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# Ecocide: Does the Quest for Environmental Justice End at the International Criminal Court?

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There are many approaches that scholars argue for when it comes to protecting the environment. One of the most controversial in this space is the idea of developing the crime of ecocide into the core crimes of the 1998 Rome Statute, along with crimes against humanity, genocide, war crimes and the crime of aggression. This would make it so people who commit crime of ecocide can be prosecuted at the International Criminal Court ("ICC") in the Hague, Netherlands. There are many arguments on both sides of this issue, but ultimately, ecocide should not be added to the Rome Statute as a core crime, because there is no agreed upon definition for the crime, there is likely to be little consensus in the international community, and there are forums available that would be better suited apart from the ICC. People who commit ecocide should be held accountable on the international stage, whether that be through criminal or civil proceedings, however the ICC is not the proper forum for these proceedings. Some alternatives include forming a specialized international environmental court, bringing cases before the International Court of Justice ("ICJ"), working through human rights conventions, and domestic prosecution in the state where the crime takes place. Each of these alternatives has its own advantages and disadvantages, but each far outweighs the potential issues of amending the Rome Statute to add ecocide as a fifth core crime.

In this paper, I will discuss the arguments on both sides of developing ecocide as a crime under the Rome Statute and adding it to the core crimes that the ICC can prosecute. In Part 1, I will first begin by discussing the history of ecocide and how it came into prominence in the international law community. In Part II, I will discuss the Rome Statute and the process to amend it to potentially add ecocide as one of the core crimes. In Part III, I will discuss precedent in the international community for criminalizing ecocide, whether that be historically or modern domestic laws. In Part IV, I will discuss the weaknesses of the arguments to amend the Rome

Statute to include ecocide, some of which being the lack of intent consensus considered many countries and the issues with prosecuting the people accountable (i.e., often state governments or corporations). Part V will discuss some proposed alternative forums for the crime of ecocide and the strengths weaknesses of those arguments. This paper will center around the legal implications of amending the Rome Statute to include ecocide as a standalone core crime as well as why that is not the best course of action and some potential alternatives to prosecuting ecocide before the ICC.

The year 1998 was a very impactful year for the development of international criminal law.[1] In the wake of the Yugoslavian and Rwandan conflicts, the International Criminal Court was formed, and the Rome Statute was passed. During these conflicts in the Balkan States and Rwanda, the world saw firsthand many atrocities committed and the international community sought to stop these things from happening again by bringing about egal tribunals that would criminalize the things that were done in these areas.. Initially, these conflicts were handled through two ad-hoc criminal tribunals: the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR"). One issue that plagued both of these ad hoc tribunals, and still continues to this day before the ICC, is the requirement of consent and participation from states.[2] There are only three ways a case can be brought before the ICC. Historically, the most common has been referral by states. The other ways are a unilateral decision to investigate from the Office of the Prosecutor and referral from the United Nations Security Council. Both of these ways are controversial in the international community. First, the Office of the Prosecutor has limited resources to launch and conduct investigations, so this path to the ICC is not often used. Second, the UN Security Council is not

[1] Kenneth A. Rodman, How politics shapes the contributions of justice: Lessons from the ICTY and the ICTR, 110 AJIL Unbound 234–239, 236 (2016).
[2] *Id.*

likely to refer cases because of the veto power of the five permanent members.[3] These permanent members are politically polarized and consensus among them is not common. When looking at whether or not to criminalize ecocide at the level of the ICC, the international law community needs to consider these roadblocks to justice.

## I. What is Ecocide?

Ecocide is large scale environmental degradation by deliberate force. This comes in times of war and in times of peace, with varying motivations for the act. This section will discuss a brief history of ecocide, early examples of codification of ecocide, some discrepancies in the language used, and a brief introduction into the similarities between the crime of aggression and ecocide.

One of the most prominent examples in modern history and the reason this call for prosecuting ecocide came to prominence in the international community was the Vietnam War. The United States used tactics like area clearing to expose enemy encampments. With the prominence of guerilla warfare during this war, this was a very fruitful strategy. There was also the notorious use of a chemical defoliant called Agent Orange.[4] However, these approaches were met with public outcry and people began calling for the international criminalization of ecocide.[5] Another example of ecocide being used in warfare was in World War II. When the United States used the atomic bomb on Hiroshima and Nagasaki, they also launched an air bombardment on Pacific atolls in the sounding areas.[6] There was also the intentional use of gas against the people

[3] The five permanent members of the UN Security Council are China, France, Russian Federation, the United Kingdom, and the United States

[4] C. Waugh, "Only you can prevent a forest": Agent orange, Ecocide, and environmental justice, 17 Interdisciplinary Studies in Literature and Environment 113–132, 117 (2010).

[5] *Id*.

[6] Richard Lemmons, Ecocide and modern warfare - population growth Climate Policy Watcher (2023), https://www.climate-policy-watcher.org/population-growth/ecocide-and-modern-warfare.html (last visited May 12, 2023).

on these islands which had a significant impact on the environment.[7] This is just one of many examples of states launching military campaigns against the environment for some perceived military advantage.[8] It is very clear from human history that the laws of war are not followed by every state waging a war.[9] There is no exception when it comes to environmental warfare. However, the situation of potentially holding states accountable for these atrocities becomes more difficult when taking into account that there are no codified rules of war when it comes to the environment.

