. (2014). The Criminal counterplan about the Environmental crime in Korea, *Korean Journal of Comparative Criminal Law*, Vol.16, No. 2, pp.437 – 460.
- [26] Kim, SeoungEun. (2018). Anwendungsprobleme des geltenden Umweltstrafrechts -Möglichkeiten und Grenzen des strafrechtlichen Umweltschutzes-, *Soongsil Law Review*, 42(3), pp.163-188.
- [27] Choi, Cheong-Hak. (2020). A Critical Review of the Punishment Clauses of Environment Law, *Korean Association of Criminology*, 31(4), pp.37-74.
- [28] Roman Statue of the International Criminal Court. (2002, July 1). Retrieved from Korea Law Information Center, [www.law.go.kr](http://www.law.go.kr)
- [29] Joseph R. Des Jardins. (2013). *Environmental Ethics: An Introduction to Environmental Philosophy* (Fifth Edition). Belmont, CA: Cengage Learning.
- [30] Ibid.
- [31] Heller, K. Jon. (2021, June 23). Skeptical Thoughts on the Proposed Crime of “Ecocide” (That Isn’t). Retrieved October 17, 2022, from [OpinioJuris.http://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/](http://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/).
- [32] Chakrabarty, Dipesh (2017). The Politics of Climate Change Is More Than the Politics of Capitalism. *Theory, Culture and Society* 34 (2-3):25-37.
- [33] Lee, Jong-gwan. (1996). Hwangeongyullihakgwainganjungsimjuui – saengtaehakjeokhwangeongyullihakgwageuedaehanbaiereucheubipaneuljungsimeuro –. *Korean Journal of Philosophy*, 49, pp.375-407.
- [34] Biermann, Frank & Kim, Rakhyun. E. (2020). The Boundaries of the Planetary Boundary Framework: A Critical Appraisal of Approaches to Define a “Safe Operating Space” for Humanity, *Annual Review of Environment and Resources*, Vol. 45, pp.497-521.
- [35] Ibid.
- [36] L'environnementen France, Rapport de synthèse – édition 2019. (2019). Retrieved from, [https://notre-environnement.gouv.fr/IMG/pdf/9782111570573\\_lenvironnementenfrance\\_edition2019\\_rapportdesynthese\\_v24\\_web\\_light.pdf](https://notre-environnement.gouv.fr/IMG/pdf/9782111570573_lenvironnementenfrance_edition2019_rapportdesynthese_v24_web_light.pdf)
- [37] Steffen, W., Richardson, K., Rockström, J., Cornell, SE., Fetzer, I., et al. (2015). Planetary boundaries: guiding human development on a changing planet. *Science*, 347(6223), pp.1–10.
- [38] Voigt, Christina. (2021, July 3). «Ecocide» as an international crime: Personal reflections on options and choices. Retrieved October 17, 2022, from EJIL:Talk! Blog of the European Journal of International Law.
- [39] Ecocide and “Planetary Boundaries”: Strong words provoke major debate. (2021, September 3), Retrieved October 17, 2022, from iD4D Sustainable Development News.



[40] Stuart-Smith, R.F., Otto, F.E.L., Saad, A.I. et al. (2021). Filling the evidentiary gap in climate litigation. *Nature Climate Change*. 11, pp.651–655.

[41] Ecocide, origin of an environmental struggle. (2021, September 3). Retrieved October 17, 2022, from iD4D Sustainable Development News.

[42] DeFalco, Randle C. & Mégret, Frédéric. (2019). The invisibility of race at the ICC: lessons from the US criminal justice system. *London Review of International Law*, Volume 7, Issue 1, pp.55–87.

[43] Defendant List. Retrieved from International Criminal Court: [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).

[44] The Conversation. By not investigating the U.S. for war crimes, the International Criminal Court shows colonialism still thrives in international law. (2019, April 15). Retrieved from <https://theconversation.com/by-not-investigatingthe-u-s-for-war-crimes-the-international-criminal-court-shows-colonialism-stillthrives-in-international-law-115269>.

[45] Goerner, S. (2015). Regenerative Development: The Art and Science of Creating Durably Vibrant Human Networks. Retrieved from Capital Institute. <http://capitalinstitute.org/wp-content/uploads/2015/05/000-Regenerative-Devel-FinalGoerner-Sept-1-2015.pdf>.

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