

## Master thesis

'Options for addressing instances of ecological harm under the Rome Statute, the added value of an autonomous international crime of ecocide, and its hurdles'.



Tilburg University  
Faculty of Law

LLM International and European Law

- International Law and Human Rights Track

First supervisor: Professor Melissa Lewis  
Second supervisor: Professor Arie Trouwborst

Student: Céline van den Berg  
Student number: U1257842  
ANR: 190190

## Table of Content

|  |           |
|--|-----------|
| <b>1 Introduction, legal issue and methodology .....</b>   | <b>3</b>  |
| 1.1 Introduction .....   | 3         |
| 1.2 Legal Issue .....  | 4         |
| 1.3 Structure and Methodology .....  | 7         |
| <b>2 How has ecocide been defined by different legal scholars and are there any common elements in these definitions? .....</b>  | <b>11</b> |
| 2.1 The start of the ecocide debate .....  | 11        |
| 2.1.1 Arthur W. Galston: 1970.....   | 11        |
| 2.1.2 Olof Palme: 1972.....  | 12        |
| 2.1.3 Richard A. Falk: 1973 .....  | 13        |
| 2.1.4 Lynn Berat: 1993.....  | 15        |
| 2.1.5 Ludwik A. Teclaff: 1994 .....  | 16        |
| 2.1.6 Mark Allen Gray: 1995.....   | 16        |
| 2.1.7 Steven Freeland: 2005.....   | 17        |
| 2.1.8 Mishkat Al Moumin: 2008.....   | 18        |
| 2.1.9 Polly Higgins: 2010.....   | 18        |
| 2.2 Concluding remarks .....   | 20        |
| <b>3 The International Criminal Court and the Rome Statute .....</b>   | <b>22</b> |
| 3.1 The history of international criminal law.....   | 22        |
| 3.2 The establishment of the International Criminal Court .....  | 24        |
| <b>4 To what extent can individuals be held criminally liable for environmental destruction under the crimes currently recognized by the Rome Statute, and what are the benefits and shortcomings of prosecuting environmental destruction under these crimes? .....</b> | <b>26</b> |
| 4.1 Genocide.....  | 26        |
| 4.1.1 'The Prosecutor v. Omar Hassan Ahmad Al Bashir'.....   | 27        |
| 4.1.2 The <i>actus reus</i> and <i>mens rea</i> requirements for the crime of genocide .....   | 28        |
| 4.2. Crimes against humanity .....   | 29        |
| 4.3 The sole ecocentric war crimes provision: Article 8(2)(b)(iv) .....  | 31        |
| 4.3.1 The history of the ecocentric war crimes provision .....   | 31        |
| 4.3.2 The shortcomings of Article 8(2)(b)(iv) .....  | 34        |
| 4.4 Ecocide and the crime of aggression.....   | 38        |
| 4.5 In what ways might an autonomous crime of ecocide make up for the shortcomings of the current Rome Statute crimes?.....  | 40        |
| <b>5 Why is it insufficient to address ecocide through national laws alone? .....</b>  | <b>44</b> |
| 5.1 The added value of an international law on ecocide .....   | 47        |
| <b>6 Incorporating new international crimes under the Rome Statute .....</b>   | <b>49</b> |
| 6.1 Ecocide as a fifth international crime under the Rome Statute .....  | 49        |
| 6.2 Areas of divergence between existing definitions and a proposed way forward.....   | 52        |
| 6.3 Concluding remarks .....   | 54        |
| <b>7 If ecocide is recognized as an international crime, is the superior responsibility doctrine a feasible avenue for holding company directors criminally liable for environmental damage?.....</b>  | <b>55</b> |
| 7.1 The Prosecutor v. Alfred Musema.....   | 58        |
| 7.2 The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze .....   | 59        |
| 7.3 Concluding remarks .....   | 60        |
| <b>8 Conclusion.....</b>   | <b>61</b> |
| <b>9 Bibliography.....</b>   | <b>67</b> |

# 1 Introduction, legal issue and methodology

## 1.1 Introduction

On the 1<sup>st</sup> of July 1998, the Rome Statute was adopted and later entered into force in 2002; the Statute currently has 123 State Parties<sup>1</sup>. According to Article 5, the Statute has jurisdiction over the four most serious crimes in the international community, namely: genocide, crimes against humanity, war crimes and the crime of aggression<sup>2</sup>. This makes the International Criminal Court the first permanent international judicial body that has the capacity to hear individuals for such crimes; it is also able to review cases that national courts are unable or unwilling to do<sup>3</sup>.

While ecocide can be defined in many different ways, according to international environmental lawyer Polly Higgins it refers to the *“extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished”*<sup>4</sup>. According to Polly Higgins, along with many other legal scholars such as Arthur W. Galston, Olof Palme and Richard A. Falk, the crime of ecocide should be added to the Rome Statute as the fifth international crime<sup>5</sup>. The reason being that thus far there is no single international definition of ecocide and no internationally recognized law to address mass destruction of the earth. Since there is no single treaty in international law that establishes the principles and rules of general application to all hazardous substances or activities<sup>6</sup>, this generally means that it is very challenging to hold individuals accountable for environmental harms under international law.

---

<sup>1</sup> "UN, United Nations, UN Treaties, Treaties." *Rome Statute of the International Criminal Court*. Treaty Collection.

<sup>2</sup> "Rome Statute of 1998." *Crimes within the Jurisdiction of the Court, Article 5*.

<sup>3</sup> "Understanding the International Criminal Court." *Crimes within the Jurisdiction of the ICC*, 13.

<sup>4</sup> "The Ecocide Project." Human Rights Consortium. University of London.

<sup>5</sup> Wijdekop, Femke. "The Duty to Care for Our Common Home." *Ecocide, a crime under International Law*. Feature Ecocide.

<sup>6</sup> Higgins, Polly. "Holding Business to Account." *Eradicating Ecocide*. Page 93. Print.

## 1.2 Legal Issue

The main questions this thesis aims to answer are: What options are currently available for addressing instances of ecological harm under the Rome Statute, what would be the added value of introducing ecocide as an autonomous international crime, and what are the potential hurdles that may arise in establishing and prosecuting such a crime?

The main components of the thesis deal with defining 'ecocide'; identifying the shortcomings of the existing Rome Statute crimes, and of national-level prohibitions of ecocide when wanting to prosecute individuals for ecological harm. In light of these shortcomings, the thesis will critically discuss the possible added value of introducing ecocide as an autonomous international crime; and it will examine the potential hurdles that may arise in establishing ecocide as an international crime and using it to prosecute instances of ecological harm once established with regards to the superior responsibility doctrine.

The importance of this research involves the fact that environmental destruction is problematic for the living conditions on planet earth. It is considered problematic because environmental destruction is one of the largest threats that the world is facing today. The planet's natural ecosystems and regenerating bio-capacity are being severely degraded and, as a result, this compromises the ability of the planet to sustain life<sup>7</sup>. Many natural ecosystems such as forests, fisheries, oceans, lakes and rivers are all threatened. Moreover, water, land and air are getting increasingly polluted which leads to global warming and causing species to die a 1000 times faster than their natural rate of extinction<sup>8</sup>.

The existing environmental laws are not able to prevent mass destruction. This is due to the fact that there is a mixture of insufficient mechanisms to enforce compliance and existing laws being insufficiently onerous. Moreover, the problem also lies with the fact that neither political entities nor businesses are

---

<sup>7</sup> United Nations, 'Report of the World Commission on Environment and Development', Our Common Future.

<sup>8</sup> United Nations, 'Report of the World Commission on Environment and Development', Our Common Future.

going to take action spontaneously to bring an end to the widespread damaging and destruction of ecosystems<sup>9</sup>. To give an example, the Paris Agreement which entered into force on the 4<sup>th</sup> of November 2016 aims to: “strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius”<sup>10</sup>. Even though 175 parties ratified the Convention, enforcement mechanisms for climate change targets have not been implemented in the Paris Agreement<sup>11</sup>. Without the legal force of an enforcement mechanism, there are no international sanctions for noncompliance. On the one hand, having international sanctions when States fail to keep temperatures below 2 degrees Celsius would be beneficial for averting climate change in the long run. On the other hand, when having such strict enforcement mechanisms, it is highly likely that certain States would choose to not ratify such an international agreement.

Additionally, the Organization for Economic Cooperation and Development issued a stark warning on the 15<sup>th</sup> of March 2012 in which it stated: “carbon dioxide emissions from energy use are expected to grow by 70% in the next thirty-eight years because of our dependence on fossil fuels”<sup>12</sup>. This yet again shows that there are insufficient changes being made within the business world and political sphere regarding the laws on environmental damage<sup>13</sup>.

Overall this thesis will indicate that over the years there have been discussions on the regulation of ecocide by different members of the International Law Commission, the UN and so far ten countries have made provisions for the crime of ecocide within their national regulations. However, since there is no internationally recognized law on ecocide, it is worthwhile investigating whether international criminal law would serve as an approach in which an international

---

<sup>9</sup> Higgins, Polly. "Holding Business to Account." *Eradicating Ecocide*. Page 93. Print.

<sup>10</sup> United Nations Framework Convention on Climate Change. "UNFCCC". The Paris Agreement.

<sup>11</sup> United Nations Framework Convention on Climate Change. "UNFCCC". The Paris Agreement.

<sup>12</sup> Higgins, Polly. "The Law of Ecocide." 'Earth is our business, changing the rules of the game', Page 17. Print

<sup>13</sup> Higgins, Polly. "The Law of Ecocide." 'Earth is our business, changing the rules of the game', Page 17. Print

law on ecocide could be created. Hence, the thesis will explore new and existing laws at national and international level in order to determine the best possible way to create a global standard of care in which there will be ecological responsibility and accountability for such destruction.

### **1.3 Structure and Methodology**

Section 2 of the thesis will start off by explaining how different legal scholars have defined ecocide since the 1970s. History shows that in the past legal scholars such as Richard A. Falk and Arthur W. Galston considered the Rome Statute as an appropriate platform to hold individuals accountable for ecocidal acts<sup>14</sup>. Many of these legal scholars proposed their own definition on ecocide. Their definitions illustrate that there are two main ways in which ecocide can be defined, namely: 'environmental warfare in which the environment is intentionally harmed' or as 'a crime in which an ecosystem is harmed and in which human rights are violated'. This means that according to these definitions, individuals could be prosecuted by way of intent, by way of negligence or by way of strict liability. Due to a lack of agreement on one common definition, there is thus far no single definition, which has been a significant hurdle to the recognition of ecocide as an autonomous international crime. Before any amendment of the Rome Statute can take place, one definition on ecocide would have to be created and be internationally agreed upon. Moreover, it also raises the question whether ecocide should only encompass military activities or also corporate actions, and whether or not intention is a necessary element of the crime.

Section 3 explains the history of how the International Criminal Court came about and illustrates how the Court operates, which is important when wanting to establish the possibilities of prosecuting individuals before the Court.

Section 4 of the thesis will proceed to analyze the possible options to prosecute individuals for ecological harm under the crimes currently recognized by the Rome Statute, and the extent to which these crimes are able to address instances of ecocide. This is important to analyze as it helps in determining whether an autonomous international crime on ecocide would be necessary or whether more priority should be given to using the existing international crimes to

---

<sup>14</sup> Falk, Richard A. "Environmental Warfare and Ecocide Facts, Appraisal and Proposals."

prosecute individuals for environmental damage. Overall, this section will indicate that the Rome Statute contains a provision which relates to environmental damage namely under Article 8(2)(b)(iv) of the war crimes provision. However, this provision deals specifically with war times and not with peace times. Also, there are certain possibilities to prosecute individuals for environmental related crimes under the genocide and crimes against humanity provisions. However, these provisions do not come without hurdles. For instance, certain criteria are not clearly defined which makes it difficult to fulfill the requirements needed in order to prosecute. These criteria involve the *actus reus* and *mens rea* requirements which are needed to determine the criminal act and the intent of the environmental crime. Although the existing crimes can theoretically be used to address some instances of environmental destruction, they have inherent limitations, which prevent them from being able to address all instances of ecocide. Therefore, creating an autonomous international crime of ecocide would be an alternative option when wanting to hold individuals liable for such crimes. However, also creating an autonomous international crime of ecocide will not be without hurdles.

Section 5 will identify the already existing national laws on ecocide and examine whether they are effective regarding holding individuals liable for environmental destruction. It adds to the argument of why there is a need for international accountability for individuals who have committed acts of ecocide. As this section will point out, there are currently 10 countries that recognize the crime of ecocide as a 'crime against peace' and have implemented it through their national law. These countries are: "Georgia, Armenia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Vietnam"<sup>15</sup>. These countries, unlike international law, did develop some sort of common definition on ecocide. Certain common elements can be found within these national criminal codes with regards to the poisoning of the flora and fauna and the punishment thereof. Also many other countries that do not have a national law on ecocide still do nevertheless criminalize various types of environmental

---

<sup>15</sup> "Eradicating Ecocide." Existing Ecocide Laws, "Criminalizing Ecosystem Destruction", 'International roadmap to earth protection and climate justice'.



destruction. However, there are various reasons why these laws are still insufficient and why there should be an international recognized law on ecocide. For instance, the downside of these national laws is that they are not very successful with regards to the enforcement of the law and the respect for the rule of law<sup>16</sup>. That is to say, many of the countries with national ecocide laws in place are ranked very highly for corruption and low for respect for the rule of law by 'Transparency International'<sup>17</sup>. Therefore, this section concludes that an international law on ecocide would be an added value for providing accountability for individuals guilty of performing acts of ecocide.

Section 6 looks at the possible options to create an autonomous international crime of ecocide. The Rome Statute is the main legislation used by the International Court, which contains a provision that allows the incorporation of new international crimes. This is an important provision as it gives the opportunity to make ecocide an autonomous international crime. However, this section also indicates that the biggest populated countries in the world have not ratified the Statute, which leads to the question whether it is worthwhile to focus upon the International Criminal Court for prosecuting individuals for crimes of ecocide. These are important challenges to take into consideration when wanting to address instances of ecocide through the Rome Statute. Furthermore, in this section a 'made-up' definition on ecocide is given. The thesis suggests that if such an international definition on ecocide would be created, it will help to overcome many of the hurdles discussed in the thesis. If in the future of international law, such a common definition on ecocide would be created, ideally it would focus on strict liability rather than intent due to the fulfillment of necessary *mens rea* and *actus reus* requirements.

Section 7 explains the possibilities for prosecuting individuals for crimes of ecocide under the superior-subordinate doctrine of the Rome Statute, if an autonomous crime of ecocide were ever to be included. This is an important

---

<sup>16</sup> "Eradicating Ecocide." Existing Ecocide Laws, "Criminalizing Ecosystem Destruction", 'International roadmap to earth protection and climate justice'.

<sup>17</sup> "Eradicating Ecocide." Existing Ecocide Laws, "Criminalizing Ecosystem Destruction", 'International roadmap to earth protection and climate justice'.

consideration in determining whether it is worth amending the Rome Statute to include ecocide as the fifth international recognized crime. Moreover, this option can be used when there is not sufficient evidence of direct individual criminal responsibility from the superior and will thus serve as a subsidiary provision. In this way, CEOs and directors of certain companies could be prosecuted. Moreover, Article 28 of the Rome Statute lays out the four requirements needed in order to establish a superior-subordinate relationship, namely: "1) there must be a superior-subordinate relationship in which effective control is present, 2) knowledge or *mens rea* of the crimes which were committed, 3) the obligation to prevent or punish the crime, 4) the crime is the result of the violated duty of control"<sup>18</sup>. Furthermore, this section will explain that it is rather difficult to fulfill all four criteria, which will be further explained through case law and will indicate that most of the cases have led to acquittals while there were only several cases in which corporate leaders were convicted. Certain aspects of Article 28 would have to be amended in order to consider it as a feasible avenue when wanting to create an autonomous international crime on ecocide.

Section 8 will critically look back upon all the sections discussed throughout the thesis. It will conclude that the current available options for holding individuals accountable for crimes of ecocide under the Rome Statute remain unsatisfactory on an international level. The thesis concludes that the world is in need of an autonomous international crime on ecocide as an added value to prosecute individuals. However, as the research will indicate, many potential hurdles will also arise when trying to accomplish making ecocide the fifth international recognized crime.

In order to conduct this research, the thesis will mostly look at the Rome Statute which is the main treaty used by the International Criminal Court. Moreover, different case law will be analyzed along with legal proposals made by legal scholars. Furthermore, international treaties and national laws will also be explained.

---

<sup>18</sup> Jansen, René. "Prosecuting Corporate Leaders for Environmental Damage in International Criminal Law." *Defining the Crime of Ecocide and Its Added Value to the Rome Statute*.

## **2 How has ecocide been defined by different legal scholars and are there any common elements in these definitions?**

Ever since the beginning of the 1970s many contributions have been made in order to define the concept of ecocide. Even though the discussion has been around for many years, there is no international fully recognized definition. This part of the thesis will review different definitions given on ecocide (and similar terms) by different legal scholars. It will also indicate to what extent certain definitions overlap and to what extent it is reasonable for a common definition to be established in the future. The importance of this section relates to the fact that these legal scholars have called for recognition of a crime of ecocide at the international level in order to hold military and private individuals, such as military and corporate leaders, responsible for environmental crimes. Moreover, an understanding of the concept of ecocide is a necessary precursor to examining, in section 3, the extent to which acts of ecocide can already be prosecuted under the existing Rome Statute crimes; and if the international community ever decides to create an autonomous crime of ecocide, it will need to be in agreement as to what this term means.

### **2.1 The start of the ecocide debate**

The concept of ecocide has been around ever since the 1970s when it was first recorded at the Conference on War and National Responsibility in Washington. It was used to describe the destruction, which caused the chemical warfare in Vietnam<sup>19</sup>. Ever since that time, legal scholars have been debating on whether there should be a criminalisation of ecocide and what possible elements should be required in order for ecocide to be considered a crime at the international level.