One of the earliest modern examples of an attempt to codify laws pertaining to ecocide was the Environmental Modification Convention. On December 10, 1976, the UN General Assembly passed what is known as the Environmental Modification Convention ("ENMOD"). This convention was entered into force on October 5, 1978. Article 1 of this convention prohibits any contracting party from engaging in "military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party."[10] Article 2 then goes on to define what "environmental modification" is. That article states

> the term 'environmental modification techniques' refers to any technique for changing – through the deliberate manipulation of natural processes – the dynamics, composition, or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.[11]

This convention uses the language "widespread", "long-lasting", and "severe," is echoed in the 1977 Protocol I to the Geneva Conventions[12] and in the 1980 Convention on Conventional

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[7] Richard A. Falk, Environmental warfare and ecocide — facts, appraisal, and proposals, 4 Bulletin of Peace Proposals 80–96, 83 (1973).
[8] *Id.*
[9] *Id.*
[10] The Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques of 18 May 1977: *1108 U.N.T.S. 151,* , Article 1.
[11] ENMOD, Article 2.
[12] Additional Protocol I to the Geneva Conventions. Article 35, para. 3 and Article 55, para. 1

Weapons.[13] [14] These two conventions specify the environment with the term "natural," however ENMOD does not.[15] This is important to the understanding because, under ENMOD, this provision could include manmade environments like cities, manmade lakes, etc… The drafters of ENMOD left open this understanding to be interpreted as the landscape of war and the environment changed in the future.[16] Article 8 of ENMOD created a structure for so-called "review conferences" to take place at intervals of not less than five years, the first of which took place in Geneva in September 1984.[17] [18] The purpose of these review conferences was written into this article which states,

> "The conference shall review the operation of the Convention with a view to ensuring that its purposes and provisions are being realized, and shall in particular examine the effectiveness of the provisions of paragraph 1 of article I in eliminating the dangers of military or any other hostile use of environmental modification techniques."

The mechanisms were put in place to consistently review the effectiveness of this convention and adapt it to the growing landscape of war. The drafters were aware that the rules of war would be ever evolving with new technology and weaponry, but also that this would change the way war affected the environment.[19]

Despite some differences in language between ENMOD and Protocol I to the Geneva Convention, Protocol I echoes the language that the damage needs to be "long-term," "severe," and "widespread." Protocol I went on to define what is meant by "long-term." It specifically

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[13] Convention on Conventional Weapons Preambular para. 4
[14] Convention on the prohibition of military or any hostile use of environmental modification techniques, 10 December 1976., International Committee of the Red Cross, https://ihl-databases.icrc.org/en/ihl-treaties/enmod-1976?activeTab=undefined (last visited May 12, 2023).
[15] *Id.*
[16] *Id.*
[17] ENMOD, Article 8.
[18] Convention on the prohibition of military or any hostile use of environmental modification techniques, 10 December 1976., International Committee of the Red Cross, https://ihl-databases.icrc.org/en/ihl-treaties/enmod-1976?activeTab=undefined (last visited May 12, 2023).
[19] IHL, https://ihl-databases.icrc.org/en/ihl-treaties/enmod-1976 (last visited May 12, 2023).

refers to damage that has effects lasting for decades or longer, i.e., something that is not easily remediated following the damage.[20] The drafters were silent on what was meant by "widespread" and "severe" in the convention. However, The United States Army Judge Advocate General School's *Operational Law Handbook* interprets "widespread" to mean "several hundred kilometers" and "severe" to mean "any act that prejudices the health or survival of the population,"[21] Scholars generally use these definitions when referring to these terms.[22] In contrast, ENMOD defines "long-lasting"[23] and "severe" differently but uses a very similar definition for "widespread". ENMOD states that "long-lasting" is damage "lasting for a period of months, or approximately a season."[24] This is a much lower standard than that imposed by Protocol I, which requires the impact from the damage to be present for decades following. ENMOD defines "severe" as "involving serious or significant disruption or harm to human life, natural and economic resources or other assets."[25] This also imposes a much lower standard than Protocol I, which requires the damage to prejudice the health or survival of the population in the area. Again, this is a much higher standard, because it requires the entire population in an area to be affected and it is very person centered. The ENMOD definition is clear that damage to human life and natural or economic resources also qualifies as "severe," which is much broader in terms of what damage would qualify as ecocide under this convention.[26]

As is evidenced by the varying definitions in the environmental protection provisions in ENMOD and Protocol I, one of the most prominent issues with prosecuting the proposed crime

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[20] The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric Environmental War Crime, page 7.
[21] INT'L & OPERATIONAL LAW DEP'T, U.S. ARMY, OPERATIONAL LAW HANDBOOK 238 (2006).
[22] Kevin Jon Heller & Jessica C. Lawrence, The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric Environmental War Crime, 20 Georgetown International Environmental Law Review 1–40, 7 (2007).
[23] This paper operates with the assumption that "long-term" and "long-lasting" are synonymous terms.
[24] Understanding Relating to Article I, Report of the Conference of the Committee on Disarmament, U.N. GAOR, 31st Sess., Supp. No. 27, at 91-92, U.N. Doc. A/31/27 (1976).
[25] Understanding Relating to Article I, Report of the Conference of the Committee on Disarmament, U.N. GAOR, 31st Sess., Supp. No. 27, at 91-92, U.N. Doc. A/31/27 (1976).
[26] The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric Environmental War Crime, page 7.

of ecocide, is that there is no formalized, agreed upon definition to work with.[27] In terms of the International Criminal Court, there needs to be such a definition in order for the charge to go into force. For example, in the decades leading up to the adoption of the Rome Statute and the formation of the ICC, there was no official definition of the crime of aggression. In 1998, the drafters passed the statute without having this definition, expressing that it would be further explored at a later point. This definition was not agreed upon until 2010, with the crime of aggression going into force on the 20th anniversary of the passing of the Rome Statute, July 17, 2018.[28] The topic of the procedural similarities between the crime of aggression and ecocide will be discussed in further in a later section. Without this formalized definition, it could be impossible for such a crime to go into force for the ICC. This is exactly what the international community sees before it with the crime of ecocide.

