



End Ecocide on Earth

Amendments to the Rome Statute /

International Criminal Court

End Ecocide on Earth (EEE) is a grass-roots initiative (citizen movement) aimed to recognize the crime of ecocide in international criminal law, as the fifth crime prosecutable before the International Criminal Court in the same manner as the crime against humanity, genocide crime, war crimes or crime of aggression.

The International Criminal Court (ICC), governed by the Rome Statute, was established to help end impunity of the most serious crimes of concern to the international community. The ICC Statute considers war crime to cause widespread, long lasting and severe damage to the natural environment, but there is no provision to protect the environment from such type of harms in peacetime.

EEE has been able to work on seventeen (17) proposed amendments to the Rome Statute, creating the International Criminal Court, to include the crime of ecocide to the list of the existing international crimes.

EEE proposed amendments to the ICC Statute for the recognition of the crime of ecocide in peacetime would allow effectiveness of a set of principles and emerging norms through the establishment of an international criminal legal framework likely to ensure **the safety of the planet**, by **protecting the global commons** necessary to maintain the living conditions on earth and **ecosystem services upon which human populations rely**, in compliance with the known **planetary boundaries**.

Ecocide is therefore defined as "an extensive damage or destruction which would have for consequence a significant and durable alteration of the global commons or ecosystem services upon which rely a group or sub-group of a human population."

The definition of Ecocide raises scientific theories to scientific standards.

What is meant by "**planetary boundaries**"? As of January 2015, the planet has crossed the threshold of four of its nine limits established by Johan Rockström's scientific team since 2009, and beyond which human existence could be threatened. Rockström assumes that the period of stability experienced by our ecosystem for 10,000 years and which is the source of human development is endangered since the advent of the industrial revolution that induced, among others, the massive use of fossil fuels and the rise in industrial agriculture. Potentially

irreversible, the consequences of such human activity could, according to him, bring the stability of the global ecosystem yet supposed to last several thousand years if there had been no industrial revolution, to an end.

Thus, the spiraling loss of biodiversity, massive deforestation, depletion of nitrogen and phosphorus needed for soil cultivation, scarcity of fresh water, ocean acidification, chemical pollution, over-concentration of carbon dioxide in our atmosphere and its pollution by aerosols, and finally the loss of integrity of the ozone layer will have consequences that could be devastating for humanity. Johan Rockström argues that all these "planetary boundaries" are related to each other, which means that the transgression of one of them may increase the chance to get closer to other limits, thus leading us to a "tipping point" characterized at the end by an irreversible extinction process of species. The loss of biodiversity, for example, interacts with other "planetary boundaries" when it intensifies the vulnerability of terrestrial and marine ecosystems to climate change and ocean acidity. Meanwhile, reach the critical threshold of 2 ° of global warming should lead to consequences such as widespread food shortages, unprecedented heat waves, more intense cyclones, a rise in water level due to the melting of glaciers, a change in geographical distribution of plant and animal species; thus accelerating soil and biodiversity vulnerability and thereby that of the peoples who rely on them.

We are facing a vicious cycle that shows us how life on earth is a complex and fragile alchemy.

What is meant by "**global commons**"? : Are common (*commons*) assets on which no social unit (individual, family, company) has no exclusive rights, whether in property rights or the rights to use. The global commons are resources or spaces that do not fall under the sovereignty of a single State or group of States, that because a legal ownership is excluded due to their nature (space, earth's atmosphere, seabed, oceans beyond 200 nautical miles and their fisheries resources), or because of an international agreement (Antarctica since 1959). Very few global commons are open access: This is the case in international law of the high seas and fish and mammals therein contained, and which are deemed to belong to no one (*res nullius*), since all States and individuals can participate in their exploitation. Once these commons are depleting due to their exploitation, rivalry in use implies regulation of access (e.g. marine fish stocks). We could understand from these characteristics that global commons are not considered here as common goods. They provide services to living organism but cannot be appropriated by humans. End Ecocide on Earth mean global commons: the oceans and seas beyond territorial waters, the atmosphere, outer atmosphere and their respective chemistry, Arctic, Antarctica, cross-border rivers and lakes, ground water, migratory species, biogeochemical cycles, genetic heritages. These spaces and species which belong to no one, and called *Res nullius* in law, should no longer be the scene of pollution and abusive predation. This would further the protection of the global ecosystem, and in any case the principle of national sovereignty should not be claimed to shirk all liability when they are impacted.

What is meant by "**ecosystem services**"? : The term was coined in the field of Biological Sciences to highlight the dependencies links between humanity and the natural environments. It has been refined in 2005 with the publication of the widely accepted scientific report named Ecosystem Assessment for the millennium. Ecosystem Assessment Millennium is an

international work program designed to meet the needs of policy makers and the public on scientific information concerning the consequences of ecosystem changes for human well-being and the alternatives for responding to these changes. It responds to the need of assessing the Convention on Biological Diversity, the Convention to combat Desertification, the Ramsar Convention on Wetlands and the Convention on Migratory Species, as well as the needs of other users of the public sector and the civil society.

Ecosystem services are defined as services provided by the ecosystems to humans: provisioning services such as food and water, regulating services such as regulation of floods and diseases, cultural services such as spiritual, recreational and cultural benefits, and support services that maintain favorable conditions for life on Earth, such as nutrient cycling.