#### **2.1.1 Arthur W. Galston: 1970**

In 1970, Professor Arthur W. Galston discussed the act of ecocide at the conference on War and National Responsibility. He was a Yale plant biologist

---

<sup>19</sup> Zierler, David. *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment*. Athens: U of Georgia, 2011. Pages 2-4 and 14-5. Print.

who helped raise awareness of the military's use of 'agent orange', an herbicide and defoliant chemical, which was used in Vietnam and had devastating effects on river ecosystems<sup>20</sup>. Also, he made the following comment regarding ecocide at a war crimes conference 'Technology and American Power'<sup>21</sup>:

*"After the end of World War II, and as a result of the Nuremburg trials, we justly condemned the wilful destruction of an entire people and its culture, calling this crime against humanity genocide. It seems to me that the wilful and permanent destruction of environment in which a people can live in a manner of their own choosing ought similarly to be considered as a crime against humanity, to be designated by the term ecocide. I believe that the most highly developed nations have already committed auto ecocide over large parts of their own countries. At the present time, the United States stands alone as possibly having committed ecocide against another country, Vietnam, through its massive use of chemical defoliants and herbicides. The United Nations would appear to be an appropriate body for the formulation of a proposal against ecocide"<sup>22</sup>.*

The above paragraph indicates that Galston recognized ecocide as a wilful destruction of the environment. His definition leads to the fact that there must be a certain level of intent, which has to be taken into account. Moreover, his proposal for a new international agreement to ban ecocide aimed at maintaining global security and to protect human populations from future wars<sup>23</sup>.

### **2.1.2 Olof Palme: 1972**

In 1972, the term ecocide was discussed at the United Nations Stockholm Conference on the Human Environment, where Mr. Olof Palme, the then Prime Minister of Sweden, used the word ecocide explicitly in his opening speech on

---

<sup>20</sup> Galston, Arthur W., and Shirley Cohen. *Interview with Arthur W. Galston*. Pasadena, CA: Caltech Archives, 2004.

<sup>21</sup> Zierler, David. *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment*. Athens: U of Georgia, 2011. Pages 2-4 and 14-5. Print.

<sup>22</sup> Knoll, Erwin, and Judith Nies McFadden. "War Crimes and the American Conscience." Page 71-72.

<sup>23</sup> Zierler, David. *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment*. Athens: U of Georgia, 2011. Page 19. Print.

the Vietnam War<sup>24</sup>. Ecocide became a highly discussed topic during the Vietnam War, therefore Palme asked for the international responsiveness as he considered the unselective bombing and large-scale use of bulldozers and pesticides to be part of ecocide<sup>25</sup>. However, in the official outcome of the Stockholm Conference document, there was no reference to ecocide. Even though Mr. Olof Palme discussed matters of ecocide, he did not speak about how ecocide should be defined.

### **2.1.3 Richard A. Falk: 1973**

Alongside the UN Stockholm Conference, there were many discussions by different NGOs about a potential law, which would criminalise ecocide. For instance, a branch of the 'International Fellowship of Reconciliation'<sup>26</sup>, which is an "independent organisation that builds awareness among governments and society on damage to nature by human misuse of technology and chemical products"<sup>27</sup>, they sponsored a 'Convention on Ecocidal War' (CEW) which took place in Stockholm, Sweden<sup>28</sup>. They brought together many people, which included doctors, lawyers and biologists. Among the group, an expert in international law and war crimes named Richard A. Falk drew up a draft convention on ecocide. He was the first legal scholar who suggested introducing ecocide in international law as he made the proposed notion of ecocide by Galston into a legal concept<sup>29</sup>. This draft convention was submitted to the UN in 1973. He believed that ecocide would need to be made illegal during peacetime just as much as during wartime. He said: "man has consciously and unconsciously inflicted irreparable damage to the environment in times of war

---

<sup>24</sup> Mowry, Curtis, Adam Pimentel, Elizabeth Sparks, and Brittany Hanlon. "The Ecocide Project." *Ecocide Is the Missing 5th Crime Against Peace* (2013).

<sup>25</sup> Hörnfeldt, Isabelle. "A Law on Ecocide: A Way to End Mass Destruction of the World's Ecosystems?" *History of the Concept. Law Faculty University of Lund*.

<sup>26</sup> "International Fellowship of Reconciliation."

<sup>27</sup> Hörnfeldt, Isabelle. "A Law on Ecocide: A Way to End Mass Destruction of the World's Ecosystems?" *History of the Concept. Law Faculty University of Lund*.

<sup>28</sup> Mowry, Curtis, Adam Pimentel, Elizabeth Sparks, and Brittany Hanlon. "The Ecocide Project." *Ecocide Is the Missing 5th Crime Against Peace* (2013):

<sup>29</sup> Falk, Richard A. "Environmental Warfare and Ecocide Facts, Appraisal and Proposals." Page 21.

and peace”<sup>30</sup>. Article II of the proposed Convention defines the act of ecocide as followed:

*“[E]cocide means any of the following acts committed with intent to disrupt or destroy, in whole or in part, a human ecosystem:*

*a) The use of weapons of mass destruction, whether nuclear, bacteriological, chemical, or other:*

*b) The use of chemical herbicides to defoliate and deforest natural forests for military purposes;*

*c) The use of bombs and artillery in such quantity, density, or size as to impair the quality of soil or the enhance the prospect of diseases dangerous to human beings, animals, or crops;*

*d) The use of bulldozing equipment to destroy large tracts of forest or cropland for military purposes;*

*e) The use of techniques designed to increase or decrease rainfall or otherwise modify weather as a weapon of war;*

*f) The forcible removal of human beings or animals from their habitual places of habitation to expedite the pursuit of military or industrial objectives”<sup>31</sup>.*

When looking at Falk’s definition, it is clear that his focus lies on military purposes rather than corporations and civilians. Also, according to his definition, the ecocidal act has to be committed with the intention of ‘disrupting or destroying a human ecosystem’. Therefore, the focus is laid upon the necessary intent of the ecocidal act, which would have to be proven by the prosecutor.

However, when taking into consideration Article IV of his proposed Convention:

*“Persons committing ecocide (...) shall be punished, at least to the extent of being removed for a period of years from any position of leadership or public trust.*

---

<sup>30</sup> Lay, Bronwyn, Laurent Neyret, Damien Short, Michael Baumgartner, and Antonio A. Oposa. "TIMELY AND NECESSARY: ECOCIDE LAW AS URGENT AND EMERGING." THE JOURNAL JURISPRUDENCE.

<sup>31</sup> Hörnfeldt, Isabelle. "A Law on Ecocide: A Way to End Mass Destruction of the World’s Ecosystems?" *History of the Concept. Law Faculty University of Lund.*

*Constitutionally responsible rulers, public officials, military commanders, or private individuals may all be charged with and convicted of the crimes associated with ecocide (...)15”<sup>32</sup>.*

The paragraph indicates that both military and civilian leaders can be held accountable for such acts of ecocide.

#### **2.1.4 Lynn Berat: 1993**

In 1993, legal scholar Lynn Berat introduced the concept of geocide rather than ecocide in the international criminal law debate when wanting to prosecute individuals responsible for environmental damage<sup>33</sup>. Berat explains that a geocidal act “destroys a species or seriously impairs on a part of the global environment and that it thereby deprives humans of their right to a healthy environment because a planet whose biodiversity is severely diminished does not offer a healthy environment to humans”<sup>34</sup>. Moreover, she provides the following definition of geocide:

*“Geocide is the intentional destruction, in whole or in part, of any of portion of the global ecosystem, via killing members of a species; causing serious bodily or mental harm to members of the species; inflicting on the species conditions of life that bring about its physical destruction in whole or in part; and imposing measures that prevent births within the group or lead to birth defects. While ideally all behavior that compromises the integrity of the environment should be punishable because it impinges upon the totality of life on the planet, it would seem that geocide, like genocide, should be reserved for the most heinous abuses of the environment”<sup>35</sup>.*

---

<sup>32</sup> Falk, Richard A. "Environmental Warfare and Ecocide Facts, Appraisal and Proposals."

<sup>33</sup> Merz, Prisca, Valérie Cabanes, and Emilie Gaillard. *Ending Ecocide - the next Necessary Step in International Law*. 6 Apr. 2014.

<sup>34</sup> Berat Lynn, 'Defending the Right to a Healthy Environment: Toward a Crime of Geocide in International Law', page 327- 340. Boston University International. Print.

<sup>35</sup> Berat Lynn, 'Defending the Right to a Healthy Environment: Toward a Crime of Geocide in International Law', page 343- 344. Boston University International. Print.

Regarding intent, Berat claims that public and private individuals can be held criminally liable on the basis of intent but also negligence<sup>36</sup>.

#### **2.1.5 Ludwik A. Teclaff: 1994**

Besides defining ecocide as an act of warfare, environmental activists began to define ecocide as the “killing of the environment by mankind”<sup>37</sup>. For instance, legal scholar Ludwik A. Teclaff recognized ecocide as “peacetime activities that destroy or damage ecosystems on a massive scale”<sup>38</sup>. He describes an ecocidal act as “the destruction of large areas of the natural environment by such activity as nuclear warfare, overexploitation of resources or dumping of harmful chemicals”<sup>39</sup>. Furthermore, Teclaff does not mention his opinion on the necessary level of intent or knowledge an individual must have in order to be held liable in international criminal law<sup>40</sup>.

#### **2.1.6 Mark Allen Gray: 1995**

Besides Ludwik A. Teclaff, legal scholar Mark Allen Gray defined ecocide on the basis of “the deliberate or negligent violation of key state and human rights and according to the following criteria: 1) serious, and extensive or lasting, ecological damage, 2) international consequences, and 3) waste”<sup>41</sup>. The first criterion involves the seriousness of the act, which can be defined from the scale of damage done to humans or other species<sup>42</sup>. The second criterion suggests that the act must threaten global interests and values of victims of different states<sup>43</sup>. The third criteria suggests that the actors have knowledge about the waste such

---

<sup>36</sup> Berat Lynn, ‘Defending the Right to a Healthy Environment: Toward a Crime of Geocide in International Law’, page 345- 346. Boston University International. Print.

<sup>37</sup> Zierler, David. *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment*. Athens: U of Georgia, 2011. Page 27. Print.

<sup>38</sup> Teclaff, Ludwik A. "Beyond Restoration- The Case of Ecocide." *Natural Resources Journal*.

<sup>39</sup> Zierler, David. *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment*. Athens: U of Georgia, 2011. Page 27. Print.

<sup>40</sup> Teclaff, Ludwik A. "Beyond Restoration- The Case of Ecocide." *Natural Resources Journal*.

<sup>41</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 215-216.

<sup>42</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 217.

<sup>43</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 215-216.



ecocidal acts cause<sup>44</sup>. Moreover, he advocates for ecocide to be recognized as a crime of strict liability under which individuals can be held criminally responsible for ecocidal acts<sup>45</sup>. He mentions that this standard would “best encourage preventive behavior, advance the ‘polluter pays’ and ‘precautionary’ principles, and simplify issues of proof of knowledge, intent and causation”<sup>46</sup>. Therefore, he believes that: “States, individuals, as well as organisations, where they are recognised as having international legal personality, should be liable”<sup>47</sup>.

### 2.1.7 Steven Freeland: 2005

Steven Freeland proposed the new crime of ‘crimes against the environment’ under the Rome Statute<sup>48</sup>. He proposed to hold individuals criminally responsible for destroying the environment during war times and for those who “threatened the lives of specifically targeted populations”<sup>49</sup>. He defines ‘crimes against the environment’ as the following:

*“A deliberate action committed with intent to cause significant harm to the environment, including ecological, biological and natural resource systems, in order to promote a particular military, strategic, political or other aim, and which does in fact cause such damage”<sup>50</sup>.*

Alternatively, Freeland suggests interpreting “actions intended to cause significant environmental harm” to be criminalized under the current four core international crimes. Furthermore, he believes in standard of intent rather negligence for individual criminal responsibility<sup>51</sup>.

---

<sup>44</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 218.

<sup>45</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 216.

<sup>46</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 218.

<sup>47</sup> Merz, Prisca, Valérie Cabanes, and Emilie Gaillard. *Ending Ecocide - the next Necessary Step in International Law*. 6 Apr. 2014.

<sup>48</sup> Freeland, Steven. *Crimes against the Environment- A Role for the International Criminal Court?* Page 358.

<sup>49</sup> Merz, Prisca, Valérie Cabanes, and Emilie Gaillard. *Ending Ecocide - the next Necessary Step in International Law*. 6 Apr. 2014.

<sup>50</sup> Grey, Mark Allan. "The International Crime of Ecocide." Page 218.

<sup>51</sup> Freeland, Steven. *Crimes against the Environment- A Role for the International Criminal Court?* Page 343-344.

### 2.1.8 Mishkat Al Moumin: 2008

Mishkat Al Moumin is the founder and Chief Executive Officer of Women and the Environment Organization in Iraq<sup>52</sup>. She defined ecocide as “taking a deliberate action to kill a group of people based on their race, religion, or culture by destroying the ecosystem on which they depend<sup>53</sup>. She mentions that the intent lies with the determination of killing people of a certain race, religion or culture while the injustice to the environment does not involve intent to kill<sup>54</sup>. She discussed the concept of ecocide in the case of the drainage of the Mesopotamian Marshlands. The draining occurred in Iraq and in some places of Iran in which they cleared large areas of the marshes in the Tigris-Euphrates river system<sup>55</sup>. Even though the draining was intended to “reclaim land for agriculture and exterminate a breeding ground for the malaria-spreading mosquitoes, some Western and Islamist sources have described the draining as a political attempt to force the Ma'dan people out of the area through water diversion tactics”<sup>56</sup>. Therefore, Al Moumin describes ecocide as a crime of intent rather than basing the act on negligence.

### 2.1.9 Polly Higgins: 2010

Polly Higgins explains ecocide through the basis of the 16<sup>th</sup> century Greek wording. She clarifies that ‘eco’ in ecocide is derived from the Greek word *oikos*, which means ‘house, dwelling place, habitation, family’<sup>57</sup>. ‘Cide’ in ecocide means killer, which comes from the Latin word *caedere*, meaning ‘to strike down, chop, beat, hew, fell, slay a human habitat’<sup>58</sup>. In her first publication of ecocide, Higgins mentions that ecocide is the missing fifth international crime<sup>59</sup>.

---

<sup>52</sup> "Mishkat Al Moumin." *Inclusive Security*.

<sup>53</sup> Mishkat Al Moumin, ‘Mesopotamian Marshlands: An Ecocide Case’. The Georgetown International Environmental Law Review, page 499. Print.

<sup>54</sup> Mishkat Al Moumin, ‘Mesopotamian Marshlands: An Ecocide Case’. The Georgetown International Environmental Law Review, page 506. Print.

<sup>55</sup> "Iraq's Ecological Disaster." *International Review*. 12 Feb. 2003.

<sup>56</sup> North, Andrew. "Saddam Drains Life from Arab Marshes: Scientists Fear Iraq's Historic Wetlands Face Destruction in 10 to 20 Years, Says Andrew North." *Independent*.

<sup>57</sup> Polly Higgins, "End Ecocide on Earth." Print.

<sup>58</sup> North, Andrew. "Saddam Drains Life from Arab Marshes: Scientists Fear Iraq's Historic Wetlands Face Destruction in 10 to 20 Years, Says Andrew North." *Independent*.

<sup>59</sup> Higgins, Polly. "Eradicating ecocide Chapter XI." *Eradicating Ecocide*. Print.

In 2010, Higgins proposed to the adoption of an Ecocide Act for the United Kingdom in which she defines ecocide as the following:

*The extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that:*

*(1) peaceful enjoyment by the inhabitants has been severely diminished; and or  
(2) peaceful enjoyment by the inhabitants of another territory has been severely diminished.*

Moreover, she makes a distinction between ascertainable and non-ascertainable ecocide. Meaning naturally occurring or human made mass destruction of a defined area of an ecosystem. To give an example, it can be considered an 'act of God' in the sense that an earthquake or flooding may arise or it can be the result of human intervention such as economic activity, particularly when connected to natural resources, can be a driver of conflict<sup>60</sup>. It is an important argument, as history shows, that human error plays a large role in environmental disasters. Some examples of human error are the 'Deepwater Horizon oil spill' or better known as the BP oil spill, the 'Chernobyl disaster' and the 'Fukushima Daiichi nuclear disaster'<sup>61</sup>.

Polly Higgins focuses on the ecocidal acts performed by individual actors. That is to say, she believes corporate leaders rather than military actors should be held liable under the superior responsibility doctrine in international criminal law<sup>62</sup>. Therefore, ecocide should be looked at as a crime of strict liability for which no proof of intent is necessary<sup>63</sup>.

Furthermore, she defines ecocide as the following:

---

<sup>60</sup> "Amendment for the Rome Statute." *Closing the Door to Dangerous Industrial Activity. Annex.*

<sup>61</sup> Merz, Prisca, Valérie Cabanes, and Emilie Gaillard. *Ending Ecocide - the next Necessary Step in International Law.* 6 Apr. 2014.

<sup>62</sup> Higgins, Polly. "Holding Business to Account." *Eradicating Ecocide.* Page 108-110. Print.

<sup>63</sup> Higgins, Polly. "Holding Business to Account." *Eradicating Ecocide.* Page 110. Print.

*“Ecocide is the extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished”<sup>64</sup>.*

In her proposed Ecocide Act she explains the three-fold test, which is needed in order to assess whether the damage of an ecosystem has been extensive; it involves the size, duration and impact of the damage. Higgins refers to the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)<sup>65</sup>. Article I (2) of the ENMOD defines “‘widespread’ as ‘encompassing an area on the scale of several hundred square kilometres’, ‘long lasting’ as ‘approximately a season’ and ‘severe’ as ‘involving serious or significant disruption or harm to human life, natural and economic resources or other assets’”<sup>66</sup>.