## II. What is the Process to Amend the Rome Statute?

Before delving into the substantive issue of ecocide and its legal implications, it is important to first understand how to amend the Rome Statute. The process of adding ecocide as the fifth crime under the Rome Statute is simple, but yet not easy. First a state who is a party to the Rome Statute would need to propose the amendment, and then it would need a two-thirds majority vote, amounting to more than 82 states voting in favor.[29] Unlike in a body like the UN Security Council, no member state to the Rome statute has veto power. This means that smaller countries have the same voting power as larger or more influential countries. For example, in December 2018, Vanuatu expressed its support for a proposal of this nature and its intent to

[27] Anastacia Greene, *The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?*, 30 FORDHAM ENVTL. L. REV. (2019).
[28] Greene, at 43.
[29] Greene, at 42.

introduce the issue before the ICC.[30] In December of 2022, the president of Vanuatu again brought this issue to the international stage and urged other countries to join his country in calling for a fossil fuel nonproliferation treaty.[31] His call included making ecocide punishable by the ICC, stating,

> We call on states to join the group of nations proposing to include the crime of ecocide in the Rome statute. Acting with the knowledge of severe and widespread or long-term damage to the environment can no longer be tolerated.[32]

Vanuatu's call is backed by the fact that it is carbon-negative, but it is rated one of the most at risk countries for natural disasters ultimately caused by climate change, according to the UN.[33] The effects of ecocide in times of non-armed conflict are primarily seen in developing nations or small pacific island nations. This call for a convention has been supported by the Vatican and the World Health Organization and has so far been backed by more than 65 cities and governments internationally.[34]

## III. Is There a Precedent for Criminalizing Ecocide?

In 1991, the International Law Commission ("ILC") created the Draft Code of Crimes Against the Peace and Security of Mankind, a precursor to the Rome Statute. It contained twelve crimes, which included an environmental crime. Article 26 covered "Willful and Severe Damage to the Environment" and stated, "an individual who willfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction

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[30] Vanuatu Ambassador supports call for Climate Ecocide to be identified as an Atrocity Crime under International Law, Vanuatu Daily Post, December 11, 2018.
[31] Miranda Bryant, Vanuatu makes bold call for global treaty to phase out fossil fuels, The Guardian, September 24, 2022, https://www.theguardian.com/world/2022/sep/24/vanuatu-makes-bold-call-for-global-treaty-to-phase-out-fossil-fuels.
[32] *Id.*
[33] *Id.*
[34] *Id.*

thereof, be sentenced."[35] This Article 26 provision would have been a huge step forward for environmental regulation. However, it was left off by the Drafting Committee and they only moved forward with Articles 21 and 22[36], Crimes Against Humanity and War Crimes, respectively. It was said by the Rapporteur that this Article 26 was left out of the Final Draft because there was some push back from a few states' governments.[37] This was due to the fact that a large part of the proposed law targeting crimes against the environment prohibited atmospheric testing of nuclear devices.[38] Further, not only did the Drafting Committee decline to add Article 26 to the final draft, it also elected not to include "Willful and severe damage to the environment" as a crime against humanity under Article 7 of the finalized Rome Statute.[39] However, it did include some protections under to War Crimes provisions of Article 8.[40] This provision includes very basic environmental protections. The caveat to these protections is that the "widespread, long-term and severe damage to the natural environment" could be justified if there is a proportionate anticipated military advantage. This means that the proportionate advantage does not need to be actual, only anticipated.

Looking now to the text of the ICC's governing document, the Rome Statute contains only one provision that provides protection against damage to the environment. Article 8(b)(iv) states:

> 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

[35] Damien Short, Redefining genocide: Settler colonialism, Social Death and Ecocide, n33 at 45 (2016).
[36] These articles became articles 7 and 8, respectively in the final draft of the Rome Statute.
[37] Rep. of the Int'l Law Comm'n, 48th Sess., May 6–July 26, 1996, U.N. Doc. A/51/10; GAOR, 51st Sess., Supp. No. 10 (1996).
[38] Document on crimes against the environment, prepared by Mr. Christian Tomuschat, member of the Commission, ¶ 49, ILC(XLVIII)/DC/CRD.3.
[39] Summary Records of the Meetings of the 48th Sess., [1996] 1 Y.B. Int'l L. Comm'n 14, U.N. Doc. A/CN.4/SER.A/1996
[40] Summary Records of the Meetings of the 48th Sess., [1996] 1 Y.B. Int'l L. Comm'n 14, U.N. Doc. A/CN.4/SER.A/1996

> would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[41]

This provision leaves open the interpretation that significant environmental damage is warranted as long as it is not "clearly excessive in relation to the concrete and direct overall military advantage."[42] Scholars have argued that the language of this provision was made to be "ecocentric" rather than anthropocentric.[43] In their article, titled "The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric Environmental War Crime", professors and environmental scholars, Kevin Jon Heller and Jessica Lawrence, wrote about the disjunctive "or" used in the language of Article 8(b)(iv). This distinction in the language of the provision means that criminal liability is not conditioned on damage to human life or objects but can be imposed for damage to the environment as a standalone act of war.[44] As mentioned in above, ENMOD and Protocol I have differing definitions of the terms "long-lasting" and "severe." Heller and Lawrence look at the way the ICC would interpret these terms. They even go as far to categorize ENMOD's definitions as "superior to Protocol I's from an environmental perspective."[45] However, they make it clear that the ICC will "almost certainly" interpret Article 8(b)(iv)'s "long-term" and "severe" in accordance with Protocol I's definitions.[46] This is due to the fact that the article that defines War Crimes that would come before the ICC stems originally from the Geneva Conventions and the two Additional Protocols, making Protocol I a natural point of comparison for the court to make for these definitions.[47]

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[41] UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998,Article 8(b)(iv)
[42] *Id.*
[43] Heller at 2.
[44] *Id*. at 6.
[45] *Id*. at 7.
[46] *Id*.
[47] *Id*. at 8.

