

THE ECOCIDE BETWEEN THE ETHICAL IDEAL AND THE LEGAL REALITY

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Abstract

Ecocide—the large-scale destruction of ecosystems by the human agent—has gained increasing prominence as an ethical and legal concern in the Anthropocene era. In this paper we explore ecocide at the intersection of moral philosophy and international law, examining how the ethical imperatives of environmental management have faced the limitations of codification and legal application. Drawing on conceptual and doctrinal analysis, in this paper we analyze the normative evolution of ecocide as an emerging international crime, tracing its roots in moral discourse, post-war humanitarian law, and contemporary climate governance. By integrating ethical theories – such as ecological justice, utilitarian environmental ethics, and deontological duty to non-human life – with legal developments from the Rome Statute to the amendments proposed by the Group of Independent Experts (2021), this study identifies a growing gap between ethical aspiration and legal achievement.

Comparative and policy analyses show that, despite the growing recognition of environmental damage as a cross-border moral error, international law remains hampered by sovereignty, evidence and political barriers. Through illustrative case studies, including deforestation in the Amazon, oil pollution in the Niger Delta, and environmental damage during the war in Ukraine, this paper elucidates how moral outrage often outweighs legal

responsibility. The conclusion calls for a more ethically grounded jurisprudence that reconciles human and ecological rights, transforming ecocide from an aspirational ideal into a concrete legal norm. The concept of ecocide — literally, "killing the house" (from Greek) — emerged in the 1970s amid debates about the environmental devastation of the Vietnam War. However, despite decades of moral support, ecocide remains largely absent from binding international law.

Key words: *ecocide, Ukraine, emerging international crime, ecology, environment.*

INTRODUCTION

The 21st century has witnessed unprecedented environmental degradation. From accelerating biodiversity loss to intensifying climate change, the Earth's ecological systems are under immense pressure. These developments have sparked moral and legal debates about whether deliberate or reckless acts that destroy ecosystems should be recognized as an international crime – an idea encapsulated by the term *ecocide*. We consider the ethical argument for criminalizing ecocide to be convincing: the intentional devastation of the natural world is an affront not only to nature itself, but also to the moral integrity of humanity. However, turning this ethical conviction into legal reality remains fraught with challenges in terms of definition, application and political will.

In this paper we explore ecocide as situated between the ethical ideal and legal reality. We examined the moral and philosophical imperatives underlying the call to criminalize ecocide, highlighting developments in environmental ethics and global justice theory. We then assessed the current international legal framework and efforts to recognize ecocide as the fifth international crime under the Rome Statute. Finally, we analyzed the tension between moral aspiration and legal coercion, concluding that while the ethical demand for ecocide law is urgent, its realization requires structural and political transformations. We argue that while moral philosophy has increasingly recognized nature as a carrier of intrinsic value, international law still treats environmental damage primarily as a collateral or secondary issue. By combining ethical and legal perspectives, we have tried, in this paper, to identify the structural and philosophical barriers that prevent the complete criminalization of ecocide and to explore viable ways to reduce this ethical-legal divide.

I. THE ETHICAL IDEAL: A MORAL IMPERATIVE FOR PLANETARY JUSTICE

The ethical foundation of the ecocide movement is based on humanity's collective responsibility to protect the Earth's life support systems. Ethical theories, from deep ecology to global justice, converge on the principle that the destruction of ecosystems is not only harmful to the environment, but also morally reprehensible.

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Ecocide invokes deep moral questions about human responsibility to the Earth. From an ecocentric ethical point of view, ecosystems possess an intrinsic moral value beyond their instrumental value to humanity. Thinkers such as Arne Naess, Aldo Leopold, and Holmes Rolston III advocate an *ecological ethic* that views the biosphere as a community of interdependent beings. Ecocide, from this point of view, constitutes not only evil, but moral betrayal - a violation of intergenerational justice and ecological duty.

Utilitarian ethics, on the contrary, frames environmental protection in terms of collective well-being. The large-scale destruction of ecosystems undermines not only biodiversity but also human well-being, making ecocide a failure of rational moral calculation. Deontological and virtue ethics further reinforce the notion that humanity has a duty to respect non-human life and to act with restraint towards the natural world.

Arne Naess's *deep ecology* states that all life forms possess *intrinsic value*, independent of their usefulness to human beings (Naess, 1973). From this perspective, nature is not just a tool for human use, but a community of which people are a part. Thus, the large-scale destruction of ecosystems constitutes moral damage to the web of life itself. The recognition of ecocide as a crime would express a legal recognition of this intrinsic value, moving from anthropocentric ethics to ecocentric ethics.