## **2.2 Concluding remarks**

The above research has shown that the ecocide debate started in the 1970s. According to different legal scholars, there are two ways in which ecocide can be defined. On the one hand, ecocide can be applied to environmental warfare in which the environment is intentionally harmed. On the other hand, ecocide can be applied as a crime in which an ecosystem is harmed and in which human rights are violated.

The importance of the above-mentioned section is the establishment regarding the different ways in which individuals can be held criminally liable for environmental crimes according to the legal scholars, namely: by way of intent, by way of negligence and by way of strict liability. As a consequence, the concept of ecocide does not have one single definition, which is shared by all legal scholars. Due to the absence of significant overlap between the definitions, the

---

<sup>64</sup> "The Ecocide Project." Human Rights Consortium. University of London.

<sup>65</sup> Higgins, Polly. "Ecocide the 5<sup>th</sup> Crime Against Peace." *Eradicating Ecocide*. Page 64. Print.

<sup>66</sup> "Article I (2)." *Customary IHL - Section B. Environmental Modification Techniques*.

question remains whether ecocide should only encompass military activities or also corporate actions, and whether or not intention is a necessary element of the crime.

Even though there is a difference in the interpretation of the definition, all scholars aim to find a legal tool that will prevent international destruction of the environment. Also, all definitions envisage serious harm to the environment to be included when talking about ecocide.

In section 6, the thesis will introduce its own definition on ecocide, which it believes to be the best possible option in creating a common international meaning of ecocide. It will also explain the necessary threshold in order to determine what amounts to a crime of ecocide.

### 3 The International Criminal Court and the Rome Statute

It is essential to explain the history of the International Criminal Court and illustrate how the Court currently operates. As mentioned, the Rome Statute is the main legislation of the Court, which will be discussed throughout the thesis. Overall, explaining how the Court and the Rome Statute came about is important when wanting to establish the possibilities for prosecuting individuals before the Court.

#### 3.1 The history of international criminal law

International law refers primarily to the “law that governs the legal relations between or among states or nations”<sup>67</sup>. It confers the rights and responsibilities, which States have towards each other. International law generally does not apply to individuals; this indicates that only States can be held accountable for violations of international law<sup>68</sup>. If an individual violates international law, the State, which has the rules of international law implemented into their domestic laws, are responsible for the punishment of the individual. There must be a necessary link between the offence committed by the individual and the jurisdiction the State has over this person<sup>69</sup>. However, International criminal law is an exception and does relate to the conduct of individuals<sup>70</sup> and it is therefore possible to prosecute the direct individual criminal responsibility. Hence the purpose of international criminal law is to protect the peace, security and well-being of the world<sup>71</sup>.

The first time a desire was shown towards wanting to create an International Criminal Court was during the Franco-German War of 1980-1871. It was expressed by the then President of the International Committee of the Red Cross,

---

<sup>67</sup> "International Law." *The Free Dictionary*. Farlex, W

<sup>68</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 183. Print.

<sup>69</sup> Cassese, Antonio. "The Repression of International Crimes." *International Law*. Oxford: Oxford UP, 2005. Page 435. Print.

<sup>70</sup> "Culpability of Individuals under International Law." *Human Rights Watch*.

<sup>71</sup> "Rome Statute." *United Nations*. Preamble.

Gustave Moynier<sup>72</sup>. He proposed that this Court would be able to prosecute individuals who had committed war crimes during the war. This proposition however, failed due to the lack of political support<sup>73</sup>.

The end of the Second World War is considered to be the most important moment for international criminal law as the International Military Tribunal in Nuremberg was created. It was a breakthrough because individuals would be tried on the basis of an international agreement rather than on domestic law<sup>74</sup>. Within the International Military Tribunal, the London Agreement on the 8<sup>th</sup> of August 1945 was an important international agreement. Due to Article 1 and the Charter, which is described in the Annex, the Tribunal was able to sentence “the major war criminals of the European Axis countries for crimes against peace, war crimes and crimes against humanity when a particular location of the offence was absent”<sup>75</sup>. In 1950, an international criminal code for global peace and security was created for the Nuremberg Tribunal<sup>76</sup>.

In 1954, the Special Committee of the General Assembly drafted a statute for the International Criminal Court. At that time, however, States did not want to limit their sovereignty due to the Cold War<sup>77</sup>. Nevertheless, in 1989 the former Prime Minister of Trinidad and Tobago asked the General Assembly to assist regarding international drug trafficking<sup>78</sup>. Therefore, in 1994 a draft statute of an International Court was submitted by the International Law Commission, which alongside the London Agreement also included drug crimes and terrorism<sup>79</sup>.

---

<sup>72</sup> Hall, Christopher Keith. "International Review of the Red Cross." *The First Proposal for a Permanent International Criminal Court*: 57.

<sup>73</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 185-186. Print.

<sup>74</sup> Roosevelt, Franklin D., Winston Churchill, and Marshal Stalin. "Moscow Declaration on Atrocities." *United Nations Information Organisation*: Page 681-86. 27 Nov. 1978.

<sup>75</sup> "Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal." *Human Rights Library*. 8 Aug. 1945.

<sup>76</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 190-191. Print.

<sup>77</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 191. Print.

<sup>78</sup> "A/RES/44/39. International Criminal Responsibility of Individuals and Entities Engaged in Illicit Trafficking in Narcotic Drugs across National Frontiers and Other Transnational Criminal Activities: Establishment of an International Criminal Court with Jurisdiction over Such Crimes." *United Nations*. United Nations.

<sup>79</sup> "Yearbook of the International Law Commission." *A/CN.4/SER.A/1997/Add.I (Part 2). Report of the Commission to the General Assembly on the Work of Its Forty-ninth Session*. 1996.

Also during that time, the Security Council of the United Nations established the International Criminal Tribunal of the former Yugoslavia (ICTY) and the International Criminal Tribunal of the former Rwanda (ICTR). These Tribunals were created on the basis of Chapter VII of the Charter of the United Nations during the post-Cold War times<sup>80</sup> and because of the massive atrocities, which took place during that time. The jurisdiction of these Tribunals was based upon customary international law since there was no international binding criminal code<sup>81</sup>. Moreover, the Tribunals deal with breaches of the 1949 Geneva Convention and with crimes against humanity, war crimes and crimes of genocide<sup>82</sup>. The creation of these Tribunals can be considered as an important part of the development of the international criminal law regime<sup>83</sup>.

### **3.2 The establishment of the International Criminal Court**

In 1994 a preparatory committee worked on drafting a Convention for the International Criminal Court based upon the ILC Draft Statute<sup>84</sup>. The establishment of the Rome Statute was negotiated in Rome in 1998. After negotiating, 120 states voted in favor of the ICC, while seven states voted against and 21 states did not vote<sup>85</sup>. The Rome Statute needed 60 ratifications in order to come into force, which it did on the first of July 2002. Currently, 123 states are party to the Rome Statute<sup>86</sup>.

The Rome Statute is able to provide criminal responsibility for individuals rather than for States. In this way, it can deal with the most serious committed crimes within the international community<sup>87</sup>. As mentioned, it has jurisdiction over the four core crimes, which means that when a citizen of a Member State commits

---

<sup>80</sup> "Resolution 827." *Security Council. United Nations.*

<sup>81</sup> Satzger, Helmut. *International and European Criminal Law.* Hart, 2011. Page 193. Print.

<sup>82</sup> "The Geneva Conventions of 1949 and Their Additional Protocols." *ICRC.* 29 Oct. 2010.

<sup>83</sup> Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst. *An Introduction to International Criminal Law and Procedure.* Cambridge: Cambridge UP, 2013.

<sup>84</sup> "A/RES/50/46. Establishment of an International Criminal Court." *United Nations.* United Nations.

<sup>85</sup> "Rome Statute of 1998." *Article 126. International Criminal Court.*

<sup>86</sup> "UN, United Nations, UN Treaties,," *Signatories : 139. Parties : 124.* United Nations.

<sup>87</sup> Rome Statute." *United Nations.* Preamble, paragraph 4.



such an international crime on the territory of another Member State or within his or her own territory, the Court will have jurisdiction<sup>88</sup>. Also, it is possible for a non-Member State to bring single cases to the ICC if it accepts its jurisdiction on an ad hoc basis<sup>89</sup>. Also, the ICC has jurisdiction to investigate cases when it is triggered by a resolution of the Security Council, a State complaint or an independent investigation of a prosecutor<sup>90</sup>. This could also involve cases within a non-Member State when there is an authorization by a United Nations Security Council resolution.

The ICC is known for being a complementary Court; this means that it is a Court of last resort, which supplements national courts<sup>91</sup>. Normally, States are responsible to bring alleged perpetrators of international crimes to justice since they have jurisdiction over individuals within their territorial. Therefore, States incorporate norms of international criminal law into their domestic law in order to convict perpetrators who commit these crimes. Since national laws differ on a substantive and procedural aspect, it is impossible to obtain a uniform punishment of international crimes worldwide<sup>92</sup>. If states are unable or unwilling to investigate and prosecute international crimes through the use of their national authorities, the ICC is competent to prosecute<sup>93</sup>. The ICC relies upon the cooperation of the State that is involved. "Without it, the Court cannot reach suspects and their powers to issue warrants for the seizure of evidence, to issue subpoenas or to issue arrest warrants will not lead to any results"<sup>94</sup>.

---

<sup>88</sup> "Rome Statute of 1998." *Article 12(2) International Criminal Court.*

<sup>89</sup> "Rome Statute of 1998." *Article 12(3). International Criminal Court.*

<sup>90</sup> "Rome Statute of 1998." *Article 13(1). International Criminal Court.*

<sup>91</sup> "Rome Statute of 1998." *Article 17. International Criminal Court.*

<sup>92</sup> Satzger, Helmut. *International and European Criminal Law.* Hart, 2011. Page 181-182. Print.

<sup>93</sup> Satzger, Helmut. *International and European Criminal Law.* Hart, 2011. Page 183. Print.

<sup>94</sup> Cassese, Antonio. "The Repression of International Crimes." *International Law.* Oxford: Oxford UP, 2005. Page 471. Print.

#### **4 To what extent can individuals be held criminally liable for environmental destruction under the crimes currently recognized by the Rome Statute, and what are the benefits and shortcomings of prosecuting environmental destruction under these crimes?**

The next part of the research will examine to what extent environmental harm is covered in the already existing four core international crimes, which are: genocide, crimes against humanity, war crimes and crimes of aggression. It will also consider to what extent it is currently possible to hold individuals liable for environmental crimes under the Rome Statute. This section is important with regards to establishing whether the Rome Statute is in need of an autonomous international crime of ecocide, or whether the existing crimes are sufficient to prosecute environmental harm. Especially since the ICC announced on September 15<sup>th</sup> 2016 that it will work on prosecuting and adjudicating environmental crimes. This indicates that the ICC will give more consideration to crimes involving the destruction of the environment, illegal exploitation of natural resources or the illegal dispossession of land, which is a step toward to the international protection of the environment<sup>95</sup>.

##### **4.1 Genocide**

A Polish jurist named Raphael Lemkin first defined the word genocide in 1944. He used the Greek word 'genos' which means nation or race and the Latin verb 'caedere' meaning an act of killing<sup>96</sup>. The Genocide Convention recognized genocide as an autonomous crime since 1948, following the Resolution 96(1) of the General Assembly of the United Nations<sup>97</sup>. Before becoming an autonomous crime, genocide was part of crimes against humanity.

Genocide is codified in Article II in the Genocide Convention, in the Statutes of the ICTY, ICTR and in the Rome Statute. According to Article 6 of the Rome

---

<sup>95</sup> International Criminal Court, Office of the Prosecutor, 'Policy paper on case selection and prioritisation', 15 September 2016.

<sup>96</sup> Lemkin, Raphael. *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Page 79. Print.

<sup>97</sup> Article I (2). " *Customary IHL - Section B. Environmental Modification Techniques*.

Statute, genocide is defined as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”<sup>98</sup>, such as:

*(a) Killing members of the group;*

*(b) Causing serious bodily or mental harm to members of the group;*

*(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*

*(d) Imposing measures intended to prevent births within the group;*

*(e) Forcibly transferring children of the group to another group.*

When looking at the list of requirements stated in Article 6 of the Rome Statute, one can argue that perhaps environmental destruction can fall under subsection (b) and (c).

#### ***4.1.1 ‘The Prosecutor v. Omar Hassan Ahmad Al Bashir’***

To give an example, subsection c of the genocide definition according to the Rome Statute, was used in 2009 when the Sudanese President Omar Hassan Ahmad Bashir was being charged with a list of ten counts under which three counts were involved with genocide<sup>99</sup>. He was charged with “the contamination of water sources and the destruction of water pumps that resulted in the forcible expulsion of the targeted group from their homes and the non-accessibility of water for the group members”<sup>100</sup>. This indicates that, as subsection c states, he deliberately inflicted on the group’s conditions of life, which brought about physical destruction.

---

<sup>98</sup> "Rome Statute of 1998." *Article 6. International Criminal Court.*

<sup>99</sup> "Case Information Sheet." *The Prosecutor v. Omar Hassan Ahmad Al Bashir, Suspected of Five Counts of Crimes against Humanity, Two Counts of War, and Three Counts of Genocide Allegedly Committed in Darfur, Sudan.*

<sup>100</sup> "Trying Individuals for Genocide, War Crimes and Crimes against Humanity." *The Prosecutor v. Omar Hassan Ahmad Al Bashir.*

When examining the case, the judges did recognize the link between genocide and environmental degradation<sup>101</sup>. However, the Pre-Trial Chamber did not support the fact that the contamination of water sources was the core feature of the attacks; therefore the president was not convicted<sup>102</sup>.

#### **4.1.2 The *actus reus* and *mens rea* requirements for the crime of genocide**

The *actus reus* of genocide requires: (i) the perpetrator to inflict certain conditions of life upon one or more persons (ii) that such person or persons belonged to a particular national, ethnical, racial or religious group and (iii) that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction"<sup>103</sup>; it usually is not difficult to prove this. The problem however, is that the prosecutors of the ICC have difficulty showing the specific genocidal intent or *mens rea* which is needed in order to prove whether or not there was an intent to destroy a group by an environmental harming activity<sup>104</sup>. Therefore, the crime of genocide has very limited ability to provide minimal environmental protection<sup>105</sup>. Moreover, this would mean that individuals are only being prosecuted if they had genocidal intent for the atrocities, which harmed the environment<sup>106</sup>.

---

<sup>101</sup> "Case Information Sheet." *The Prosecutor v. Omar Hassan Ahmad Al Bashir, Suspected of Five Counts of Crimes against Humanity, Two Counts of War, and Three Counts of Genocide Allegedly Committed in Darfur, Sudan*.

<sup>102</sup> "Trying Individuals for Genocide, War Crimes and Crimes against Humanity." *The Prosecutor v. Omar Hassan Ahmad Al Bashir*.

<sup>103</sup> International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/ Add.2 (2000)

<sup>104</sup> Sharp, Peter. "Prospects for Environmental Liability in the International Criminal Court." *Environmental Law Journal*.

<sup>105</sup> International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/ Add.2 (2000)

<sup>106</sup> Wyatt, Julian. "Law-making at the Intersection of International Environmental, Humanitarian, and Criminal Law: The Issue of Damage to the Environment in International Armed Conflict." *30-09-2010 Article, International Review of the Red Cross, No. 879*. Page 593, 640.

## 4.2. Crimes against humanity

According to Article 7 of the Rome Statute, crimes against humanity means, “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”:

- (a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) Torture;*
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*
- (i) Enforced disappearance of persons;*
- (j) The crime of apartheid;*
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health<sup>107</sup>.*

Besides this list, subsection 2 of the Article explains in further detail the definition of all acts.

Crimes against humanity indicate that the crime must be part of a systemic or widespread attack. Therefore, the *mens rea* requirement involves the perpetrator to “have an intention to commit the crime and knowledge of it and must have knowledge of the fact that the crime falls within the context of a

---

<sup>107</sup> "Rome Statute of 1998." *Article 7. International Criminal Court*. Web. 6 June 2017.

widespread or systematic attack against a civilian population”<sup>108</sup>. The definition of an attack is defined in Article 7(2)(a) which states: “an attack directed against any civilian population means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”<sup>109</sup>. According to this Article, the attack does not require it to be a military attack, however, this will often be the case<sup>110</sup>.

It would be more appropriate to address ecocide, under the crimes against humanity provision than under the genocide provision. This is due to the fact that crimes against humanity have more possibilities than genocide for the ICC to prosecute for environmental harming activity. As mentioned above, it is difficult to prove genocidal intent, which is not a requirement for crimes against humanity.

For instance, when referring back to the case of the drainage of the Mesopotamian Marshlands, the prosecution for environmental harm would apply since the “continuous and knowing discharge of millions of gallons of toxic waste and oil onto the ancestral homelands of indigenous peoples, resulting in injury, displacement, or death to a significant number of the population, because this is certainly a widespread or systematic attack directed against any civilian population, with knowledge of the attack”<sup>111</sup>. For instance, the criteria of Article 7(2)(b) for the crimes against humanity can be applied. According to this Article, “‘extermination’ includes the mass killing of civilians through the intentional infliction of conditions of life calculated to bring about the destruction of part of a population”<sup>112</sup>. While the *actus reus* requirement is largely the same as described in the genocide context, the *mens rea* requirement is less burdensome. For instance, “the *mens rea* for the crime of extermination is the knowledge that the act was intended to be part of a widespread or systematic attack against the

---

<sup>108</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 256. Print.

<sup>109</sup> "Rome Statute of 1998." *Article 7(2)(a)*. *International Criminal Court*.

<sup>110</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 258. Print.

<sup>111</sup> North, Andrew. "Saddam Drains Life from Arab Marshes: Scientists Fear Iraq's Historic Wetlands Face Destruction in 10 to 20 Years, Says Andrew North." *Independent*.