These conventions are based primarily on a proposed convention against ecocide. In 1973, Professor Richard A. Falk published a proposed International Convention on the Crime of Ecocide. This work contained within it a framework, definition, and full analysis for the proposed crime of ecocide. It included the following list of things that could constitute ecocide:

> "In the present Convention, ecocide means any of the following acts committed with intent to disrupt or destroy, in whole or in part, a human ecosystem:
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> 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.60 Although the article states that ecocide can occur in times of peace or war, the enumerated acts of ecocide almost all relate to war or military actions. Only one provision, the forcible removal of human beings or animals from their habitual places of habitation, relates to the pursuit of industrial objectives. In his article, Falk summarizes the current danger of ecocide as a counterinsurgency tactic, as a military seeks to eliminate the insurgents by destroying the population, economy, and environment in which the insurgents live."[48]

Included in this framework of what kinds of acts could be considered ecocide, there is also the added intent requirement.[49] This is another issue found in the proposed crime of ecocide. Many scholars argue that there should be a specific criminal intent required to prosecute this crime. This makes holding people accountable for these acts very difficult, because most people

[48] Richard A. Falk, Environmental Warfare and Ecocide: Facts, Appraisal and Proposals, 9 Belgian Rev. Int'l L. 1, 21 (1973).
[49] Symposium exploring the crime of Ecocide: Accountability for Environmental Destruction–Ecocide in national and international law (part II) The way forward, Opinio Juris (2020), http://opiniojuris.org/2020/09/25/symposium-exploring-the-crime-of-ecocide-accountability-for-environmental-destruction-ecocide-in-national-and-international-law-part-ii-the-way-forward/ (last visited May 12, 2023).

committing these atrocities are not driven by the desire to do the act itself, they are driven by profits or military advantage. Others argue that ecocide should have a strict liability form of intent.[50] Strict liability would allow the onus to be placed onto the individual to prevent the harm rather than on one who commits the act.[51] The proposed law is often defined as a strict liability offense. Under this framework, it is possible for corporations and their leaders to be held accountable for their actions. Directors cannot use lack of intent or knowledge as a defense to their alleged ecocide because there is no intent requirement under strict liability offenses.[52]

To address the issues of interpretation of a proposed ecocide law, mock trial for ecocide was conducted in September 2011, where a jury at the Supreme Court in London found two fictitious CEOs, Robert Bannerman and John Tench, guilty of the international crime against peace, ecocide, in a mock trial. While of course this is not binding on any state, it sets out how a court could conduct such a trial in the future. The case was based around the fictitious damage and destruction in Athabasca in the tar sands in Canada.[53] This trial was a model for states in showing what a trial for ecocide would look like and what kind of evidence would be used.[54] One scholar, Rebecca Harvey, uses the effectiveness of this trial and the sentence given as evidence that ecocide should be added via amendment to the Rome Statute. She says this would be a "small amendment" to the Rome Statute, only requiring one state to adopt the law and 80 states to sign it.[55] While her reasoning is sound, it is, in a way, fantastical to look at the situation this way. Amending the Rome Statute is not an easy process. In addition to the process of

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[50] *Id*.
[51] Polly Higgins, in Eradicating ecocide: Exposing the corporate and political practices destroying the planet and proposing the laws needed to eradicate ecocide 68 (2015).
[52] Greene at 27.
[53] Rebecca Harvey, 'ecocide' — will this be the fifth international crime against peace?, Socialist Lawyer (2012).?.
[54] *Id*.
[55] *Id.*

amendment, ecocide is a controversial topic in the international law community due to pressures from corporations and militaristic states.

There is no doubt that ecocide has been an issue since the adoption of the phrase following the Vietnam War. However, with these crimes being committed, there is the problem of who can be held accountable for these acts. Some of these acts are committed by corporations trying to turn a profit, while some are committed in times of war for military advantage.

The ICC does not have jurisdiction over corporations, only people. This is a massive roadblock for things like human rights violations committed by corporations. For example, big tech companies have been committing human rights violations in places like Democratic Republic of the Congo for decades and there is very little the international community can do in terms of justice for these acts.[56] This is a similar issue when approaching the crime of ecocide. Where there are numerous other issues to prosecuting ecocide or holding would-be perpetrators accountable, one is the jurisdictional aspect of the ICC and many other bodies of international law.

As an example of this, in 2016, there was a potential case of ecocide happening in Guatemala in which the responsible party was an international corporation.[57] With "foul" smelling water and a plethora of dead, poisoned fish, the term ecocide became too familiar for the village of Sayaxché.[58] A palm oil plant, REPSA (Reforestadora de Palma de Petén S. A.), about 75 miles upriver of the village, was releasing high levels of an agricultural insecticide, Malathion, into the river.[59] The effects of this act are felt not only by the environment, but by the local people and

[56] 18 AMNESTY INT'L, "THIS IS WHAT WE DIE FOR": HUMAN RIGHTS ABUSES IN THE DEMOCRATIC REPUBLIC OF THE CONGO POWER THE GLOBAL TRADE IN COBALT 38 (Jan. 19, 2016).
[57] Carlos Chavez, Guatemala's La Pasión River is still poisoned, nine months after an ecological disaster, Mongabay Environmental News (2016), https://news.mongabay.com/2016/02/guatemalas-la-pasion-river-is-still-poisoned-nine-months-after-an-ecological-disaster/ (last visited May 12, 2023).
[58] *Id.*
[59] *Id.*

their economy. One woman, who comes from a family of fisherman, has gone into significant debt to a local bank because of this disaster.[60] The effects of ecocide are far reaching, much beyond the impact to the environment. However, this act of ecocide committed by REPSA may have caused the extermination of nearly 23 species of fish, including an already endangered fish called the xixi.[61] This loss has been lamented by the local community, and they are looking for justice from local courts in Guatemala.[62] While this is an ongoing situation, the world will be watching firsthand how to potentially hold an international corporation accountable for ecocide.