Ecocide also involves the principles of *intergenerational justice*. Hans Jonas (1984) argues that modern technological power creates unprecedented responsibilities to future generations, as our actions today can irreversibly alter the habitability of the planet. Global environmental justice theories also highlight that the burden of ecological destruction falls disproportionately on vulnerable populations in the Global South, who contribute the least to environmental degradation (Shue, 2014). The criminalization of ecocide would thus reflect not only concern for the environment, but also moral commitments to fairness and equality in a globally interdependent world.

Jonas' Imperative of Responsibility (1984) calls for an ethics appropriate to humanity's new capacity to destroy the planets. The ethical ideal of the law of ecocide reflects this shift from voluntary stewardship to an obligatory moral duty. It frames environmental protection as an obligation based on justice, not just political preferences. In this sense, ecocide embodies a moral boundary – a recognition that deliberate or reckless destruction of the environment is incompatible with human dignity and planetary survival.

II. LEGAL REALITY: BETWEEN RECOGNITION AND RESISTANCE

We appreciate that while the ethical arguments for criminalizing ecocide are strong, international law remains hesitant. The legal framework provides only limited protection against widespread environmental destruction, mainly during armed conflicts.

The concept of ecocide first entered public discourse during the Vietnam War, when massive ecological damage caused by chemical defoliants such as Agent Orange spurred legal reform. Swedish Prime Minister Olof Palme used the term at the 1972 United Nations Conference on the Human Environment, describing *the outrage of ecocide* (Palme, 1972). Despite these appeals, ecocide has been excluded from *the Rome Statute of the International Criminal Court (ICC)*, which recognizes only four basic crimes: genocide, crimes against humanity, war crimes, and the crime of aggression (Rome Statute, 1998).

Article 8(2)(b)(iv) of the Statute refers to damage to the environment in time of war, but requires that damage be 'widespread, long-term and severe', a high threshold that limits applicability. Consequently, most forms of peacetime environmental destruction – such as deforestation, oil pollution, or climate-related damage – do not fall under international criminal jurisdiction (Schneider, 2022). The absence of ecocide as a crime in its own right thus underlines the gap between ethical imperatives and legal practice.

In June 2021, a *group of independent experts for the legal definition of ecocide*, convened by the Stop Ecocide Foundation, proposed defining ecocide as: "Illegal or unjustified acts committed with the knowledge that there is a substantial likelihood of serious and large-scale or long-term damage to the environment caused by these acts" (Independent Expert Panel, 2021, p. 5).

This definition aimed to integrate environmental protection into international criminal law, while maintaining legal precision and consistency with existing principles. By invoking "gratuitous" behavior and a standard of "knowing," the definition captures both intentional and reckless acts. However, despite the growing support of civil society, adoption by the International Criminal Court requires the amendment of the Rome Statute – a process that requires consensus among two-thirds of the 124 states parties (Burke et al., 2022). Political and economic resistance remain significant obstacles.

State sovereignty and economic interests are the main barriers to the codification of ecocide. Many states fear potential liability for industrial or military activities, especially those dependent on fossil fuels or extractive industries (Higgins, 2010). Moreover, the questions of definition - what constitutes "illegal" or "gratuitous" damages - generate legal uncertainty. Developing nations have expressed concern that strict criminalization of the environment could limit their right to economic development. Thus, the legal criminalization of ecocide faces resistance rooted in the tension between environmental protection and global capitalism.

We consider that the conservative nature of international law aggravates this difficulty. As Sands (2021) argues, the evolution of international crimes has always been politically contested; Genocide and crimes against humanity also faced initial skepticism. However, the eventual codification of such norms demonstrates that moral transformation can precede legal reform.

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III. BETWEEN IDEAL AND REALITY: THE LINK BETWEEN ETHICS AND LAW

The gap between ethical aspiration and legal recognition reveals the slow evolution of international norms. Ecocide, like previous advances in human rights, can gradually shift from moral support to codified law.

Even without formal recognition, the campaign for the ecocide law exerts normative influence. Jurists emphasize *the expressive function of law*: the designation of an act as "criminal" reshapes moral conscience and social expectations (Feinberg, 1970). Framing ecocide as a crime contributes to a broader moral vocabulary of responsibility, reinforcing the idea that environmental destruction is a form of violence against life. This discursive shift can influence national legislation, corporate behavior, and public perception, creating momentum for eventual legal codification (Higgins *et al.*, 2013).