<sup>112</sup>"Rome Statute of 1998." *Article 7(1)(k)*. *International Criminal Court*.

civilian population”<sup>113</sup>. The difference of the level of intent between the genocide and crimes against humanity requirement involves the fact that as long as the alleged perpetrator knew that the act amounted to a systematic attack against the civilian population, they may be guilty of this crime against humanity. “Therefore, where development policies are pursued aggressively and result in the widespread killing of civilians as a result of serious environmental damage, for example, it may be easier to pursue an alleged perpetrator for the crime against humanity of extermination rather than genocide”<sup>114</sup>.

Moreover, Article 7(1)(d) would also apply in this case as it involves the deportation or forcible transfer of population and therefore the forced displacement of the Marsh Arabs could amount under this section of crimes against humanity. Also, Article 7(1)(k) can provide possibilities for the ICC prosecutor regarding crimes against humanity relating to environmental harm as it relates to ‘other inhumane acts’ which “intentionally cause great suffering, or serious injury to body or to mental or physical health”<sup>115</sup>.

Crimes against humanity, just like genocide provide possibilities for individual criminal responsibility for acts of environmental damage as a result of its impacts on the human population<sup>116</sup>.

### **4.3 The sole ecocentric war crimes provision: Article 8(2)(b)(iv)**

#### **4.3.1 The history of the ecocentric war crimes provision**

Article 8(2)(b)(iv) of the Rome Statute is the sole ecocentric provision which can be relied upon to prosecute individuals for environmental damage<sup>117</sup>. This

---

<sup>113</sup> International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/ Add.2 (2000)

<sup>114</sup> Smith, Tara. "Creating a Framework for the Prosecution of Environmental Crimes in International Criminal Law." Page 52.

<sup>115</sup> North, Andrew. "Saddam Drains Life from Arab Marshes: Scientists Fear Iraq's Historic Wetlands Face Destruction in 10 to 20 Years, Says Andrew North." *Independent*.

<sup>116</sup> International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/ Add.2 (2000)

<sup>117</sup> "Rome Statute of 1998." *Article 8(2)(b)(iv)*. *International Criminal Court*.

provision explicitly relates to environmental damage for which no human suffering is needed as a requirement to hold individuals liable for such a crime.

As mentioned before, Polly Higgins and other legal scholars, proposed to incorporate an autonomous provision for crimes against the environment under the Rome Statute. In 1996, Christian Tomuschat, a member of the International Law Commission prepared a document in which the working group proposed the option of an autonomous crime against the environment to be incorporated under the Rome Statute or under the war crimes or crimes against humanity crimes<sup>118</sup>. The records of 48<sup>th</sup> meeting session of the ILC members provide the following draft statute for incorporating the crime of environmental damage under the ICC:

*“Article 22. War crimes*

*2 (a) (iii) (bis). Employing methods or means of warfare, which are intended or may be expected to cause such widespread, long-term and severe damage to the natural environment that the health or survival of a population will be gravely prejudiced;*

*Article 21. Crimes against humanity*

*2 (h) (bis). Wilfully causing such widespread, long-term and severe damage to the natural environment that the health or survival of a population will be gravely prejudiced;*

*or*

*Article 26. Wilful and severe damage to the environment. "An individual who wilfully causes such widespread, long-term and severe damage to the natural*

---

<sup>118</sup> "A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session.* ILC(XLVIII)/DC/CRD.3 Part 1, Paragraph 4.



*environment that the health or survival of a population will be gravely prejudiced, shall, on conviction thereof, be sentenced to ...* <sup>119</sup>

This indicates that in 1996 there was a time in which a proposed autonomous provision for environmental damage was considered, namely Article 26.

Unfortunately, none of these recommendations were followed up and in 1996 the Chairman of the meeting of the ILC named Mr Ahmed Mahiou decided to remove the entire provision of the crime of ecocide. The decision was made without voting and without taking into consideration the recommendations of the working group. One of the group members, Mr Alberto Szekely objected to this decision<sup>120</sup>. After that, the ILC voted on whether to “include environmental damage solely in the context of a war crime or to include it as a crime against humanity, which would be applicable in peacetime. The result was that the Drafting Committee was notified only to draft the far smaller remit of environmental damage in the context of war crimes, and not in the context of crimes against humanity”<sup>121</sup>. This meant that there was an exclusion of the crime of environmental damage during peacetime.

Moreover, the Member States were given four different options as to how environmental damage should be defined under the war crimes provision. The following options were proposed:

*“Option 1*

*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*

---

<sup>119</sup> "A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session.* ILC(XLVIII)/DC/CRD.3 Part 1, Paragraph 3.

<sup>120</sup> "A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session.* 2431th meeting, 21 May 1996.

<sup>121</sup> "A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session.* ILC(XLVIII)/DC/CRD.3 Part 1, Paragraph 3.

*widespread, long-term and severe damage to the natural environment, which is not justified by military necessity;*

*Option 2*

*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 excessive in relation to the concrete and direct overall military advantage anticipated;*

*Option 3*

*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;*

*Option 4*

*No paragraph (b)."<sup>122</sup>*

The representatives of the Member States decided to choose the second option. The option states that it criminalises ‘intentionally launching of an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment’<sup>123</sup>.

#### **4.3.2 The shortcomings of Article 8(2)(b)(iv)**

According to Article 8 of the Rome Statute, the Court has jurisdiction over “war crimes in particular when committed as part of a plan or policy or as part of a

---

<sup>122</sup> Bassiouni, M. Cherif. *The Legislative History of the International Criminal Court*. Ardsley (N.Y.): Transnational, 2005. Page, 79. Print.

<sup>123</sup> "A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session*. ILC(XLVIII)/DC/CRD.3 Part 1, Paragraph 3.

large-scale commission of such crimes”<sup>124</sup>. In this Article, war crimes are defined as:

*“Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:*

- (i) Wilful killing;*
- (ii) Torture or inhuman treatment, including biological experiments;*
- (iii) Wilfully causing great suffering, or serious injury to body or health;*
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;*
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;*
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;*
- (vii) Unlawful deportation or transfer or unlawful confinement;*
- (viii) Taking of hostages.”*<sup>125</sup>

Furthermore, subsection b and c of this Article defines the other serious violations of the laws and customs of war and their requirements.

As mentioned, Article 8(2)(b)(iv) is the sole ecocentric provision which can be relied upon to prosecute individuals for environmental damage. The next section will discuss the shortcomings regarding the possibilities of prosecuting individuals under Article 8(2)(b)(iv).

As stated, the current definition of this Article is the following:

---

<sup>124</sup> "Rome Statute of 1998." *Article 8. International Criminal Court.*

<sup>125</sup> "A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session. ILC(XLVIII)/DC/CRD.3 Part 1, Paragraph 3.*

*“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 excessive in relation to the concrete and direct overall military advantage anticipated”*<sup>126</sup>.

There are several elements within this provision, which makes it difficult for the prosecutors at the ICC to prosecute individuals under this provision. The first challenge can be described on the basis that Article 8(2)(b)(iv) focuses on international armed conflicts, which refers to conflicts between two or more States<sup>127</sup> rather than internal conflicts. This is considered a shortcoming as many of the harmful cases and damage is done in internal conflicts.

Even more importantly, the article demands there to be *‘widespread, long-term and severe damage to the natural environment’*. This would become challenging for the ICC prosecutor as all three elements *‘widespread’*, *‘long-term’* and *‘severe’* would have to be proven. Moreover, it is even more difficult for the prosecutor to prove these elements, as there is no definition provided by the Rome Statute as to what the elements mean and what criteria must be met; overall it complicates the *actus reus* of the provision. There are different Conventions, which define the three required elements for the *actus reus*. For instance, the ENMOD Convention defines the elements in a disjunctive manner. As mentioned, Article I(2) defines the three elements as: (a) *“widespread”*: encompassing an area on the scale of several hundred square kilometres; (b) *“long-lasting”*: lasting for a period of months, or approximately a season; (c) *“severe”*: involving serious or significant disruption or harm to human life, natural and economic resources or other assets”<sup>128</sup>. Even though this Convention provides definitions for the three elements, it also states that: *“the interpretation set forth above is intended exclusively for this Convention and is not intended to prejudice the interpretation of the same or similar terms if used in connection with any other*

---

<sup>126</sup> "Rome Statute of 1998." *Article 8(2)(b)(iv)*. *International Criminal Court*.

<sup>127</sup> "Rome Statute of 1998." *Article 8(2)(b)(iv)*. *International Criminal Court*.

<sup>128</sup> "Article I (2)." *Customary IHL - Section B. Environmental Modification Techniques*.

international agreement”<sup>129</sup>. Moreover, Articles 35(3) and 55(1) of the Additional Protocol 1 of the 1949 Geneva Conventions mention these elements conjunctively but do not provide definitions of these elements<sup>130</sup>. Only the Protocol’s preparatory documents indicate that ‘long-term’ refers to damage that lasts decades, but are silent concerning the definitions of ‘widespread’ and ‘severe’<sup>131</sup>. Therefore, the Rome Statute and how it is currently written can be considered too general and lacks precision regarding the three necessary elements of Article 8(2)(b)(iv)<sup>132</sup>.

Furthermore, the Article requires that the crime must be committed intentionally. This means that the accused can be acquitted when claimed that he/she was unaware that it would cause damage to the environment. Even worse would be when the accused decides to purposely not inform themselves and therefore not have the knowledge about the consequences in order to escape criminal punishment<sup>133</sup>. This creates problems with the *mens rea* element of the provision<sup>134</sup>.

Lastly, the Article must fulfil a proportionality test regarding military advantage. That is to say, the act is not considered to be illegal if there is a military advantage, which then justifies the damage that has been caused. Together with the use of military advantage, the words ‘concrete’, ‘direct’ and ‘overall’ are used. However, it is not clearly defined in the Rome Statute as to how and by whom the damage must be performed, which then again becomes difficult for the

---

<sup>129</sup> *Treaties, States Parties, and Commentaries - Convention Prohibiting Environmental Modification Techniques (ENMOD), 1976 - Understandings - Understandings.*

<sup>130</sup> *Treaties, States Parties, and Commentaries - Additional Protocol (I) to the Geneva Conventions, 1977 - 55 - Protection of the Natural Environment.*

<sup>131</sup> Lawrence, Jessica C., and Kevin Jon Heller. "The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute'." *Georgetown International Environmental Law Review*, Page 73.

<sup>132</sup> Lawrence, Jessica C., and Kevin Jon Heller. "The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute'." *Georgetown International Environmental Law Review*, Page 72.

<sup>133</sup> Lawrence, Jessica C., and Kevin Jon Heller. "The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute'." *Georgetown International Environmental Law Review*, Page 72.

<sup>134</sup> Lawrence, Jessica C., and Kevin Jon Heller. "The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute'." *Georgetown International Environmental Law Review*, Page 72.

prosecutor to prove these elements<sup>135</sup>. Due to the fact that this provision is rather vague as to when such conduct becomes punishable under international criminal law, it makes it difficult for the prosecutor to do the work. Overall, it is fair to say that at a certain time in history there was an interest in creating laws on ecocide for both in peace and wartime. Even though we are left with Article 8 exclusively for in times of war, it remains to be a hurdle when wanting to hold perpetrators accountable for environmental damage under this Article at the international level.

#### **4.4 Ecocide and the crime of aggression**

According to Article 5 of the Rome Statute, “the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations”<sup>136</sup>. The crime of aggression is defined in Article 8bis which states: the “*crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations*”<sup>137</sup>.

The second paragraph of the Article explains the act of aggression in more detail. It states the following:

*“The act of aggression means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in*

---

<sup>135</sup> Lawrence, Jessica C., and Kevin Jon Heller. “‘The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute.’” *Georgetown International Environmental Law Review*, Page 72.

<sup>136</sup> “Rome Statute of 1998.” *Article 5. International Criminal Court*.

<sup>137</sup> Lawrence, Jessica C., and Kevin Jon Heller. “‘The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute.’” *Georgetown International Environmental Law Review*, Page 72.

*any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:*

*(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;*

*(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;*

*(c) The blockade of the ports or coasts of a State by the armed forces of another State;*

*(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;*

*(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;*

*(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;*

*(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein"<sup>138</sup>.*

When looking at the definition of aggression, it would be unrealistic to consider Article 8bis as a route for the prosecution of environmental crimes at the ICC. This is due to the fact that there is an unfinished status of the crime of aggression

---

<sup>138</sup> "Rome Statute of 1998." Article 5. *International Criminal Court*.

within the international community<sup>139</sup>. Moreover, “it is difficult to see how the crime of aggression as it stands could be perpetrated by any means of environmental damage falling short of the use of nuclear weapons, or extreme biological or chemical attacks”<sup>140</sup>. For instance, when a State invades or attacks another State through the use of armed forces as stated in Article 8bis, it would certainly lead to environmental damage. “However, such acts could easily be transformed into an armed conflict, at which point the relationship between the armed forces and the environment becomes governed by Article 8(2) (b)(iv) of the Rome Statute or Articles 35(3) and 55(1) of Additional Protocol I if the conflict is international in nature”<sup>141</sup>.

#### **4.5 In what ways might an autonomous crime of ecocide make up for the shortcomings of the current Rome Statute crimes?**

The research above aimed to illustrate to what extent individuals can be held criminally liable for environmental crimes under the crimes that are currently recognized by the Rome Statute. As mentioned, there are some possibilities available under the existing crimes. The advantage lies with the fact that the Rome Statute already contains a provision (the war crime provision) which explicitly relates to environmental damage for which no human suffering is needed as a requirement to hold individuals liable for such a crime. However, there are many weaknesses found within this provision as well as in the other three existing international crimes provisions. The shortcomings are mostly related to the *mens rea* and *actus reus*. For instance, Article 8(2)(b)(iv) of the war crime provision focuses on international armed conflicts rather than internal conflicts. Also, Article 8(2)(b)(iv) demands there to be ‘*widespread, long-term and severe damage to the natural environment*’, which is usually difficult for the ICC prosecutor would to prove. It is even more challenging for the prosecutor to prove these elements, as there is no definition provided by the Rome Statute as to what the elements mean and what criteria must be met; overall it complicates the *actus reus* of the provision. As mentioned, even though the ENMOD

---

<sup>139</sup> Smith, Tara. "Creating a Framework for the Prosecution of Environmental Crimes in International Criminal Law." Mar. 2016.

<sup>140</sup> "Rome Statute of 1998." *Article 5. International Criminal Court.*

<sup>141</sup> Smith, Tara. "Creating a Framework for the Prosecution of Environmental Crimes in International Criminal Law." Page 57.



Convention provides definitions for all three elements, such definitions are intended exclusively for this Convention and are not intended to prejudice the interpretation of the same or similar terms if used in connection with any other international agreement. Therefore, the Rome Statute and how it is currently written can be considered too general and lacks precision regarding the three necessary elements of Article 8(2)(b)(iv). Also, Article 8(2)(b)(iv) requires that the crime must be committed intentionally, meaning that the accused can be acquitted when claimed that he/she was unaware that it would cause damage to the environment or even worse, if the accused decides to purposely not inform themselves and therefore not have the knowledge about the consequences in order to escape criminal punishment. Lastly, the Article must fulfil a proportionality test regarding military advantage. That is to say, the act is not considered to be illegal if there is a military advantage, which then justifies the damage that has been caused. Together with the use of military advantage, the words 'concrete', 'direct' and 'overall' are used. However, it is not clearly defined in the Rome Statute as to how and by whom the damage must be performed, which then again becomes difficult for the prosecutor to prove these elements. Due to the fact that this provision is rather vague as to when such conduct becomes punishable under international criminal law, it makes it difficult for the prosecutors to do their work. Also, Article 8 is exclusively used for times of war; it remains to be a hurdle when wanting to hold perpetrators accountable for environmental damage in times of peace.

Additionally, there were some possibilities to prosecute environmental crime under the crimes of genocide and crimes against humanity. For instance, the actus reus of genocide is usually not too difficult to prove as it requires: (i) the perpetrator to inflict certain conditions of life upon one or more persons (ii) that such person or persons belonged to a particular national, ethnical, racial or religious group and (iii) that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction. The weakness of the genocide provision, however, lays with the fact that 'specific genocidal intent' or the '*mens rea*' is needed in order to prove whether or not there was intent to destroy a group by an

environmental harming activity. This leads to the crime of genocide not being able to provide minimal environmental protection, it would also mean that individuals are only being prosecuted if they had genocidal intent for the atrocities, which harmed the environment.

Therefore, it is argued that crimes of humanity would be more appropriate to address ecocide since it has more possibilities than genocide for the ICC to prosecute for environmental harming activity. This is due to the fact that the *mens rea* requirement is less burdensome. This has to do with the difference in level of intent. The *mens rea* requirement for crimes against humanity simply entails that as long as the alleged perpetrator knew that the act amounted to a systematic attack against the civilian population, they may be guilty of this crime against humanity. However, the hurdle with the crimes against humanity provision is that the crime must be directed against a civilian population.

Lastly, as mentioned, the crime of aggression would be an unrealistic route to consider for the prosecution of environmental crimes at the ICC because of the unfinished status of the crime within the international community. Moreover, it is difficult to see how the crime of aggression as it stands, could be perpetrated by any means of environmental damage falling short of the use of nuclear weapons, or extreme biological or chemical attacks. Therefore, this crime is not considered a possible avenue for the prosecution of environmental crime.

Due to the above explanation, creating an autonomous international crime of ecocide would generate an added value when wanting to hold individuals liable for crimes of ecocide, it would help to overcome many of the hurdles, which are found when wanting to prosecute ecocide under the already existing international crimes. For instance, when creating the autonomous crime for ecocide, it should be defined as a crime of strict liability for which no proof of intent is necessary. That is to say, strict liability crimes are crimes, which require no proof of *mens rea* in relation to one or more aspects of the *actus reus*. This means that the prosecutor would not have to prove that the defendant acted with a culpable mental state. Overall, defining the crime of ecocide on the basis of

strict liability would make the criteria for the *mens rea* and *actus reus* easier to fulfill, which until now is considered a big hurdle in the already existing international crimes. Also, strict liability brings practical benefits and it is often used to provide a greater level of protection to the public in areas where it is perceived that there is a need to provide such protection<sup>142</sup>.