## IV. Should Ecocide be Added to the Rome Statute as an International Crime?

### a. What is the alternative? Why not the ICC?

Ecocide should be considered an international crime because of its large-scale impact and potential to increase in severity over time. However, the ICC is not the correct forum for these claims, and a discussion of the various alternatives is imperative to the conversation around criminalizing ecocide. Scholars have hypothesized some alternatives to amending the Rome Statute and making ecocide a crime under that statute. Some of these alternatives include, but are not limited to forming a separate tribunal, the "International Environmental Court," taking up these claims in the civil venue of the International Court of Justice, bringing these claims in domestic courts, whether civilly or criminally, and using the avenue of the several human rights treaties to which a state may be a party. The next sections will discuss each of these alternatives.

#### i. Formation of an International Environmental Court

One of the most controversial alternatives – almost as controversial as the problem of criminalizing ecocide itself – is the formation of an international tribunal that would specifically and exclusively look at violations of international laws and norms surrounding the environment.

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[60] *Id.*
[61] *Id.*
[62] *Id.*

This International Environmental Court, or, as others call it, the Environmental Court of Justice, would supposedly bridge the gap between international law and the environment.

Proponents of this alternative look to the World Trade Organization ("WTO") as a model for how this body would be formed and function internationally.[63] The WTO does not have a compliance system, but rather an enforcement system.[64] Dispute resolution mechanisms used by the WTO only come into effect when there is a claim by a member state that their rights have been violated under the WTO, not when there is a mere allegation of a violation.[65] In other words, the WTO does not bring claims on behalf of member states in the same way some other international bodies may, like the ICC, for example, in the case of the Office of the Prosecutor launching an investigation. There has to be a claimed violation by a member state in order to enact a dispute resolution process. With this being said, there are many deficiencies in the way the dispute resolution process works under the WTO. For example, there is no mechanism that would transfer a case to the appropriate body if it is found that the WTO is not the proper venue for this claim.[66] Also, there is the lack of access to the process for private parties,[67] which would cause problems in the environmental field, as many of the disputes raised for protection of the environment are raised by private NGOs or even private citizens.[68]

Scholars who advocate for an International Environmental Court want this body to follow a similar path in their mechanisms and methodology. In order for this to be an option, an Ecocide

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[63] James Watson, WTO and the Environment: Development of Competence Beyond Trade (2014).
[64] Understanding on Rules and Procedures Governing the Settlement of Disputes: Annex 2 of the WTO Agreement, WORLD TRADE ORGANIZATION, http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#3
[65] *Id.*
[66] *Id*.
[67] There is the ability for private parties to write amici curae brief, however this is highly controverted. Michelle Ratton Sanchez Badin, Demandas por um novo arcabouço sociojurídico na Organização Mundial do Comércio e o caso do Brasil, 226 (Jan. 2004) (unpublished Ph.D. dissertation, Law School of the University of São Paulo) (Braz.), available at http://www.teses.usp.br/teses/disponiveis/2/2139/tde-02022012-095714/.
[68] Creation of an International Environmental Court, page 192 https://law.stanford.edu/wp-content/uploads/2015/12/179-218-Lehmen-2.pdf [FIX CITE]

Convention would need to be formed. An advantage to forming this Convention is that there is already a model convention drafted by Professor Falk in 1973. While this would need to be updated to consider technological advances in the field of environmental science and environmental protections, the existence of this document gives a good starting point for the drafters to use, rather than starting from scratch.

While scholars are hopeful while looking to this as a solution, it is highly unlikely to be fruitful based on the lack of consensus among states as to the definition of ecocide or its impact. While a convention could be drafted, it would likely not have many state parties and would have very low enforcement power. The best comparison to make is the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes ("Basel"). Basel is a multilateral environmental treaty that concerns when, where, and how hazardous waste can be transported outside the boundaries of the contracting parties.[69] There are almost 190 state parties to Basel. However, there is extensive debate as to whether it is considered customary international law, and some of the world's largest polluters are not parties.[70] Article 11 provides that parties to Basel can contract with either parties or non-parties, but the provisions of said agreements cannot derogate from the requirements of the convention and the parties cannot stipulate to provisions that less environmentally sound than those provided for in the convention.[71] This article provides a way to bind non-parties to Basel in their engagements with state parties. This would be very difficult to accomplish on a convention that criminalizes ecocide. As a main issue, like with the

[69] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 57. s

[70] The United States became a signatory to Basel in 1990, and the U.S. Senate provided its advice and consent for it to be ratified in 1992. As of the time this paper was written, it has not been ratified. Basel Convention on Hazardous Wastes - United States Department of State, U.S. Department of State (2021), https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/basel-convention-on-hazardous-wastes/#:~:text=The%20United%20States%20signed%20the,implement%20all%20of%20its%20provisions. (last visited May 12, 2023)..

[71] Basel, Article 11.

ICC, you cannot hold a state or an individual liable for crimes committed under laws to which they have not consented.[72]

ii. International Court of Justice

In addition to the criminal prosecutorial power of the ICC, there is the civil adjudication tribunal known as the International Court of Justice ("ICJ"). This is the civil arm of international law. The ICJ hears disputes between states, as well as has the limited ability to issue advisory opinions.

The ICJ is structured to only hear cases between state parties, not cases brought by individual parties. In order for an individual's rights to be brought before the ICJ, it has to be taken up by a state party. In addition to this roadblock for holding committers of ecocide responsible, both states that are party to the action need to consent to the jurisdiction of the court, which a state that is being sued for polluting is unlikely to do.[73] The only feasible way to guarantee jurisdiction in an instance of ecocide between states is a treaty or bilateral/multilateral agreement that contains a provision prohibiting ecocide and also includes a provision that attributes jurisdiction and adjudicatory power to the ICJ.

The main advantage of the ICJ is its power to issue advisory opinions. Scholars have proposed that the ICJ could issue an advisory opinion to the United Nations General Assembly recommending the best legal mechanisms to protect the rights of people who are substantially affected by climate change.[74] While these opinions from the ICJ are not binding on parties, they hold a lot of weight in terms international legal precedent, and this would help increase the weight of accusations of ecocide.[75] In addition, calling for an ICJ advisory opinion on the topic

[72] Rome Statute, Articles 11 & 12
[80] Greene at 45. ,
[74] Greene at 46.
[75] *Id.*

of ecocide would force the ICJ to formalize a definition for ecocide and enter it into international law, even if it is in a way that is not binding.