Under the proposed amendments project, the ultimate goal is not to attribute a monetary value to ecosystem services, considering that this would open the way for compensation markets, but mainly to recognize the essential character to the survival of human populations and evaluate or assess how their destruction constitute a threat to collective living conditions, environmental, health or cultural. The destruction of an ecosystem service on which rely a human community, a whole or sub population to live, is therefore equal to a crime against humanity. Thus, this type of ecocide should not be excluded from an international jurisdiction in the name of national sovereignty, nor be traded through market instruments and trading rights.

These scientific standards would make it possible to pose the framework where we would be in capacity to protect the global environment in a supranational way, with a possible jurisdiction on national territories when ecosystems of which depend on human populations are threatened.

The definition of Ecocide poses new principles and new rights.

To recognize by law the role of the ecosystems and the duty of human to protect them induced a normative evolution towards **a transgenerational right** but also a right for the living beings. Indeed, it is clearly posed as principle that human beings are inalienable parts of nature and that their actions have consequences, not only in their environment but also on the perpetuation of Humankind. The incrimination of ecocide thus applies to the damages caused to living beings and extends to basic life components, in order to ensure the continuity of the life and Humankind itself. It gives to the present generations **a duty to protect the environment** for the future generations. This gives de facto **rights to the generations to come**.

Thus, the prohibition of the ecocide would ensure **the human right to a healthy** environment for Humankind, i.e. the present and future generations, and would establish **the right of nature to be protected**.

The crime of Ecocide is of an extreme seriousness and requires specific measures.

The crime of ecocide, given its global impact and its severity, should be a crime subject to **universal jurisdiction principle**. The principle of universal jurisdiction derives from the assumption that certain crimes are so serious that they affect the international community as a

whole, and that, consequently, all States have the right, if not the obligation, to take legal action against the perpetrators, and this regardless of where the crime was committed or the nationality of the perpetrator or victims.

The seriousness of the facts should be determined by the International Criminal Court in light of the scientific knowledge of the time or on the basis of the data compiled by the United Nations environment programme or other specialized international agencies.

In case of proven ecocide, victims have the opportunity to refer to the **restorative justice** principles to constrain the perpetrators (legal or natural person, but also heads of state, or managers) to pay moral, physical and/or economic damages. It will be possible to impose the restoration of damaged natural environment on behalf of its simple ecological value or repair the injustices caused to populations or sub group of population, with **particular attention to indigenous peoples**.

When it seems necessary and accepted, the judge may call for **transitional justice** measures to find a peaceful outcome to the complaint, this by encouraging the perpetrators to tell the truth, to recognize and consider victims, to apologize, and to repair their wrongful actions through negotiation.

Finally, the judge has the power to order the dissolution of a company depending on the seriousness of the facts. The superior responsibility could be engaged and prison sentences could be imposed. These actions of **punitive justice** are considered a last resort.

In view of the extremely serious consequences of an ecocide and because of the propensity of legal entities to commit such a crime, it must be recognized as a crime of **strict liability**, therefore not requiring a proving of malice on the part of his / its authors. Responsibilities should be determined on the basis of the **knowing of the consequences** of the act, whereas it is the duty of leaders/managers of hazardous industrial activities to comply, on one hand, with their duty of care, and on the other, to repair the damage caused to the affected ecosystems and affected populations. However in determining the applicable penalty, the judge can make recourse to the intention of the author of the act, which will then be a mitigating or an aggravating element.

Article 30 of the Rome Statute offers a breach to make the crime of ecocide a crime of strict liability.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

*2. **For the purposes of this article, a person has intent where:***

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

To **respond to environmental injustices**, the recognition of the crime of ecocide must also rely on a **principle of shared responsibility** in the international community. Indeed, we must be in solidarity with the consequences of the degradation of the global environment and climate change because we are all, at our level, responsible for pollution and emissions of greenhouse gases. That is why the international community must agree to submit to a principle of shared responsibility in the management of natural disasters caused by human action, management that should be arbitrated by an international court if negotiations fail within United Nations. The international judge could impose to transnational companies, as operators, to participate in the international aid on the basis of their shared responsibility.

It is also urgent, to be able reduce our collective impact, to implement Article 15 of the Rio Declaration in order to enact **obligation to environmental and health awareness** on a global scale. Article 15 stipulates that "in the event of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing the adoption of effective measures to prevent environmental degradation.". The precautionary principle there enunciates would give the international judge to compel a valuable tool to stop the industrial activities being responsible for ecocide, and this through **declaratory remedy and injunctions**. Injunctive remedies or conservatory measures are aimed to conserve a resource or wealth existing at the time of designing a development project in the framework of environmental assessment studies or public inquiries. Such measures are also given for the compensation of socio-economic or health impacts. The judge could, after investigation, issue suspension orders to projects highly emitters of greenhouse gas or having irreversible consequences for accidents occurring on global commons, such as drilling projects or burning/extracting fossil fuels, nuclear sites of projects or projects identified as disruptive of the carbon or methane cycle, such as massive deforestation and intensive agricultural methods. Citizens/peoples could then bring an action to the international prosecutor on the results of an environmental impact study in pre-industrial phase project if a serious risk of ecocide was suspected. The big polluters have then the obligation to comply with the law in order to avoid this risk. The implementation of preventive justice is a powerful pillar to halt the deterioration of living conditions on earth and protect future generations against our current inconsistency.

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