Moreover, the autonomous crime of ecocide should ideally be created in a way in which it is criminalized in both peace and war times. This is in line with the arguments made by international environmental lawyer Polly Higgins. In her definition on ecocide, she makes a distinction between ascertainable and non-ascertainable ecocide. Meaning naturally occurring or human made mass destruction of a defined area of an ecosystem. The advantage of defining ecocide in such a way lies with the fact that the autonomous crime would protect the well being of all life instead of just humanity. Hence, when prosecuting, the ICC could lay more focus upon the actual harm done to the environment as a whole rather than only directed against a civilian population. This would fill up the gaps established in the crimes against humanity and war crimes provisions as the autonomous crime of ecocide would not only lay focus on the civilian population, and would not only prosecute the crimes committed in war times but also in peace times. It is important to add that since there would be legal consequences for both naturally and intentionally occurring environmental devastation, the autonomous crime of ecocide would also make sure that nations should become legally responsible for helping those who have been affected by the naturally occurring ecocide. In this way, there is a legal duty of care to provide assistance in urgent situations in which there is clear evidence that an event, or series of events, has occurred which causes human suffering or imminently threatens lives or livelihoods, and which the government concerned has not the means to remedy; and it is a demonstrably abnormal event, or series of events, which produces dislocation in the life of a community on an exceptional scale"<sup>143</sup>. In

---

<sup>142</sup> Definition on strict liability in criminal law, E-law-resources.

<sup>143</sup> "Emergency Relief." Definition. *World Food Programme*.

this way States should be responsible for mass damage and ecosystem failure and will be bound to support other states facing these issues<sup>144</sup>.

Preferably, the new provision on ecocide would be clearly defined with regards to the necessary threshold. In this way, the necessary requirements would be easier to prove by the prosecutors' rather than leaving many elements vague in which it becomes difficult to determine what is punishable under international criminal law. As mentioned, in section 6, a proposed definition on ecocide and the necessary threshold will be explained for the creation of an autonomous international crime on ecocide.

## **5 Why is it insufficient to address ecocide through national laws alone?**

This section will identify the already existing national laws on ecocide and it will explain why it is problematic to only criminalize it at national level. Moreover, this section will discuss why there is a need for international accountability for individuals who have committed acts of ecocide.

Ecocide is recognized as a crime in ten countries, namely in: "Georgia, Armenia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Vietnam"<sup>145</sup>. Most of the penal codes of these countries set down the crime of ecocide as a "crime against peace", alongside the named four core international crimes which are crimes against humanity, genocide, war crimes and crimes of aggression"<sup>146</sup>.

Ecocide is criminalised in Georgia under Article 409 of the Criminal Code Georgia 1999. The Article states:

---

<sup>144</sup> TEDxTalks. "Ecocide, the 5th Crime Against Peace: Polly Higgins at TEDxExeter." *YouTube*. YouTube, 01 May 2012.

<sup>145</sup> "Eradicating Ecocide." Existing Ecocide Laws.

<sup>146</sup> "Rome Statute of 1998." *Article 5. International Criminal Court*.

*“1. Ecocide, that is the poisoning of atmosphere, soil or water resources, and massive destruction of flora or fauna, or any other action that could have resulted in ecological disaster.*

*Shall be punishable with the deprivation of liberty for a period from eight to twenty years.*

*2. The same action committed during the armed conflict, -*

*Shall be punishable with the deprivation of liberty for a period from ten to twenty years<sup>147</sup>”*

The Criminal Code of the Republic of Armenia 2003 defines ecocide under Article 394 as the following:

*“Mass destruction of flora or fauna, poisoning the environment, the soils or water resources, as well as implementation of other actions causing an ecological catastrophe, is punished with imprisonment for the term of 10 to 15 years”<sup>148</sup>.*

The Criminal Code of the Ukraine 2001 defines ecocide under Article 441 as the following:

*“Mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster, – shall be punishable by imprisonment for a term of eight to fifteen years”<sup>149</sup>.*

The Criminal Code of Belarus 1999 criminalizes ecocide under Article 131 as:

*“Mass destruction of the fauna and flora, pollution of the atmosphere and water resources as well as any other act liable to cause an ecological disaster”<sup>150</sup>.*

---

<sup>147</sup> Shevardnadze, Eduard. *LAW OF GEORGIA ON AMENDMENTS TO THE “CRIMINAL CODE OF GEORGIA”*.

<sup>148</sup> "Eradicating Ecocide." Existing Ecocide Laws.

<sup>149</sup> Kuchma, L. "CRIMINAL CODE OF UKRAINE."

<sup>150</sup> "Criminal Procedure Code of the Republic of Belarus (RU)." *United Nations Office on Drugs and Crime*.

The Penal Code of Kazakhstan 1997 defines ecocide under Article 161 as the following:

*“Mass destruction of the fauna or flora, pollution of the atmosphere, agricultural or water resources, as well as other acts which have caused or are capable of causing an ecological catastrophe, constitutes a crime against the peace and security of mankind-*

*Shall be punished by imprisonment for a period from ten to fifteen years”<sup>151</sup>.*

The Criminal Code of Kyrgyzstan 1997 defines ecocide under Article 374 as the following:

*“Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of 12 to 20 years”<sup>152</sup>.*

The Penal Code of the Republic of Moldova 2002 defines ecocide under Article 136, as the following:

*“Deliberate mass destruction of flora and fauna, poisoning the atmosphere or water resources, and the commission of other acts that may cause or caused an ecological disaster shall be punished by imprisonment for 10 to 15 years”<sup>153</sup>.*

Russia criminalized ecocide under Article 358 of the Criminal Code of the Russian Federation 1996. Ecocide is defined as:

*“Massive destruction of the fauna and flora, contamination of the atmosphere or water resources, as well as other acts capable of causing an ecological catastrophe, constitutes a crime against the peace and security of mankind-*

---

<sup>151</sup> NAZARBAEV, N. "The Criminal Code of Kazakhstan."

<sup>152</sup> AKAEV, A. "THE KYRGYZ REPUBLIC CRIMINAL CODE."

<sup>153</sup> "Eradicating Ecocide." Existing Ecocide Laws.

*Shall be punishable by deprivation of liberty for a term of 12 to 20 years*<sup>154</sup>.

Also, the Criminal Code of Tajikistan 1998 defines ecocide under Article 400 as the following:

*"Mass destruction of flora and fauna, poisoning the atmosphere or water resources, as well as commitment of other actions which may cause ecological disasters is punishable by imprisonment for a period of 15 to 20 years"*<sup>155</sup>.

In Vietnam, Article 342 of the 1990 Vietnam Crimes against mankind defines ecocide as the following:

*"Those who, in peace time or war time, commit acts of Genocide or acts of Ecocide or destroying the natural environment shall be sentenced"*<sup>156</sup>.

### **5.1 The added value of an international law on ecocide**

The above research indicates that even though there is no recognition of the crime of ecocide at the international level, there are ten countries that do already recognize this crime and have implemented it through their national law. As previously emphasized, it is difficult to find a common definition on ecocide. However, within the ten mentioned laws on ecocide, common elements in these definitions can be found. For instance, all ten laws describe that there must be an element of mass destruction present. Interestingly, these laws do not define what mass destruction actually entails and there is no threshold in order to assess when one can talk about there being 'mass destruction'. Moreover, these definitions also do not require the proof of harm caused to humans but rather focus on the flora and fauna.

Besides the fact that only ten countries have incorporated ecocide in their national law, many countries that do not have such a national law on ecocide still do nevertheless criminalize various types of environmental destruction. However, the reason why these laws are still insufficient on an international level has to do with the fact that in some of these ten countries only a small

---

<sup>154</sup> "Russian Federation." *Criminal Codes*.

<sup>155</sup> *Penal Code of the Republic of Tajikistan of 21 May 1998*.

<sup>156</sup> "Vietnam Criminal Code." *Penal Code No. 15/1999/QH10*.

number of perpetrators are actually caught and even fewer are punished; there is a low number of detected and reported crimes<sup>157</sup>. When comparing the sanctions to profits, the sentences that are pronounced are often low and fines are minor when compared to the profits and gains made by criminals. This leads to the criminal sanctions often not being sufficiently severe to ensure a high level of environmental protection<sup>158</sup>. Moreover, one can argue that having these ten countries recognize ecocide as a national crime is a good step towards regulating environmental crimes. However, since there is an international lack of consensus, it may enable criminals to go 'forum shopping' because what constitutes as a crime of ecocide in one country might not be so in another<sup>159</sup>. Even though forum shopping might still be considered a problem if not all the countries in the world were to be subject to the international crime of ecocide, making ecocide an international crime would have a significant impact on the risk minimizing strategies of transnational companies who operate in nations with weak governance structures and which are facing difficulty with holding powerful companies to account for environmental harm<sup>160</sup>.

Therefore, in order for ecocide laws to be more successful, it must be recognized and implemented on an international level. In this respect, an autonomous crime of ecocide could be considered an added value to the Rome Statute and the International Criminal Court, as it will help to ensure that the law is effectively enforced<sup>161</sup>. Moreover, the ICC would be able to intervene when the national judicial systems fail and when a State Party is either "unwilling or unable to bring perpetrators of ecocide to justice"<sup>162</sup>.

---

<sup>157</sup> Luttenberger Axel, Luttenberger Runko Lidija, 'Challenges in regulating environmental crimes', University of Rijeka, page 219.

<sup>158</sup> Luttenberger Axel, Luttenberger Runko Lidija, 'Challenges in regulating environmental crimes', University of Rijeka, page 219.

<sup>159</sup> Luttenberger Axel, Luttenberger Runko Lidija, 'Challenges in regulating environmental crimes', University of Rijeka, page 218.

<sup>160</sup> Neyret Laurent, 'Protecting the environment through criminal law', United Nations, from ecocrimes to ecocide, 2017.

<sup>161</sup> Neyret Laurent, 'Protecting the environment through criminal law', United Nations, from ecocrimes to ecocide, 2017.

<sup>162</sup> Wijdekop, Femke. "Against Ecocide: Legal Protection for Earth." *Great Transition Initiative: Towards a Transformative Vision and Praxis*. Aug. 2016.



## **6 Incorporating new international crimes under the Rome Statute**

This section will analyze the possibilities to introduce a new crime under the Rome Statute of the ICC. It will also explain the possible hurdles that may come along when wanting to make ecocide the fifth international autonomous recognized crime. Besides that, this section will propose its own definition on ecocide and explain the threshold for assessing what constitutes a crime of ecocide according to the definition.

### **6.1 Ecocide as a fifth international crime under the Rome Statute**

According to Article 121 of the Rome Statute, it would be possible to add ecocide as a fifth international crime. This Article allows the possibility to add crimes via amendments, which have to be submitted to the Secretary- General of the United Nations, who shall promptly circulate it to all State Parties<sup>163</sup>. The Assembly of State Parties will then decide upon the amendment through meetings and voting. Some amendments come into force for all State Parties one year after they are ratified by seven-eighths of the State Parties. However, any amendment to Articles 5, 6, 7, or 8 of the Statute (the provisions on crimes within the jurisdiction of the Court) only enters into force for State Parties that have ratified the amendment<sup>164</sup>. The downside to Article 121 is that State Parties do not have to accept the new crime if they do not want to. Subsection 5 states: "In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory"<sup>165</sup>. Moreover, subsection 6 states that "if an amendment has been accepted by seven-eighths of State Parties in accordance with paragraph 4, any State Party which has not accepted the amendment may withdraw from this Statute with immediate effect"<sup>166</sup>. This indicates that there are two sorts of problems which can occur while wanting to

---

<sup>163</sup> "Rome Statute of 1998." *Article 121. International Criminal Court.*

<sup>164</sup> Articles 121(3), (4), and (6) of the Rome Statute of the International Criminal Court.

<sup>165</sup> "Rome Statute of 1998." *Article 121. International Criminal Court.*

<sup>166</sup> "Rome Statute of 1998." *Article 121. International Criminal Court.*

create an autonomous crime of ecocide, namely: 1) States not wanting to be Party to (or choosing to withdraw from) the Rome Statute, and 2) the possibility that some States might choose not to ratify an amendment to the Rome Statute.

To give an example, some countries like India, Indonesia and China did not sign or ratify the Rome Statute<sup>167</sup>. Moreover, “on May 6, 2002, the United States, in a position shared with Israel and Sudan, having previously signed the Rome Statute, formally withdrew its intent of ratification”<sup>168</sup>. Regarding ecocide, this would mean that such a provision would not apply to the countries that withdrew from the Court or decided to not ratify it. From an environmental destruction perspective this is rather problematic due to the fact that the United States, China and India are considered the world’s biggest polluters. China is the largest emitter of carbon dioxide in the world, it emits about 10,357 million metric tons per year; the United States comes second with 5,414 million and India third with 2,274 million<sup>169</sup>. It is rather problematic that these countries did not sign and/or ratified the Rome Statute if ecocide were to be incorporated in the Statute. This would mean that the international law on ecocide would not apply to the countries, which represent a large part of the world and which together with Europe accounts for 60% of the dioxide emissions. It would complicate the effective and long-term global enforcement of the prohibition of ecocide<sup>170</sup>. The main challenge would be to get these countries on board of the Rome Statute. Despite the challenges this movement faces, the Paris Climate Agreement does offer some grounds for optimism since India and China did ratify the agreement<sup>171</sup>. Signing the Paris Climate Agreement indicates that the bigger polluters do show interest in wanting to protect the environment. For instance, the Prime Minister of India, Mr. Narendra Modi said that “care and concern towards nature is integral to the Indian ethos” and that “India is

---

<sup>167</sup> *UN Treaties: Chapter XVIII – Penal Matters – item 10. Rome Statute of the International Criminal Court*’.

<sup>168</sup> *UN Treaties: Chapter XVIII – Penal Matters – item 10. Rome Statute of the International Criminal Court*’.

<sup>169</sup> Thomson Reuters, ‘Who are the world’s biggest polluters?’, 2017.

<sup>170</sup> Wijdekop Femke, ‘Against Ecocide: Legal Protection for Earth’, 2016.

<sup>171</sup> United Nations Framework Convention on Climate Change. “Status of Ratification.” The Paris Agreement, 10 Apr. 2017.

committed to doing everything possible to mitigate climate change”<sup>172</sup>. The signing of the bigger polluters is a step in the good direction and it may encourage these countries to also sign and become Party to a potential future law on ecocide of the Rome Statute.

Another issue the International Criminal Court faces is the fact that the Court is losing the support of an increasing number of African countries. In October 2016, Burundi and South Africa formally wrote to the United Nations Secretary-General to communicate their decision to withdraw from the ICC<sup>173</sup>. The dissatisfaction came about because African countries felt targeted since nine out of ten cases before the court involved African countries<sup>174</sup>. However, the ICC prosecutor Fatou Bensouda who investigates and prosecutes crimes under the jurisdiction of the Court finds such accusations to make no sense since the countries themselves initiated most of the cases. Until now only Burundi has left the Court but the thought of leaving is on the mind of many other African countries. The effects of leaving the Court are major since it will have an impact on the access to justice and redress for victims of grave crimes. African countries leaving the ICC will also have a negative impact on the continent if ecocide were to be included in the Rome Statute. The ecosystems in many African regions are being destroyed in order to maximize profits and to secure and expand the prosperity of the west<sup>175</sup>. This brings along many disadvantages for the people who live in these areas; many people are forced to leave their homes due to the fact that life has become unbearable in most of the resource rich regions in Africa<sup>176</sup>. If more African countries were to leave the ICC, they would take away the opportunity to hold individuals and companies accountable for crimes of environmental devastation. However, one may argue that creating an autonomous crime of ecocide would make African countries more eager to stay

---

<sup>172</sup> Dennis Brady, Mooney Chris, ‘India just ratified the Paris climate deal- brining it extremely close to taking effect’, The Washington Post, 2016.

<sup>173</sup> Kuwonu Franck, ‘ICC: beyond the threats of withdrawal’, Africa at the United Nations General Assembly, 2017.

<sup>174</sup> Kuwonu Franck, ‘ICC: beyond the threats of withdrawal’, Africa at the United Nations General Assembly, 2017.

<sup>175</sup> Donatus Peter, ‘Ecocide in the Niger delta’, Western resource politics are a reason for flight and migration in Nigeria, 2016.

<sup>176</sup> Donatus Peter, ‘Ecocide in the Niger delta’, Western resource politics are a reason for flight and migration in Nigeria, 2016.

Party to the Rome Statute since they are often the victims of mass destruction to the environment. In this way, the Rome Statute would create an international platform for countries such as Africa to protect themselves and the environment from such harm.

## **6.2 Areas of divergence between existing definitions and a proposed way forward**

As mentioned before, ever since the 1970s many different legal scholars have tried to define ecocide. On the one hand, defining ecocide with regards to environmental warfare in which the environment is intentionally harmed. On the other hand, defining ecocide on the basis of a crime in which an ecosystem is harmed and in which human rights are violated. These legal scholars have argued for different ways in which individuals can be held criminally liable, namely: by way of intent, by way of negligence and by way of strict liability. As a consequence, the concept of ecocide does not have one single definition, which is shared by all legal scholars. Therefore, this section will present a definition on ecocide, which would best address the various hurdles discussed throughout the other sections of the thesis.

As discussed, when wanting to create a common definition on ecocide in the future of international law, ideally it would focus on strict liability for which no proof of intent or negligence is necessary. This generally means that there will be liability for crimes of ecocide even if there was no intention to commit the crime. Strict liability may apply in cases in which the damage is inherently hazardous such as damages to or loss of ecosystems. The reason why the definition should ideally focus on strict liability is due to the fact that it would be easier to prove in Court rather than negligence or intent. Moreover, the definition should also expand to corporate action meaning that strict liability would ideally not only apply to individuals but also to corporate leaders of companies. This will be explained in further depth in section 7.

The thesis suggests that an appropriate definition of ecocide is: *'The mass destruction on areas of ecosystems in which human or naturally caused environmental devastation activities have taken place, to such a degree in which the living conditions of the occupants (humans and/or other fauna or flora) are endangered'*.