There are considerations of state responsibility when looking at ecocide from a civil standpoint. One of the main sources in international law for state responsibility is the ILC's Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA").[76] ARSIWA only defines state responsibility in terms of a breach of such a duty by another state. When looking at this document, there is a lack of the mention of the environment. However, there is much debate among scholars over whether the Article 40 prevention principle applies to the environment.[77] The issue with this idea is that states are not customarily held accountable for strict liability offenses before the ICJ.[78] Therefore, any draft law pertaining to ecocide that contains a strict liability provision will not be useful in the ICJ against states that commit the acts. That is a large gap left for the ICJ to consider, should they be found to be the appropriate forum for accountability for ecocide.

In theory, a state that has been harmed by ecocide committed by another state would have the ability to bring that case before the ICJ now, should they have a claim for damages and should the court agree to hear the case. This has happened already in recent history. In 2005, the small Pacific island nation of Tuvalu issued a threat to take legal action against the United States before the ICJ over the U.S.'s contributions to climate change.[79] The United States' refusal to ratify the Kyoto Protocol brought Tuvalu to the point of threatening legal action before the ICJ.[80] This lawsuit will likely not get very far at the ICJ, due to many procedural and substantive issues

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[76] Ginevra Le Moli, State Responsibility and the Global Environmental Crisis EJIL:Talk! (2021), https://www.ejiltalk.org/state-responsibility-and-the-global-environmental-crisis/ (last visited May 12, 2023).
[77] *Id.*
[78] *Id.*
[79] Rebecca Elizabeth Jacobs, Treading Deep Waters: Substantive Law Issues in Tuvalu's Threat to Sue the United States in the International Court of Justice 14 PAC. RIM L. & POL'Y J. 103, 103 (2005).
[80] Rebecca E. Jacobs,, *Treading Deep Waters: Substantive Law Issues in Tuvalu's Threat to Sue the United States in the International Court of Justice*, 14 PAC. RIM L & POL'Y J. 103 (2005).

with the case.[81] [82] In order for this case to be successful for Tuvalu, the small nation would need to show not only that the United States is unlawfully caused the damage to the islands, but also that Tuvalu has a right to future damages that have yet to occur.[83] Scholars argue that, regardless of whether the case is successful before the ICJ, this would offer a unique look into how international environmental law issues stemming from climate change that are likely in the next few years would function in an international tribunal.[84]

iii. Domestic courts

Another more viable option would be criminalizing ecocide at a domestic level. This would erase the issue of consent, because if a state passes a law like this, then there is no other state they would need to have sign this agreement in order for it to enter into force. In other words, it would be completely confined to the boundary of the state. This, while removing one issue, presents the problem of extraterritoriality of domestic law. Extraterritoriality is whether or not a law extends beyond the boundaries of the state that passes the law. Often there is an effects requirement where the effects of the violation of the law have to be felt in the state that passed the law. For example, there are some U.S. laws that apply extraterritorially. The Racketeer Influenced and Corrupt Organizations Act ("RICO") is one that judges have determined to apply extraterritorially. Judges and scholars have decided that RICO applies outside the boundaries of the U.S. because of Legislative intent when drafting the statute. RICO is a special case because it applies extraterritorially, but it is limited to only injuries suffered in the U.S.[85] This application

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[81] *Id.*
[82] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22.
[83] Rebecca E. Jacobs, *Treading Deep Waters: Substantive Law Issues in Tuvalu's Threat to Sue the United States in the International Court of Justice*, 14 PAC. RIM L & POL'Y J. 103, 119 (2005).
[84] *Id.*
[85] Jones Day, Supreme Court Limits Application of RICO Insights | Jones Day (2016), https://www.jonesday.com/en/insights/2016/06/supreme-court-limits-extraterritorial-application-of-rico#:~:text=The%20Court%20held%20that%20RICO's,suffered%20inside%20the%20United%20States. (last visited May 12, 2023)..

of the principle of extraterritoriality is rare in the U.S., as the court systems that deal with these questions operate under a "Presumption against Extraterritoriality." While it is possible for Congress to override this with a clear statement of intent, there are numerous policy and political reasons for not applying domestic laws in this way.[86] For these reasons, it is difficult to apply statutes extraterritorially, and the same issues would be present should a state like the U.S. try to pass a statute criminalizing ecocide.

Extraterritoriality becomes an issue when you consider which counties would be passing these types of laws. If a state where progressive environmental policy is the norm were to criminalize ecocide, the ecocide must have been committed in their boundaries or the effects of that ecocide must be felt in their boundaries.[87] This presents issues when things like mass deforestation in the Amazon Rainforest is determined to be an ecocide. If a state such as Norway, for example, passes a law criminalizing ecocide, and tries to prosecute an individual or an organization for deforestation in the Amazon, there are specific requirements for the actors to be held responsible for their crimes. It is unlikely that countries where these crimes are being committed are going to pass laws criminalizing ecocide, and it would be difficult to hold someone accountable under a different state's ecocide law without specific requirements, like the effect of the harm being felt there, the actor being a national of that country, etc….[88] For example, in the area around the Amazon Rainforest, there are numerous developing nations.[89] The development and subsequent ecocide in the Amazon bring in a lot of profits for the state,

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[86] Nathan Williams, The Sometimes "Craven Watchdog": The Disparate Criminal-Civil Application Of The Presumption Against Extraterritoriality, 63 Duke Law Journal 1381–1422, 1400 (2014).
[87] *See*, Ann Baker, Rights of nature and criminalizing ecocide Democrats Abroad (2022), https://www.democratsabroad.org/wc_rights_of_nature_and_criminalizing_ecocide#:~:text=A%20legal%20panel%20composed%20of,being%20caused%20by%20those%20acts%E2%80%9D. (last visited May 12, 2023).
[88] Williams at 1392.
[89] Richard Lemmons, Poverty and ecocide - population growth Climate Policy Watcher (2023), https://www.climate-policy-watcher.org/population-growth/poverty-and-ecocide.html (last visited May 12, 2023).