The link between ethics and law can involve strategies on several levels:

- *National legislation*: Some states, including Belgium and France, have proposed domestic ecocide laws (Burke *et al.*, 2022). National adoption can create normative pressure for international alignment.
- *Corporate responsibility*: Extending corporate responsibility for environmental destruction through human rights due diligence frameworks can operationalize ecocide prevention.
- *International human rights law*: The United Nations Human Rights Council's (2021) recognition of the right *to a clean, healthy and sustainable environment* provides a complementary way to link environmental damage to human rights violations.

Through these paths, the moral aspiration of the ecocide law can gradually crystallize into applicable legal norms.

Civil society movements—led by organizations such as Stop Ecocide International—have been instrumental in advancing the discourse (Gray, 2023). Young climate activists, indigenous communities and non-governmental organizations are reframing environmental damage as a matter of justice and responsibility. This bottom-up mobilization mirrors the historical trajectories of other global justice movements, demonstrating that sustained advocacy can ultimately reshape international law.

IV. DOCTRINAL AND COMPARATIVE DIMENSIONS

From a doctrinal point of view, the incorporation of ecocide into international law faces definitional and jurisdictional barriers. The Rome Statute's focus on intentional acts limits its applicability to reckless or negligent environmental damage – despite the fact that most of the ecological destruction comes from cumulative industrial or political actions. Moreover, international criminal law traditionally prioritizes human victims, which makes the recognition of non-human entities as legal subjects still controversial.

Politically, ecocide represents an opportunity to redefine international responsibility in the Anthropocene. Criminalization could deter corporate abuses,

strengthen environmental treaties, and complement climate disputes. However, critics warn that criminal law could be too direct a tool that could politicize environmental governance or discourage development in poorer states. Balancing ethical idealism with pragmatic application thus remains the central political dilemma.

4.1 Examples of ecocides

a. Amazon Basin (Brazil)

Amazon exemplifies ecocide as both moral outrage and legal inertia. Large-scale deforestation, driven by agribusiness and state neglect, constitutes the deliberate destruction of ecosystems with cross-border impact. Despite international condemnation, enforcement remains weak, revealing the powerlessness of global law in limiting sovereign environmental degradation.

b. Niger Delta (Nigeria)

Decades of oil pollution by multinational corporations like Shell have devastated local ecosystems and livelihoods. Although national courts have awarded limited compensation, no actor has faced criminal liability for ecocidal damage. Ethical responsibility clashes with corporate immunity and weak governance structures.

c. Ukraine (2022–present)

The war in Ukraine has revived debates about environmental crimes during the war. Reports of scorched earth tactics, oil fires, and contamination underscore how armed conflicts cause long-term ecological trauma. However, without a specific ecocide framework, such acts remain legally marginal, reinforcing the gap between ethical condemnation and legal reparation. We believe that what could be found during Russia's war of aggression against Ukraine represents a cornerstone on which the criminalization of ecocide as the fifth international crime can be based.

CONCLUSION

Ecocide occupies a liminal space between moral necessity and legal hesitation. Ethically, it reflects humanity's growing recognition of its duty to protect the biosphere. From a legal point of view, it reveals the inertia of anthropocentric institutions related to sovereignty and political compromise. Bridging this divide requires a reorientation of international law towards environmental jurisprudence – one that recognizes nature as both a victim and a subject of rights. Codifying ecocide as an international crime would not only punish mistakes, but would affirm an ethical paradigm shift: from human domination to ecological coexistence. Only by aligning the law with the moral conscience can the global community transform ecocide from a moral lament into a justiciable reality.

Ecocide also represents a defining ethical and legal challenge of the Anthropocene. Ethically, it encapsulates humanity's duty to protect the integrity of

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the natural world and uphold justice for future generations. From a legal point of view, it exposes the limitations of an international order still based on state sovereignty and economic pragmatism.

The gap between the ethical ideal and the legal reality underlines both the promise and the inertia of international law. However, history suggests that moral conviction can transform legal norms over time. The recognition of genocide, apartheid and crimes against humanity began as moral revolutions before they became legal realities. Similarly, criminalizing ecocide would mark a paradigm shift – from a human-centered conception of justice to a complementary one that also encompasses the protection of the environment, in particular and the planet in general.

Finally, we appreciate that while the legal recognition of ecocide faces formidable obstacles, its ethical imperative is undeniable. Bridging the gap will require global solidarity, institutional innovation, and a reimagining of the law as a tool of planetary stewardship. The journey from moral idealism to legal reality may be gradual, but it is essential for the survival of humanity and the living world in which it inhabits.

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