The definition could rely on the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)<sup>177</sup> in order to determine the threshold for the different elements of the definition. For instance, in order to talk about 'mass' destruction of an ecosystem, the destruction should be extensive. Extensive destruction involves the size, duration and impact of the damage. The threshold mentioned in the Convention focuses on three elements, namely: 'widespread', 'long-term' and 'severe'. As said before, it is difficult for the prosecutor to prove all three elements since there is no definition provided by the Rome Statute as to what the elements mean and what criteria must be met. Also, the ENMOD mentions that it should not be used for other international agreements. Ideally, the Rome Statute should amend the elements in a way that they are clearly defined. Another possibility would be that the ENMOD would make an exception allowing the Rome Statute to make use of the ENMOD criteria for the autonomous crime of ecocide.

As discussed, Article I (2) of the ENMOD defines "'widespread' as 'encompassing an area on the scale of several hundred square kilometres', 'long lasting' as 'approximately a season' and 'severe' as 'involving serious or significant disruption or harm to human life, natural and economic resources or other assets'"<sup>178</sup>. With regards to the proposed definition, 'widespread' could be linked to the *'mass destruction on areas of ecosystems'*, 'long lasting' to *'human or naturally caused environmental devastation activities have taken place'* (which makes the place a unsafe place to live for a long lasting period of time) and 'severe' to *'endangering the living conditions of an ecosystem's occupants'*.

---

<sup>177</sup> "Article I (2)." *Customary IHL - Section B. Environmental Modification Techniques*.

<sup>178</sup> "Article I (2)." *Customary IHL - Section B. Environmental Modification Techniques*.

Furthermore, the definition suggests that it is important for there to be a legal duty of care in order to prevent the risk of mass ecosystem collapse, whether it is as a result of ascertainable or non-ascertainable occurring environmental devastation. The duty of care should lay on “any person or persons who exercises a position of superior responsibility, without exemption, in either private or public capacity to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s); on CEOs and directors of a business and/or any person who exercises rights over a given territory to ensure ecocide does not occur; on governmental actors, specifically Heads of State and Ministers with environment/energy/climate change portfolios, to ensure ecocide does not occur and to provide emergency assistance before, during and after to other territories at risk or adversely affected by ecocide; and on financiers, investors, CEOs and directors of any banking and investment institutions who exercises a position of superior responsibility, to ensure ecocide is not financed<sup>179</sup>. This thesis does recognize the fact that the likelihood of States agreeing to such an expansive definition might be difficult to realize, especially considering that national definitions of ecocide do currently not encompass such a duty of care. However, if States would be able to agree to such a definition, it is important to analyze whether the superior responsibility doctrine would be a feasible avenue for holding company directors criminally liable for environmental crimes; this will be examined in the next section.

### **6.3 Concluding remarks**

This section has shown that some of the biggest populated countries in the world have not ratified the Statute, which leads to the question whether it is worthwhile to focus upon the ICC for prosecuting individuals for crimes of ecocide. Moreover, besides the fact that it would be possible to create an autonomous international crime of ecocide under the Rome Statute for its current members, its application would be limited, given that not all countries are Parties to the Rome Statute and some Parties might choose not to ratify the amendment. Overall, these are important challenges to take into consideration

---

<sup>179</sup> Higgins Polly, Eradicating Ecocide, ‘Proposed amendment to the Rome Statute’.

when granting the power to the ICC to address cases of ecocide. However, the fact that India and China did ratify the Paris Climate agreement leaves some room for optimism. The same goes for the fact that many African countries decided to stay State Party to the Rome Statute and the ICC.

The section also provides its own definition on ecocide. The thesis takes on the point of view that if an autonomous crime of ecocide is being created, it would more likely become successful if it is created according to the proposed definition given. For instance, strict liability instead of negligence or intent is easier to prove in Court.

The next section will determine whether the superior responsibility doctrine under Article 28 of the Rome Statute would be a feasible avenue for prosecuting individuals for environmental degrading activities if ecocide would be added to the Rome Statute as the fifth autonomous international crime.

## **7 If ecocide is recognized as an international crime, is the superior responsibility doctrine a feasible avenue for holding company directors criminally liable for environmental damage?**

The previous sections have shown that currently it is difficult to hold individuals criminally liable for crimes of ecocide under the Rome Statute. As mentioned, there are some possibilities to prosecute under the crimes against humanity, genocide and war crimes provision. However, it is often difficult to fulfill all necessary *mens rea* and *actus reus* requirements. Moreover, there is also a lack of an internationally recognized definition on ecocide, which makes it problematic, if necessary, to determine the level of intent. Therefore, this thesis proposes the alternative option of creating an autonomous international crime of ecocide, which it understands does not come without hurdles. If such an option is created, it might be possible to hold individuals accountable for environmental degrading activities on the basis of the superior responsibility doctrine of the Rome Statute. However, this option will also not come without obstacles. This section aims to examine the possibilities of establishing a legal duty of the superior. It is an

important consideration in determining whether it is worth amending the Rome Statute to include ecocide.

If an autonomous ecocentric provision will be created which applies to both war and peace times, it would be possible to hold private individuals responsible for environmental harms caused by their subordinates<sup>180</sup>. The doctrine of superior responsibility can be applied as a potential option in which the CEO and/or any one of or all of the directors can be prosecuted<sup>181</sup>. The doctrine of superior responsibility is used when there is not sufficient evidence of direct individual criminal responsibility from the superior and thus serves as a subsidiary provision<sup>182</sup>. It is also used to make sure that the one who had a legal duty to act but failed will not go unpunished<sup>183</sup>. The legal duty of the superior is explained in Article 28 of the Rome Statute.

## **Article 28**

### **Responsibility of commanders and other superiors**

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

---

<sup>180</sup> Fenrick, William J. "Commentary on the Rome Statute of the International Criminal Court." Page 521, superiors who fall under Article 28(b) 'can include political leaders, business leaders, and senior civil servants'.

<sup>181</sup> Higgins, Polly. "Ecocide: The 5th Missing Crime Against Peace." *Eradicating Ecocide*. Page 62-63. Print.

<sup>182</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 241. Print.

<sup>183</sup> Werle, Gerhard, and Florian Jessberger. *Principles of International Criminal Law*. Oxford: Oxford UP, 2014. Page 222. Print.



- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information, which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution<sup>184</sup>.

This Article indicates that the superior has to: “1) prevent that subordinates commit international crimes and 2) to punish the subordinates for international crimes they have committed or to submit the matter to the competent

---

<sup>184</sup> "Rome Statute of 1998." *Article 28. International Criminal Court.*

investigative authorities”<sup>185</sup>. There are four requirements under the superior responsibility criteria, which need to be fulfilled in order for it to be successful. These requirements are laid down in Article 28 of the Statute, namely: “1) there must be a superior-subordinate relationship in which effective control is present, 2) knowledge or *mens rea* of the crimes which were committed, 3) the obligation to prevent or punish the crime, 4) the crime is the result of the violated duty of control”<sup>186</sup>. Even though Article 28(a) and (b) make a distinction between military and other leaders<sup>187</sup>, it is still more challenging to apply it to civilians than to military commanders. For instance, it is very challenging to apply superior responsibility to civilian leaders as case law shows that most of the civilian cases have led to acquittals while there were only several cases in which corporate leaders were convicted<sup>188</sup>.

### **7.1 The Prosecutor v. Alfred Musema**

This case involved a director of a public tea company called Gisovu Tea Factory. He was also a member of several regional governmental authorities and very influential in the Rwandan region. The Prosecutor alleged: “Musema transported armed attackers, including employees of the factory, to different locations in Gisovu and Gishyita communes and ordered them to attack Tutsis seeking refuge there. He also personally took part in such attacks and killings. The indictment against Musema was later amended to include charges that he committed various acts of rape and that he ordered and encouraged others to rape and kill Tutsi women”<sup>189</sup>. Therefore, he was convicted for committing genocide and crimes against humanity and besides that also for the failure to prevent and punish the criminal acts of his subordinates<sup>190</sup>; the Trial Chamber sentenced Musema to life in prison.

---

<sup>185</sup> "Rome Statute of 1998." *Article 28. International Criminal Court.*

<sup>186</sup> Jansen, René. "Prosecuting Corporate Leaders for Environmental Damage in International Criminal Law." *Defining the Crime of Ecocide and Its Added Value to the Rome Statute.*

<sup>187</sup> Ronen, Yaël. "Superior Responsibility of Civilians for International Crimes Committed in Civilian Settings." *CIVILIAN SUPERIOR RESPONSIBILITY*. Page 313,354.

<sup>188</sup> Nybondas, Maria L. *Command Responsibility and Its Applicability to Civilian Superiors*. Page 114. Print.

<sup>189</sup> "The Prosecutor v. Alfred Musema." *ICD - Musema - Asser Institute.*

<sup>190</sup> "THE PROSECUTOR v. ALFRED MUSEMA." *Case No. ICTR-96-13-A.*

## **7.2 The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze**

“Ferdinand Nahimana and Jean-Bosco Barayagwiza founded Rwanda's *Radio-Television Libre des Mille Collines (RTL)*. Besides being the founder and director of this radio station and Hassan Ngeze edited the twice-monthly *Kangura* newspaper. Both media outlets were used as vehicles for promoting extremist Hutu ideology, inciting hatred, and exhorting listeners and readers to murder Tutsis during the 1994 genocide in Rwanda. Moreover, Nahima was also a member of the ruling political party at that time<sup>191</sup>. On December 3, 2003, an ICTR Trial Chamber convicted the three defendants of charges including direct and public incitement to commit genocide”<sup>192</sup>.

The cases above also show that they were not ordinary businessmen involved with purely corporate activities. Moreover, this indicates that it is very challenging to establish the superior-subordinate relationship for corporate leaders. Also, the effective control criterion is more emphasized on military leaders than civilian leaders since effective responsibility and control is limited to the time place of the function<sup>193</sup>. That is to say, the civilian leader is only responsible for crimes committed during the working hours of their subordinates while the military commanders are also responsible for crimes committed outside the scope of their duties<sup>194</sup>. The second requirement refers to the fact that the civilian leader must have known, or consciously disregarded information. This might also be challenging for the prosecutor of the ICC to provide evidence for such *mens rea* as it sets a high standard to be proven. The third requirement, which deals with the obligation to prevent or punish the crime, would be easier to prove for the prosecutor. This is due to the fact that usually within companies systems of supervision and reporting are installed

---

<sup>191</sup> The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze." *Refworld*. ICTR-99-52-A (28 November 2007) Paragraphs 606-09.

<sup>192</sup> "The Prosecutor v. Nahimana Et Al." *Open Society Foundations*. 28 Nov. 2007.

<sup>193</sup> Werle, Gerhard, and Florian Jessberger. *Principles of International Criminal Law*. Oxford: Oxford UP, 2014. Page 228. Print.

<sup>194</sup> Triffterer, Otto, and Kai Ambos. *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*. München: Verlag C.H. Beck, 2016. Print.

which makes it easier to determine the crime<sup>195</sup>. This means that the fourth requirement in which the crime must have been committed as a result of the superior's failure to exercise control over the subordinate will also be easier to prove through the use of monitoring and supervision. This is due to the fact that until now the ICC "has held that this requirement only applies to those cases in which the superior did not take any preventive measures and thereby increased the risk that his subordinate was going to commit the crime<sup>196</sup>.

### 7.3 Concluding remarks

The above section aimed to answer the question whether the superior responsibility doctrine can be considered a feasible avenue for holding individuals criminally liable for environmental damage if ecocide were to be recognized as a fifth autonomous international crime. The importance of this doctrine is that it allows holding both governments and businesses accountable for crimes of ecocide. The idea is that individuals such as the CEO and/or directors of the companies who are responsible for the decision-making that resulted in harm to the environment should be prosecuted under the superior responsibility doctrine as civilian corporate leaders.

The research has shown some of the challenges when holding individuals such as corporate leaders criminally responsible under the superior responsibility doctrine of Article 28 of the Rome Statute. For instance, thus far ad hoc tribunals have rarely convicted civilian leaders on the basis of the doctrine of superior responsibility. In the examples of '*The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze*' and '*The Prosecutor v. Alfred Musema*' convictions did succeed on the basis of this principle, however, these cases did not deal with the average civilian corporate leaders involved with purely corporate activities. Moreover, the four necessary requirements in order to fulfill the superior responsibility doctrine have shown that it is rather difficult to

---

<sup>195</sup> "The Prosecutor v. Jean - Pierre Bemba Gombo." *Found Guilty, on 21 March 2016, of Two Counts of Crimes against Humanity (murder and Rape) and Three Counts of War Crimes (murder, Rape, and Pillaging)*. Sentenced, on 21 June 2016, to 18 Years of Imprisonment. In ICC Custody.

<sup>196</sup> Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 241. Print.

lead to a successful prosecution before the ICC. Therefore, regarding ecocide having a successful application of superior responsibility to prosecute corporate leaders seems highly unlikely.

A possible way of overcoming this hurdle would be to rewrite or amend Article 28 in such a way that it applies more to 'normal' civilian corporate leaders instead of military leaders. In this way, Article 28 could be considered a feasible avenue when ecocide is made into an autonomous international crime. The other possible option would be to create an entire new Article in the Rome Statute, which would apply more to civilian corporate leaders rather than military leaders, and to the crime of ecocide rather than to the other four already established crimes.

## **8 Conclusion**

This final part aims to provide an answer to the central questions of the thesis, namely: What options are currently available for addressing instances of ecological harm under the Rome Statute, what would be the added value of introducing ecocide as an autonomous international crime, and what are the potential hurdles that may arise in establishing and prosecuting such a crime? In order to answer these questions, the main findings will be discussed below.

The thesis started off by pointing out that the ecocide debate started in the early 1970s. Around this time many legal scholars gave their opinion about how ecocide should be defined. Due to a lack of agreement with regards to a common definition, there is no international definition on ecocide. This can be seen as a possible hurdle when wanting to hold individuals liable and also when wanting to make ecocide the fifth international crime under the Rome Statute. The thesis aims to eliminate this hurdle by creating its own definition namely: *'The mass destruction on areas of ecosystems in which human or naturally caused environmental devastation activities have taken place, to such a degree in which the living conditions of the occupants (humans and/or other fauna or flora) are endangered'*. This definition is more in line with wanting to prosecute by way of

strict liability rather than negligence or intent. This definition also aims to prosecute both ascertainable and non-ascertainable occurring environmental devastation since human error also plays a large role in environmental disasters. Creating such a definition would be a better road to choose as many of the *mens rea* and *actus reus* requirements are in certain instances difficult to prove. This was illustrated in section 4, in which the thesis looked at whether it is currently possible to hold individuals liable for crimes of ecocide under the existing four international crimes of the Rome Statute. The section indicates that there are certain possibilities available to hold individuals accountable under the Rome Statute. As explained, the Rome Statute already contains a provision (the war crime provision), which explicitly relates to environmental damage for which no human suffering is needed as a requirement to hold individuals liable for such a crime. However, the provision focuses on international armed conflicts rather than internal conflicts and is written in a way in which ecocide can only be prosecuted during war times and not at peace times. Also, many of the requirements to fulfil this provision are vaguely defined. Therefore, the way the Rome Statute is currently written can be considered too general and lacks precision regarding the three necessary elements of Article 8(2)(b)(iv) which are '*widespread, long-term and severe damage to the natural environment*'. The provision also lacks clarity with regards to the 'military advantage' concept and the definition of 'concrete', 'direct' and 'overall'.

Furthermore, the research also shows that it is possible to prosecute cases involving ecocide under genocide and crimes against humanity. However, the weakness of the genocide provision, lays with the fact that 'specific genocidal intent' or the '*mens rea*' is needed in order to prove whether or not there was intent to destroy a group by an environmental harming activity. This leads to the crime of genocide not being able to provide minimal environmental protection, which means that individuals are only being prosecuted if they had genocidal intent for the atrocities that harmed the environment. Moreover, the hurdle with the crimes against humanity provision is that the crime must be directed against a civilian population. Therefore, it reaches the conclusion that the current recognized crimes are not a feasible avenue for prosecuting ecocide, and that

ideally an autonomous crime of ecocide should be created. In this way, when prosecuting, the ICC could lay more focus upon the actual harm done to the environment rather than directed against a civilian population and it would also include ecocide offenses at peacetime rather than just at war times.

Additionally, the thesis looked at the already existing national laws on ecocide. It is considered an important section as it helps to examine whether these national laws are successful when wanting to hold individuals liable for environmental destruction. It also adds to the argument that international accountability for individuals is needed since the current laws in place are insufficient. The research shows that currently there is no international law on ecocide but it is recognized in ten countries under their national law. These countries are: Georgia, Armenia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Vietnam.

The downside of these laws is that in some of these ten countries, only a small number of perpetrators are actually caught and even fewer are punished; there are a low number of detected and reported crimes<sup>197</sup>. Also, when comparing the sanctions to profits, the sentences that are pronounced are often low and fines are minor when compared to the profits and gains made by criminals. This leads to the criminal sanctions often not being sufficiently severe to ensure a high level of environmental protection<sup>198</sup>. Moreover, since there is an international lack of consensus, it may enable criminals to go 'forum shopping' because what constitutes as a crime of ecocide in one country might not be so in another<sup>199</sup>. Due to these reasons, an autonomous crime of ecocide under the Rome Statute could be considered an added value due to the fact that national laws alone does not bring sufficient support for creating liability for environmental crimes. Making ecocide an international crime would have a significant impact on the risk minimizing strategies of transnational companies who operate in nations

---

<sup>197</sup> Luttenberger Axel, Luttenberger Runko Lidija, 'Challenges in regulating environmental crimes', University of Rijeka, page 219.

<sup>198</sup> Luttenberger Axel, Luttenberger Runko Lidija, 'Challenges in regulating environmental crimes', University of Rijeka, page 219.