ultimately raising their GDP.[90] A law banning ecocide would halt this development and hinder any economic growth for these countries, so they are unlikely to do it. Further, the countries that are committing these potential crimes in these developing countries are also unlikely to pass these ecocide laws due to political pressure from interest groups from "big oil" and lobbying groups of that nature.[91]

As it stands now, the states that have passed ecocide and related laws are:

- Ecuador[92]
- Vietnam[93]
- Uzbekistan[94] [95]
- France[96]
- Russia[97]
- Kazakhstan[98]

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[90] *Id*.
[91] *Id*.
[92] In Ecuador's Penal Code, "crimes against the environment and nature or Pacha Mama and crimes against biodiversity" (Article 98). Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023). ]
[93] Under Vietnam's Penal Code of 1990, Article 278, "ecocide, destroying the natural environment", whether committed in time of peace or war, constitutes a crime against humanity. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).
[94] Article 196 states that "Pollution or damage of land, water, or atmospheric air, resulted in mass disease incidence of people, death of animals, birds, or fish, or other grave consequences – shall be punished with fine from one hundred to two hundred minimum monthly wages or deprivation of certain right up to five years, or correctional labor up to three years." Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).]
[95] Article 198 provides that "Damage or destruction of crops, forest, or other plants as the result of negligent dealing with fire, resulted in large damage or other grave consequences – shall be punished with fine up to fifty minimum monthly wages, or correctional labor up to one year, or arrest up to three months. Illegal felling of timber or other plants, resulted in large damage – shall be punished with fine from fifty to seventy-five minimum monthly wages, or correctional labor from one year to two years, or arrest from three to six months, or imprisonment up to three years. Intentional damage or destruction of crops, forest, or other plants, resulted in large damage – shall be punished with fine from seventy-five to one hundred minimum monthly wages, or correctional labor from two to three years, or imprisonment up to three years." Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).
[96] 'Climate & Resilience Act,' Article 231-3, passed in 2021 Firstly, providing for up to 10 years imprisonment for those committing offences which "cause serious and lasting damage to health, flora, fauna or the quality of the air, soil or water." Secondly, the government is obliged, under Article 296 of the new law, to report back to parliament within one year on "its action in favour of the recognition of ecocide as a crime which can be tried by international criminal courts." Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023). ]
[97] Article 358; 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. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

- Kyrgyz Republic[99]
- Tajikistan[100]
- Georgia[101]
- Belarus[102]
- Ukraine[103]
- Moldova[104]
- Armenia[105]

There is an immediately noticeable trend in these countries that have passed such legislation. The most significant trend among these states is that they have been previously or are currently war-torn areas. Many of these states are located in the middle east or are former Soviet states, meaning they have seen either civil war or a rebel insurrection against the Soviets in the latter half of the 20th century. While there have been no prosecutions under these laws, their

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[98] Article 161; Mass destruction of flora or fauna, poisoning the atmosphere, land or water resources, as well as the commission of other acts which caused or a [sic] capable of causation of an ecological catastrophe, – shall be punished by imprisonment for a period from ten to fifteen years. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

[99] Article 374; 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. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

[100] Article 400; 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. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

[101] Article 409; (1) Ecocide i.e. contamination of the atmosphere, soil, water resources, mass destruction of fauna or flora, or any other act that could have led to an ecological disaster, – shall be punished by imprisonment for a term of twelve to twenty years; (2) The same act committed during armed conflicts, – shall be punished by imprisonment for a term of fourteen to twenty years or with life imprisonment. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

[102] Article 131; Intentional mass destruction of flora or fauna, or poisoning of atmospheric air or water resources, or committing other deliberate actions capable of causing an ecological disaster (ecocide) -are punished with imprisonment for a term of ten to fifteen years. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023). ]

[103] Article 441; 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. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).]

[104] Article 136; 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. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

[105] Article 394; 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. Existing ecocide laws, Ecocide Law, https://ecocidelaw.com/existing-ecocide-laws/ (last visited Apr 18, 2023).

formation is significant because there is a push among scholars and lawmakers to make ecocide a crime of war, rather than a general crime against the future generations, as some refer to it.[106] This correlation should not be ignored because it could show that countries that are more exposed to the environmental ravages of war are more likely to criminalize ecocide on its face. For example, Vietnam was the one of the first states to pass such a domestic ecocide law. While ecocide has been a military tactic for centuries, the first identified and recorded acts were in the Vietnam War in the late-1960s/early-1970s.[107] Following this devastation, Vietnam saw the impact from things like herbicide and area clearing done by the United States for military advantage.

iv. Human Rights Tribunals – ECHR, ICESCR (Art. 12(2)(b))

While there are a plethora of alternatives scholars are considering, the last that this paper will address is holding people who commit ecocide accountable under the various human rights conventions. Mechanisms like the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR") may offer protections to people affected by ecocide or, more broadly, large scale environmental impacts, justice. Unfortunately, neither of these documents have specific protections for the environment. For example, the only time the ICESCR mentions the environment is in Article 12(2)(b), where it says, "(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: … (b) The improvement of all aspects of environmental and industrial hygiene…"[108] This provision means that the state parties shall take the necessary precautions to ensure protections

[106] Greene at 13.
[107] *Id.* at 8.
[108] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 12(2)(b)

for the items following in (a)-(d), which includes "environmental hygiene." The European Environment Agency defines "environmental hygiene" as

> Practical prevention and control measures used to improve the basic environmental conditions affecting human health, for example clean water supply, human and animal waste disposal, protection of food from contamination, and provision of healthy housing, all of which are concerned with the quality of the human environment.[109]

Ecocide would fall under a violation of this provision of the ICESCR if one looks at the definition provided by Professor Falk. Under that definition, things like destroying crops, animals, or humans with biological weaponry a fall under the umbrella of ecocide and violates the definition of environmental hygiene.[110]

While these human rights covenants are lacking when it comes to explicit protections for the environment, these covenants are largely people-focused, so there could be the ability to hold people accountable for what the effects of ecocide on the people of these areas, rather than what it does to the environment itself.

**b. Defining Ecocide vs. Crime of Aggression and Why the Definitions Matter**

The laws of war extend well into our past as a human race. *Jus ad bellum*, or the laws of war, have been well established since at least as early as the Peace of Westphalia, which ended the Thirty Years' War.[111] It was further developed in the centuries following and eventually formalized in the UN Charter following the devastation of World War II. Under Article 2(4) of the UN Charter, states must refrain from the threat or use of force against the territorial integrity or political independence of another state.[112] However there are some exceptions to this rule. For

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[109] Environmental hygiene, European Environment Agency (2017), https://www.eea.europa.eu/help/glossary/eea-glossary/environmental-hygiene (last visited Apr 18, 2023).
[110] Richard A. Falk, Environmental Warfare and Ecocide: Facts, Appraisal and Proposals, 9 Belgian Rev. Int'l L. 1, 21 (1973).
[111] Martin Rochester, Applying jus in bello rules to the New Warfare, The New Warfare 108–128 (2016)..
[112] U.N. Charter art. 2, para.4.

example, states have the right to self-defense under the UN Charter Article 51 or they can use force if the state receives prior authorization from the UN Security Council.[113]

While it seems as though there is a long-standing precedent in the international community against the use of force, the crime of aggression was very controversial when the Rome Statute was first drafted. Much of this controversy was due to the fact that there was no agreed upon definition of the crime of aggression at the passing of the Rome Statute in 1998.[114] The state parties to the Rome Statute agreed that the crime of aggression should be included in the final draft and agreed to conclude on the definition and formalize the elements of this crime at a later date.[115] This decision was not reached until 2010, and the vote to activate the fourth crime, the crime of aggression, was not done until December 15, 2017. The crime of aggression was not entered into force until the 20th anniversary of the passing of the Rome Statute itself, July 17, 2018.[116] This lack of consensus among the international community led to much of the controversy scholars see today.

Similar to the process of establishing the crime of aggression, ecocide has no concrete, agreed-upon definition in international law. However, in mid-2021, an independent group of lawyers came to the table to draft a new, more cohesive definition of ecocide. This group defined the crime as, "unlawful or wanton acts committed with knowledge that there is substantial likelihood or severe and either widespread or long-term damage to the environment bring [sic]

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[113] IHL and other legal regimes – jus ad bellum and jus in Bello, ICRC (2010), https://www.icrc.org/en/doc/war-and-law/ihl-other-legal-regmies/jus-in-bello-jus-ad-bellum/overview-jus-ad-bellum-jus-in-bello.htm (last visited May 12, 2023).
[114] Muhammad Aziz Shukri, Will aggressors ever be tried before the ICC?, The International Criminal Court and the Crime of Aggression 33–42, 33 (2017).
[115] The Crime of Aggression, Crime of Aggression | Coalition for the International Criminal Court, http://www.coalitionfortheicc.org/explore/icc-crimes/crime-aggression (last visited May 12, 2023).
[116] Assembly of States Parties, Rep. on the facilitation on the activation of the jurisdiction of the International Criminal Court over the crime of aggression, Nov. 27, 2017, ICC-ASP/16/24

caused by those acts".[117] This is a step in the right direction of formalizing ecocide in the lens of international criminal law, something that lawyers and scholars have not been able to do up to this point. While the crime of aggression and ecocide are very different in terms of actus reus and immediate impact, the crime of aggression gives a very practical roadmap for how to amend the Rome Statute and the substantial progress in defining ecocide in recent years has given the international community more trust in this as a workable crime.

While there was a definition formed, there is still a long wait until the international community feels comfortable amending the Rome Statute to add a fifth core crime, ecocide. For all the reasons mentioned above, like investors/lobbyists fighting for less environmental legislation and the economic issue of the boot to GDP that developing nations get from ecocide, it is unlikely that the ICC assume jurisdiction over this crime, for the time being.

## V. Conclusion

Ecocide is a very complex topic, especially when looking at it through the lens of international criminal law. There a quite a few advantages to amending the Rome Statute to add ecocide as the fifth crime of the ICC. However, for every advantage, it seems as though there is a corresponding issue. For example, this would be a way for would-be perpetrators to be held accountable on a global scale, but, many of the actors who engage in this conduct are corporations or states and are thus immune to the reach of the ICC; Ecocide was drafted into the initial Rome Statute and later removed, showing it has some weight in that body, but, there is no agreed-upon definition for judges at the ICC to use to hold actors accountable. These comparisons can be made for almost every part of the argument in favor. Until these issues are

[117] Person & Mark Hillsdon, Society watch: Drive to make ecocide an international crime gains momentum Reuters (2023), https://www.reuters.com/business/sustainable-business/society-watch-drive-make-ecocide-an-international-crime-gains-momentum-2023-02-20/#:~:text=In%202021%2C%20independent%20lawyers%20came,bring%20caused%20by%20those%20acts%E2%80%9D. (last visited May 12, 2023).

resolved, it is unlikely that ecocide will become the fifth crime under the Rome Statute. There are alternatives to amending the Rome Statute to include ecocide as a core crime, however, it seems as though these options bring with them their own advantages and disadvantages. While it seems like there is no end in sight for the debate surrounding ecocide, there have been strides made in recent years in formalizing a definition, which is the first step to holding people accountable for this crime. There is no way to know when or if the controversy surrounding ecocide will be settled, but for the sake of the planet we live on, it is humanity's duty to look at this problem with sincerity and hope.