<sup>199</sup> Luttenberger Axel, Luttenberger Runko Lidija, 'Challenges in regulating environmental crimes', University of Rijeka, page 218.

with weak governance structures and which are facing difficulty with holding powerful companies to account for environmental harm<sup>200</sup>. Additionally, the ICC would be able to intervene when the national judicial systems fail and when a state party is either “unwilling or unable to bring perpetrators of ecocide to justice, which could lead to a decrease in corruption. However, this thesis does recognize that the ICC’s ability to do so depends upon whether or not a particular State is a Party of the Rome Statute.

Since this thesis takes on the viewpoint that ecocide should be made an autonomous international crime under the Rome Statute, it provides an analysis in which it determines the possibilities to do so. Section 6 explains that Article 121 of the Rome Statute allows for a new crime to be introduced, which would have to be submitted to the Secretary- General of the United Nations. However, the two main problems that can come about are: 1) States not wanting to be Party to (or choosing to withdraw from) the Rome Statute, and 2) the possibility that some States might choose not to ratify an amendment to the Rome Statute. Besides the fact that it would be possible to create an autonomous international crime of ecocide under the Rome Statute for its current members, its application would be limited, given that not all countries are Parties to the Rome Statute and some Parties might choose not to ratify the amendment. That is to say, some of the biggest populated countries in the world have not ratified the Statute such as India and China. However, then again, the fact that India and China did ratify the Paris Climate agreement leaves some room for optimism. The same goes for the fact that many African countries decided to stay State Party to the Rome Statute and the ICC.

The thesis also looked at whether the superior responsibility doctrine under Article 28 of the Rome Statute would be a feasible avenue for prosecuting individuals for environmental degrading activities if ecocide would be added to the Rome Statute as the fifth autonomous international crime. In this way, it

---

<sup>200</sup> Neyret Laurent, ‘Protecting the environment through criminal law’, United Nations, from ecocrimes to ecocide, 2017.



looks at the possibility to hold individuals such as policy makers, directors and others who are responsible for the decision-making accountable.

The problem with Article 28 of the Rome Statute is that it originally applied to military commanders and could not easily be applied to corporate leaders. For instance, this has been pointed out with examples of previous cases by the ICTY and the ICTR. It indicates that there are only a few convictions and those convictions involved civilian leaders whom were associated with governmental or policing authorities. Therefore, these leaders are not considered 'normal' civilian corporate leaders. The reason for limited convictions regarding the superior responsibility doctrine is because it is very difficult for the prosecutor to establish the superior-subordinate relationship and to provide evidence for the necessary requirements such as *mens rea*. Therefore, this thesis has argued that that the superior responsibility doctrine would only be a successful prosecution before the ICC if the civilian leader acts in a military or paramilitary position<sup>201</sup>.

To conclude, it is very complex to hold individuals liable under the Rome Statute for crimes of ecocide. The Rome Statute, as it is currently written, does not offer the possibility to prosecute severe environmental harm; only if it falls within the scope of certain already established crimes. Besides that, it is also challenging to hold corporate leaders accountable on the basis of the superior responsibility doctrine, as they should operate in a military or paramilitary setting. A possible way of overcoming this hurdle would be to rewrite Article 28 in such a way that it applies more to 'normal' civilian corporate leaders instead of military leaders, or to create an entire new Article in the Rome Statute, which would apply more to civilian corporate leaders rather than military leaders, and to the crime of ecocide rather than to the other four already established crimes. In this way, Article 28 could be a potential feasible avenue. However, overall it can be concluded that the current available options are not sufficient on an international level to criminalize harm against the environment. Despite the

---

<sup>201</sup> Bonafé, Beatrice I. "Finding a Proper Role for Command Responsibility." *Command Responsibility between Personal Culpability and Objective Liability*.

hurdles, the thesis intended to introduce new possibilities in which an international crime of ecocide could be created. It did so by proposing a definition for the crime of ecocide, and by analyzing the different provisions of the Rome Statute.

The hurdles found within the thesis are probably the reason why there is currently not already a fifth crime of ecocide under the Rome Statute. However, the creation of such an autonomous crime would be the appropriate way forward simply because the world is in need of such a crime. The international crime of ecocide would be considered an added value to prevent the 21<sup>st</sup> century from becoming a century of resource wars and to avoid the escalation of resource depletion<sup>202</sup>. It is necessary since environmental destruction is one of the largest threats that the world is facing today. The planet's natural ecosystems and regenerating bio-capacity are being severely degraded and, as a result, this compromises the ability of the planet to sustain life<sup>203</sup>. If the laws will not be changed, the earth will continue to worsen, which will have a negative impact on the living conditions of all beings of the planet.

---

<sup>202</sup> Higgins, Polly. "The Law of Ecocide." 'Earth is our business, changing the rules of the game', Page 9. Print.

<sup>203</sup> United Nations, 'Report of the World Commission on Environment and Development', Our Common Future.

## 9 Bibliography

### Treaties

"Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal." *Human Rights Library*. 8 Aug. 1945.

"Article I (2)." *Customary IHL - Section B. Environmental Modification Techniques*. Web. 21 June 2017. [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cha\\_chapter14\\_rule45\\_sectionb](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cha_chapter14_rule45_sectionb)

"Object of the International Law Commission." *Article 1, Paragraph 1, of the Statute of the International Law Commission*. <http://legal.un.org/ilc/work.shtml>

The Rome Statute." *United Nations*. Preamble.

*Treaties, States Parties, and Commentaries - Additional Protocol (I) to the Geneva Conventions, 1977 - 35 - Basic Rules*. Web. 21 June 2017. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=0DF4B935977689E8C12563CD0051DAE4>

*Treaties, States Parties, and Commentaries - Additional Protocol (I) to the Geneva Conventions, 1977 - 55 - Protection of the Natural Environment*. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E20CAD5E1C078E94C12563CD0051DD24>

*Treaties, States Parties, and Commentaries - Convention Prohibiting Environmental Modification Techniques (ENMOD), 1976 - Understandings - Understandings*. <https://ihl-databases.icrc.org/ihl/WebART/460-920013?OpenDocument>

### Treaty commentaries

International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000) <http://legal.un.org/icc/prepcomm/report/prepreportdocs.htm>

"The Geneva Conventions of 1949 and Their Additional Protocols." *ICRC*. 29 Oct. 2010. <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

United Nations Framework Convention on Climate Change. "UNFCCC". The Paris Agreement. [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php)

"UN Treaties: Chapter XVIII – Penal Matters – item 10. Rome Statute of the International Criminal Court".

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en)

"UN, United Nations, UN Treaties, Treaties." *Rome Statute of the International Criminal Court*. Treaty Collection, [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en)

"UN, United Nations, UN Treaties,." *Signatories : 139. Parties : 124*. United Nations. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en)

### **UN resolutions**

31/72. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques." *UN Documents Gathering a Body of Global Agreements*. <http://www.un-documents.net/enmod.htm>

"A/cn.4/ser.a/1986/add.l(Part 1)." *Yearbook of the International Law Commission. Documents of the Thirty-eighth Session*. Part 2, Page 46, Paragraph 96. [http://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1986\\_v2\\_p1.pdf](http://legal.un.org/ilc/publications/yearbooks/english/ilc_1986_v2_p1.pdf)

"A/cn.4/ser.a/1993/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-fifth Session*. Part 1, Page 66, Paragraph 50 and Page 68, Paragraph 30. [http://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1993\\_v2\\_p2.pdf](http://legal.un.org/ilc/publications/yearbooks/english/ilc_1993_v2_p2.pdf)

"A/cn.4/ser.a/1996/add.l(Part 2)." *Yearbook of the International Law Commission. Report of the Commission to the General Assembly on the Work of Its Forty-eighth Session*. ILC(XLVIII)/DC/CRD.3 Part 1, Paragraph 1. [http://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1996\\_v2\\_p2.pdf](http://legal.un.org/ilc/publications/yearbooks/english/ilc_1996_v2_p2.pdf)

"A/RES/44/39. International Criminal Responsibility of Individuals and Entities Engaged in Illicit Trafficking in Narcotic Drugs across National Frontiers and Other Transnational Criminal Activities: Establishment of an International Criminal Court with Jurisdiction over Such Crimes." *United Nations*. United Nations. <http://www.un.org/documents/ga/res/44/a44r039.htm>

"A/RES/50/46. Establishment of an International Criminal Court." *United Nations*. United Nations. <http://www.un.org/documents/ga/res/50/a50r046.htm>

"Analytical Guide to the Work of the International Law Commission." *Resolution 42/151 of 7 December 1987*. [http://legal.un.org/ilc/guide/7\\_4.shtml](http://legal.un.org/ilc/guide/7_4.shtml)

"Convention on the Prevention and Punishment of the Crime of Genocide."  
*Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.*

"Official Document of the United Nations." *A/CN.4/377 and Corr.1*. United Nations, Page 95, Paragraph 46. Web. 06 June 2017. *A/CN.4/377 and Corr.1*, para.46, p.95.  
[http://legal.un.org/docs/?path=../ilc/documentation/english/a\\_cn4\\_377.pdf&lang=EFS](http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_377.pdf&lang=EFS)

"Report on the Conference of the Committee on Disarmament." *ASEE Prism* 26.6 (2017): 43-54. Page 91. *General Assembly*. [https://disarmament-library.un.org/UNODA/Library.nsf/7ea0a65906287d128525757d004f04aa/b47d23bf00885b1c8525780f006d66f9/\\$FILE/A-31-27-Vol-I.pdf](https://disarmament-library.un.org/UNODA/Library.nsf/7ea0a65906287d128525757d004f04aa/b47d23bf00885b1c8525780f006d66f9/$FILE/A-31-27-Vol-I.pdf)

"Resolution 827." *Security Council. United Nations*.  
[http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_827\\_1993\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_827_1993_en.pdf)

"Resolutions and Decisions Adopted by the General Assembly during Its 2nd Session." *UN Documentation Research Guide*.  
General Assembly resolution 177 (II) of 21 November 1947.  
<http://research.un.org/en/docs/ga/quick/regular/2>

"Sub-Commission on the Promotion and Protection of Human Rights." *United Nations Human Rights*.  
<http://www.ohchr.org/EN/HRBodies/SC/Pages/SubCommission.aspx>

"U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its 46th Session, U.N. Doc. E/CN.4/Sub.2/1994/56 (1994)." *Human Rights Library*. <http://hrlibrary.umn.edu/demo/1994min.html>

Whitaker, B. "United Nations Economic and Social Council Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities Thirty-eighth Session, Item 4 of the Provisional Agenda, E/CN.4/Sub.2/1985/6 — 2 July 1985." *Whitaker Report*.  
<http://www.preventgenocide.org/prevent/UNdocs/whitaker/>

"Yearbook of the International Law Commission." *A/CN.4/SER.A/1997/Add.I (Part 2)*. *Report of the Commission to the General Assembly on the Work of Its Forty-ninth Session*. 1996.  
[http://legal.un.org/ilc/publications/yearbooks/english/ilc\\_1997\\_v2\\_p2.pdf](http://legal.un.org/ilc/publications/yearbooks/english/ilc_1997_v2_p2.pdf)

### **National statutes**

AKAEV, A. "THE KYRGYZ REPUBLIC CRIMINAL CODE."

Kuchma, L. "CRIMINAL CODE OF UKRAINE."  
<http://www.legislationline.org/documents/action/popup/id/16257/preview>

NAZARBAEV, N. "The Criminal Code of Kazakhstan."  
<http://www.parliament.am/library/Qreakan/kazakstan.pdf>

*Penal Code of the Republic of Tajikistan of 21 May 1998.*  
[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=68663](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=68663)

"Russian Federation." *Criminal Codes - Legislationline.*  
<http://legislationline.org/documents/section/criminal-codes/country/7>

Shevardnadze, Eduard. *LAW OF GEORGIA ON AMENDMENTS TO THE "CRIMINAL CODE OF GEORGIA"*.  
[https://iccdb.hrlc.net/documents/implementations/pdf/Law\\_on\\_Amendments\\_to\\_the\\_Criminal\\_Code.pdf](https://iccdb.hrlc.net/documents/implementations/pdf/Law_on_Amendments_to_the_Criminal_Code.pdf)

"Vietnam Criminal Code." *Penal Code No. 15/1999/QH10.*  
[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=385615](http://www.wipo.int/wipolex/en/text.jsp?file_id=385615)

### **Court decisions**

*Budayeva and Others v Russia* [2008] European Court of Human Rights, COU-154684 (European Court of Human Rights).

"Case Information Sheet." *The Prosecutor v. Omar Hassan Ahmad Al Bashir, Suspected of Five Counts of Crimes against Humanity, Two Counts of War, and Three Counts of Genocide Allegedly Committed in Darfur, Sudan.* Web. 6 June 2017.  
<https://www.icc-cpi.int/darfur/albashir/Documents/AlBashirEng.pdf>

*Oneryildiz v Turkey* [2004] European Court of Human Rights, [2004] ECHR 657 (European Court of Human Rights). Web. 7 June 2017.

"THE PROSECUTOR v. ALFRED MUSEMA." *Case No. ICTR-96-13-A.*  
<http://hrlibrary.umn.edu/instreet/ICTR/MUSEMA ICTR-96-13/MUSEMA ICTR-96-13-A.html>

"The Prosecutor v. Alfred Musema." *ICD - Musema - Asser Institute.*  
<http://www.internationalcrimesdatabase.org/Case/121/Musema/>

"The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze." *Refworld.* ICTR-99-52-A (28 November 2007) Paragraphs 606-09.  
<http://www.refworld.org/cases,ICTR,404468bc2.html>

"The Prosecutor v. Jean - Pierre Bemba Gombo." *Found Guilty, on 21 March 2016, of Two Counts of Crimes against Humanity (murder and Rape) and Three Counts of War Crimes (murder, Rape, and Pillaging). Sentenced, on 21 June 2016, to 18 Years of Imprisonment. In ICC Custody.* <https://www.icc-cpi.int/car/bemba/Documents/BembaEng.pdf>

"The Prosecutor v. Nahimana Et Al." *Open Society Foundations*. 28 Nov. 2007.  
<https://www.opensocietyfoundations.org/litigation/prosecutor-v-nahimana-et-al>

"Trail Smelter Case (United States, Canada)." *REPORTS OF INTERNATIONAL ARBITRAL AWARDS*. Pages 1905-1982, 1965.  
[https://www.ilsa.org/jessup/jessup17/Batch%202/Trail%20smelter%20case%20\(United%20States,%20Canada\).pdf](https://www.ilsa.org/jessup/jessup17/Batch%202/Trail%20smelter%20case%20(United%20States,%20Canada).pdf)

"Trying Individuals for Genocide, War Crimes and Crimes against Humanity." *The Prosecutor v. Omar Hassan Ahmad Al Bashir*. <https://www.icc-cpi.int/darfur/albashir/pages/alleged-crimes.aspx>

*UNION CARBIDE CORPORATION V RESPONDENT: UNION OF INDIA AND OTHERS, ETC* [1989] SUPREME COURT OF INDIA, JT 1989 (1) 296 (SUPREME COURT OF INDIA). <http://www.cseindia.org/userfiles/scbhopal.pdf>

### **Journal articles**

Bonafé, Beatrice I. "Finding a Proper Role for Command Responsibility." *Journal of International Criminal Justice*, Volume 5, Issue 3.  
<https://academic.oup.com/jicj/article-abstract/5/3/599/790801?redirectedFrom=fulltext>

Falk, Richard A. "Environmental Warfare and Ecocide Facts, Appraisal and Proposals." Volume: 4 issue: 1, page(s): 80-96.  
<http://journals.sagepub.com/doi/abs/10.1177/096701067300400105?journalCode=sdia>

Freeland, Steven. *Crimes against the Environment- A Role for the International Criminal Court?* Vol. 4 (2004), pp. 201-237.  
<https://www.peacepalacelibrary.nl/ebooks/files/352205628.pdf>

Grey, Mark Allan. "The International Crime of Ecocide." *California Western International Law Journal*, Volume 26, page 215.  
<http://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1335&context=cwilj>

Lawrence, Jessica C., and Kevin Jon Heller. "'The First Ecocentric Environmental War Crime: The Limits of Article 8(2)(b)(iv) of the Rome Statute'." *Georgetown International Environmental Law Review*, Page 72. Volume 20, No.1, 2007.

Lay, Bronwyn, Laurent Neyret, Damien Short, Michael Baumgartner, and Antonio A. Oposa. "TIMELY AND NECESSARY: ECOCIDE LAW AS URGENT AND EMERGING." *THE JOURNAL JURISPRUDENCE*.  
<http://www.jurisprudence.com.au/juris28/lay.pdf>

Lipsky, Phillip Y., Kenji E. Kushida, and Trevor Incerti. "The Fukushima Disaster and Japan's Nuclear Plant Vulnerability in Comparative Perspective." *Environmental Science & Technology* (2013): 130529150607006.  
<http://web.stanford.edu/~plipsky/LipskyKushidaIncertiEST2013.pdf>

Mishkat Al Moumin, 'Mesopotamian Marshlands: An Ecocide Case' 2008) 20 *The Georgetown International Environmental Law Review*, page 499. Print.

Prunella, Catherine. "An International Environmental Law Case Study: The Trail Smelter Arbitration". Dec. 2014. <https://intlpollution.commons.gc.cuny.edu/an-international-environmental-law-case-study-the-trail-smelter-arbitration/>

Ronen, Yaël. "Superior Responsibility of Civilians for International Crimes Committed in Civilian Settings." *CIVILIAN SUPERIOR RESPONSIBILITY*. *Vanderbilt Journal of Transnational Law*, volume 43, page 313.  
<https://www.vanderbilt.edu/wp-content/uploads/sites/78/Ronen-cr1.pdf>

Sharp, Peter. "Prospects for Environmental Liability in the International Criminal Court." *Environmental Law Journal*.

Teclaff, Ludwik A. "Beyond Restoration- The Case of Ecocide." *Natural Resources Journal*.  
<http://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1847&context=nrj>

## **Books**

Bassiouni, M. Cherif. *The Legislative History of the International Criminal Court*. Ardsley (N.Y.): Transnational, 2005. Page, 79. Print.

Berat Lynn, 'Defending the Right to a Healthy Environment: Toward a Crime of Geocide in International Law', page 327- 340. Boston University International. Print.

Cassese, Antonio. "The Hierarchy of Rules in International Law: The Role of Jus Cogens ." Oxford University Press, 20 July 2016. Web. 07 June 2017.  
<http://www.oxfordlawtrove.com/view/10.1093/he/9780199259397.001.0001/he-9780199259397-chapter-11>

Cassese, Antonio. "The Repression of International Crimes." *International Law*. Oxford: Oxford UP, 2005. Page 435. Print.

Cryer, Robert, Hakan Friman, Darryl Robinson, and Elizabeth Wilmshurst. *An Introduction to International Criminal Law and Procedure*. Cambridge: Cambridge UP, 2013.  
[http://assets.cambridge.org/97805211/35818/frontmatter/9780521135818\\_frontmatter.pdf](http://assets.cambridge.org/97805211/35818/frontmatter/9780521135818_frontmatter.pdf)



Dupuy, Pierre-Marie, and Jorge E. Viñuales. *International Environmental Law*. Cambridge: Cambridge UP, 2016. Page 56-57.  
[http://assets.cambridge.org/97811070/41240/frontmatter/9781107041240\\_frontmatter.pdf](http://assets.cambridge.org/97811070/41240/frontmatter/9781107041240_frontmatter.pdf)

Fenrick, William J. "Commentary on the Rome Statute of the International Criminal Court." *Google Books*. Page 521, superiors who fall under Article 28(b) 'can include political leaders, business leaders, and senior civil servants'.  
[https://books.google.nl/books?id=iIbAkLRWPUgC&pg=PA465&lpg=PA465&dq=William+J.+Fenrick,+%E2%80%98Article+28%E2%80%99+in+Otto+Triffterer+\(ed\),Commentary+on+the+Rome+Statute+of+the+International+Criminal+Court&source=bl&ots=JjcBwJnHea&sig=APKhCtdlJE76j-IWk5axIhe9Hqo&hl=en&sa=X&ved=0ahUKEwj8yam3hKzUAhUKLIAKHemmADYQ6AEIKzAB#v=onepage&q=William%20J.%20Fenrick%2C%20%E2%80%98Article%2028%E2%80%99%20in%20Otto%20Triffterer%20\(ed\)%2CCommentary%20on%20the%20Rome%20Statute%20of%20the%20International%20Criminal%20Court&f=false](https://books.google.nl/books?id=iIbAkLRWPUgC&pg=PA465&lpg=PA465&dq=William+J.+Fenrick,+%E2%80%98Article+28%E2%80%99+in+Otto+Triffterer+(ed),Commentary+on+the+Rome+Statute+of+the+International+Criminal+Court&source=bl&ots=JjcBwJnHea&sig=APKhCtdlJE76j-IWk5axIhe9Hqo&hl=en&sa=X&ved=0ahUKEwj8yam3hKzUAhUKLIAKHemmADYQ6AEIKzAB#v=onepage&q=William%20J.%20Fenrick%2C%20%E2%80%98Article%2028%E2%80%99%20in%20Otto%20Triffterer%20(ed)%2CCommentary%20on%20the%20Rome%20Statute%20of%20the%20International%20Criminal%20Court&f=false)

Fischer, Frank, Fridolin Wild, Rosamund Sutherland, and Lena Zirn. *Grand Challenges in Technology Enhanced Learning Outcomes of the 3rd Alpine Rendez-Vous*. Cham: Springer International, 2014. Page 358-259. Print.

Galston, Arthur W., and Shirley Cohen. *Interview with Arthur W. Galston*. Pasadena, CA: Caltech Archives, 2004.  
[http://oralhistories.library.caltech.edu/150/1/Galston\\_OHO.pdf](http://oralhistories.library.caltech.edu/150/1/Galston_OHO.pdf)

Higgins, Polly. "Ecocide Act." *Eradicating Ecocide*. Print.

Higgins, Polly. "Ecocide Act" 'Earth is our business, changing the rules of the game', Print.

Knoll, Erwin, and Judith Nies McFadden. "War Crimes and the American Conscience." 01 Apr. 2017. Page 71-72.

Lemkin, Raphael. *Axis Rule in Occuopied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. Page 79. Print.

MASON, MARTIN R. *DOOMSDAY SCENARIOS*. S.l.: LULU COM, 2015. Print.  
[https://books.google.nl/books?id=D20-CQAAQBAJ&pg=PA28&lpg=PA28&dq=ecocide+wont+work+rome+statute&source=bl&ots=RPJS1ymFY\\_&sig=24flXLeuTYZ9n9PitQhyuWhrk0E&hl=en&sa=X&ved=0ahUKEwj1p-L9wqTUAhVJbVAKHeVIAHMq6AEIRjAF#v=onepage&q=ecocide%20wont%20work%20rome%20statute&f=false](https://books.google.nl/books?id=D20-CQAAQBAJ&pg=PA28&lpg=PA28&dq=ecocide+wont+work+rome+statute&source=bl&ots=RPJS1ymFY_&sig=24flXLeuTYZ9n9PitQhyuWhrk0E&hl=en&sa=X&ved=0ahUKEwj1p-L9wqTUAhVJbVAKHeVIAHMq6AEIRjAF#v=onepage&q=ecocide%20wont%20work%20rome%20statute&f=false)

Nybondas, Maria L. *Command Responsibility and Its Applicability to Civilian Superiors*. Page 114. Print.

Satzger, Helmut. *International and European Criminal Law*. Hart, 2011. Page 183. Print.

Smith, Tara. "Creating a Framework for the Prosecution of Environmental Crimes in International Criminal Law." Mar. 2016.  
<https://www.routledgehandbooks.com/doi/10.4324/9781315613062.ch2>

Triffterer, Otto, and Kai Ambos. *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*. C.H. Beck, 2016. Print.

Werle, Gerhard, and Florian Jessberger. *Principles of International Criminal Law*. Oxford: Oxford UP, 2014. Page 222. Print. [https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

Zierler, David. *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment*. Athens: U of Georgia, 2011. Pages 2-4 and 14-5. Print.

### **Internet resources**

"African Union Backs Mass Withdrawal from ICC." *BBC News*. BBC, 01 Feb. 2017.  
<http://www.bbc.com/news/world-africa-38826073>

"Amendment for the Rome Statute." *Closing the Door to Dangerous Industrial Activity. Annex*. <http://eradicatingecocide.com/wp-content/uploads/2012/06/Concept-Paper.pdf>

Corr, Anders. "Expect Climate Catastrophe: Paris Agreement Lacks Enforcement." *Forbes*, *Forbes Magazine*, 1 Dec. 2016.  
<https://www.forbes.com/sites/anderscorr/2016/12/01/expect-climate-catastrophe-paris-agreement-lacks-enforcement/#12583d303313>

"Criminal Procedure Code of the Republic of Belarus (RU)." *United Nations Office on Drugs and Crime*.  
[https://www.unodc.org/cld/document/blr/1999/criminal\\_procedure\\_code\\_of\\_the\\_republic\\_of\\_belarus\\_ru.html](https://www.unodc.org/cld/document/blr/1999/criminal_procedure_code_of_the_republic_of_belarus_ru.html)

"Culpability of Individuals under International Law." *Human Rights Watch*.  
<https://www.hrw.org/legacy/features/darfur/fiveyearson/report9.html>

Dennis Brady, Mooney Chris, 'India just ratified the Paris climate deal- brining it extremely close to taking effect', *The Washington Post*, 2016.

[https://www.washingtonpost.com/news/energy-environment/wp/2016/10/02/india-ratifies-global-climate-agreement-on-gandhis-birthday/?utm\\_term=.3518504d149a](https://www.washingtonpost.com/news/energy-environment/wp/2016/10/02/india-ratifies-global-climate-agreement-on-gandhis-birthday/?utm_term=.3518504d149a)

Definition on strict liability in criminal law, E-law-resources.

<http://e-lawresources.co.uk/Strict-liability.php>

Docker, John. "Raphael Lemkin's History of Genocide and Colonialism." *Lemkin's Definitions*. <https://www.ushmm.org/confront-genocide/speakers-and-events/all-speakers-and-events/raphael-lemkins-history-of-genocide-and-colonialism>

Donatus Peter, 'Ecocide in the Niger delta', Western resource politics are a reason for flight and migration in Nigeria, 2016.

<https://www.pambazuka.org/global-south/ecocide-niger-delta>

"Ecocide: The Fifth Crime against Peace." *JUNO Magazine*.

<http://www.junomagazine.com/ecocide-polly-higgins-32/>

"Emergency Relief." *World Food Programme*. <http://www1.wfp.org/emergency-relief>

"End Ecocide on Earth." Polly Higgins. <https://www.endecocide.org/>

"Eradicating Ecocide." How Will Ecocide Law Affect Businesses That Already Have Effective Monitoring Systems in Place? <http://eradicatingecocide.com/the-law/faqs/#faq-13>

"Erga Omnes Obligations." *Oxford Reference*. 17 Mar. 2017.

<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803095756413>

"Fukushima Nuclear Disaster Will Impact Forests, Rivers and Estuaries for Hundreds of Years, Warns Greenpeace Report." *Greenpeace International*. <http://www.greenpeace.org/international/en/press/releases/2016/Fukushima-nuclear-disaster-will-impact-forests-rivers-and-estuaries-for-hundreds-of-years-warns-Greenpeace-report/>

Higgins, Polly. "Earth Is Our Business." *The Guardian*. Guardian News and Media, 04 June 2012. <https://www.theguardian.com/law/2012/jun/04/ecocide-earth-business-extract>

"International Crime." ECOCIDE LAW HISTORICAL BACKGROUND International Crime. <http://eradicatingecocide.com/wp-content/uploads/2015/11/EL-Historical-Background-27.09.15.pdf>

"International Fellowship of Reconciliation." <http://www.ifor.org/#mission>

"International Law." *The Free Dictionary*. Farlex. <http://legal-dictionary.thefreedictionary.com/international+law>

"Iraq's Ecological Disaster." *International Review*. 12 Feb. 2003. <http://www.int-review.org/terr36a.html>

John Taggart, 'Ecocide: A Worthy "Fifth Crime Against Peace"?' (*The Journal*, 2014) <http://www.journalonline.co.uk/Magazine/59-3/1013715.aspx>

"Jus Cogens." *The Free Dictionary*. Farlex. <http://legal-dictionary.thefreedictionary.com/Jus+Cogens>

Kuwonu Franck, 'ICC: beyond the threats of withdrawal', Africa at the United Nations General Assembly, 2017. <https://www.un.org/africarenewal/magazine/may-july-2017/icc-beyond-threats-withdrawal>

Lawrence, D. Grant. "Environmental Liability Directive (ELD), Environmental Damage Directive (EDD)." *International Documents on Environmental Liability* (2008): 3-21. Page 1. <http://ec.europa.eu/environment/legal/liability/pdf/Summary%20ELD.pdf>

Memeti, Ardit. "The Concept of Erga Omnes Obligations in International Law." *New Balkan Politics*. <http://www.newbalkanpolitics.org.mk/item/the-concept-of-erga-omnes-obligations-in-international-law#.WTAJOMmklyk>

'Mens Rea Negligence' (*e-law resources*, 2016). <http://e-lawresources.co.uk/Negligence-in-criminal-liability.php>

"'No-harm Rule' and Climate Change." *Lawyers Responding to Climate Change*. <http://legalresponseinitiative.org/legaladvice/no-harm-rule-and-climate-change/>

North, Andrew. "Saddam Drains Life from Arab Marshes: Scientists Fear Iraq's Historic Wetlands Face Destruction in 10 to 20 Years, Says Andrew North." *Independent*. <http://www.independent.co.uk/news/world/saddam-drains-life-from-arab-marshes-scientists-fear-iraqs-historic-wetlands-face-destruction-in-10-1436553.html>

*On Scene Coordinator Report: Deepwater Horizon Oil Spill*. Washington, D.C.: U.S. Dept. of Homeland Security, U.S. Coast Guard, 2011. <https://www.loc.gov/item/2012427375>

"Pixar Story Part Three – The Business Advantages to the Law of Ecocide." 22 Oct. 2013. <http://6-heads.com/2013/10/22/pixar-story-part-three-the-business-advantages-to-the-law-of-ecocide/>

Relations, University. *The Bhopal Disaster : Student Website for PubH 6101: Environmental Health : University of Minneosta*. <http://enhs.umn.edu/current/2008studentwebsites/pubh6101/bhopal/environment.html>

Sherman, Richard. "The International Institute for Sustainable Development." *CLIMATE-L NEWS*. [http://enb.iisd.org/email/climate-l/Climate-L\\_News\\_4.html](http://enb.iisd.org/email/climate-l/Climate-L_News_4.html)

Should Ecocide Be Deemed A Crime Against Peace?' <http://ourworld.unu.edu/en/should-ecocide-be-deemed-a-crime-against-peace>

Sim D, 'Chernobyl Disaster: Inside The Exclusion Zone And Abandoned Ghost Town Of Pripyat [Photos]' (*International Business Times*, 2015). <http://www.ibtimes.co.uk/chernobyl-disaster-inside-exclusion-zone-abandoned-ghost-town-pripyat-photos-1523628>

TEDxTalks. "Ecocide, the 5th Crime Against Peace: Polly Higgins at TEDxExeter." *YouTube*. YouTube, 01 May 2012. <https://www.youtube.com/watch?v=8EuxYzQ65H4>

"The Ecocide Project." Human Rights Consortium. University of London. <https://hrc.sas.ac.uk/research-themes/environmental-justice/ecocide-project>

Thomson Reuters, 'Who are the world's biggest polluters?', 2017. <https://www.reuters.com/news/picture/who-are-the-worlds-biggest-polluters-idUSRTXRKSI>

"Visie & Missie." Stop Ecocide. <https://stopecocide.nl/en/vision-mission/>

Wijdekop, Femke. "Against Ecocide: Legal Protection for Earth." *Great Transition Initiative: Towards a Transformative Vision and Praxis*. Aug. 2016. <http://www.tellus.org/pub/Against-Ecocide.pdf>

Wijdekop, Femke. "The Duty to Care for Our Common Home." *Ecocide, a Crime under International Law*. Feature Ecocide. [http://eradicatingecocide.com/wp-content/uploads/2012/06/NewInt\\_Femke\\_May16.pdf](http://eradicatingecocide.com/wp-content/uploads/2012/06/NewInt_Femke_May16.pdf)

Wyatt, Julian. "Law-making at the Intersection of International Environmental, Humanitarian, and Criminal Law: The Issue of Damage to the Environment in International Armed Conflict." *30-09-2010 Article, International Review of the Red Cross*, No. 879. Page 593, 640. <https://www.icrc.org/eng/resources/documents/article/review-2010/irrc-879-wyatt.htm>

## **Research reports and discussion papers**

"Chernobyl: Assessment of Radiological and Health Impacts." *Radiation Protection*. <https://www.oecd-nea.org/rp/reports/2003/nea3508-chernobyl.pdf>

"EC Directive on Environmental Liability." *Journal of Environmental Law* 16.3 (2004): 419-38.  
[http://efface.eu/sites/default/files/EFFACE\\_Directive%202004\\_35\\_EC%20on%20Environmental%20liability.pdf](http://efface.eu/sites/default/files/EFFACE_Directive%202004_35_EC%20on%20Environmental%20liability.pdf)

Hall, Christopher Keith. "International Review of the Red Cross." *The First Proposal for a Permanent International Criminal Court*: 57.  
<https://www.icrc.org/eng/resources/documents/article/other/57jp4m.htm>

Hörnfeldt, Isabelle. "A Law on Ecocide: A Way to End Mass Destruction of the World's Ecosystems?" *History of the Concept. Law Faculty University of Lund*.

International Criminal Court, Office of the Prosecutor, 'Policy paper on case selection and prioritisation, 15 September 2016.  
[https://www.icc-cpi.int/itemsDocuments/20160915\\_OTP-Policy\\_Case-Selection\\_Eng.pdf](https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf)

Merz, Prisca, Valérie Cabanes, and Emilie Gaillard. *Ending Ecocide - the next Necessary Step in International Law*. 6 Apr. 2014.  
<https://www.endecocide.org/wp-content/uploads/2014/04/iadlcongress.pdf>

Mowry, Curtis, Adam Pimentel, Elizabeth Sparks, and Brittany Hanlon. "The Ecocide Project." *Ecocide Is the Missing 5th Crime Against Peace* (2013).  
[http://sas-space.sas.ac.uk/4830/1/Ecocide\\_research\\_report\\_19\\_July\\_13.pdf](http://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf)

Neyret Laurent, 'Protecting the environment through criminal law', United Nations, from ecocrimes to ecocide, 2017.  
<http://drustage.unep.org/environmentalgovernance/ecocrimes-ecocide>

Roosevelt, Franklin D., Winston Churchill, and Marshal Stalin. "Moscow Declaration on Atrocities." *United Nations Information Organisation*: Page 681-86. 27 Nov. 1978.

"Understanding the International Criminal Court." *Crimes within the Jurisdiction of the ICC*, 13..  
<https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>

United Nations, 'Report of the World Commission on Environment and Development', Our Common Future.  
[http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/Desarroll osostenible/Documents/Informe%20Brundtland%20\(En%20ingl%C3%A9s\).pdf](http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/Desarroll osostenible/Documents/Informe%20Brundtland%20(En%20ingl%C3%A9s).pdf)

"What Is the Polluter Pays Principle?" *What Is the Polluter Pays Principle? | Grantham Research Institute on Climate Change and the Environment*.  
<http://www.lse.ac.uk/GranthamInstitute/faqs/what-is-the-polluter-pays-principle/>

Wijdekop Femke, 'Against Ecocide: Legal Protection for Earth', 2016.  
<http://www.greattransition.org/publication/against-ecocide>