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The Possibility of Ecocide Being Included in the Rome Statute: An Analysis of the Legislative Dilemma and Path of the Crime of Ecocide in International Criminal Law

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Abstract. This paper will review the practicality, need and difficulty of introducing the crime of Ecocide in the Rome Statute of the international criminal court (ICC). Continuing the definition of legal practices suggested by the Independent Expert Panel (2021) and relying on the recent scholarly discussion, the proposed study critically examines the key features, legal aspects, and suggestion of the possible location of Ecocide in the system of international criminal law. It suggests an actual, multi-staged, multi-pronged action plan of developing Ecocide legal recognition, the argument being that its incorporation is both a vital expansion of international environmental law but a pressing necessity to global ecological justice. The suggested course of action consists of three actions running parallel: development of an international statute, Ecocide Convention, and development of regional statutes, Ecocide. This is a multi-track route, a combination of ambition and pragmatism, with the goal of achieving consensus, developing the necessary legal and institutional capacity and creating complementary normative schemes that may ultimately be unified to transform the Ecocide as a fundamental international crime.

Keywords: Ecocide, Rome Statute, International Criminal Court, International Environmental Criminal Law, global governance

1. Introduction

The increasing environmental crisis, which is marked by the concept of climate change, biodiversity collapse and massive pollution [1].

In these circumstances, the term Ecocide, which means devastation and massive destruction of the ecosystems, has shifted out of a peripheral status of scholarly discussion towards a topic taken seriously by the international law community [2,3]. A 2021 report of the Independent Expert Panel on the Legal Definition "unlawful or wanton acts carried out with knowledge the alleged acts will inflict severe harm and one or more of the following conditions are likely to occur as a result of the harm inflicted by those acts; the harm is likely to cause widespread or long-term damage to the environment vindicated the report [4]. This definition is a significant move towards the realization of Ecocide as a distinct international crime; it will turn Ecocide into a hypothetical concept to a possible legal doctrine [5].

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The paper is an attempt to answer this question, by, first, following the development of the concept of Ecocide and outlining its primary features. Second, its segment analyzes the key legal, practical, and political issues and consequent in its prospective adoption. Third, it draws up the normative and practical grounds on which inclusion should take place and, lastly, the paper lays a three-level high-way to which a follow-up decision not only on the legal justifiability under local laws but also on the moral imperative of criminalising the Ecocide on the international level can be reached.

In spite of this development, the Rome Statute, the original treaty of the ICC, today acknowledges four principal international crimes: crimes against humanity, war crimes, the crime against humanity and genocide. Even the very notion of the Anthropocene is indicative of the scale of human harm to the planet and implies the need to target it with corresponding legal tools [1,6]. This is why a leading question arises: Should Ecocide become the fifth core crime under the Rome Statute? This paper studies this problem

2. Basic features and conceptual development of ecocide

Ecocide is not a monolithic or fixed concept. Its definition has changed greatly, and it represents more insight into ecological interconnectedness and boundaries of prevailing international core crime [7]. Early proposals, such as Falk's association of ecocide to environmental warfare, prepared ground [2]. This was later popularised by Higgins, who broadly defined it as the total destruction or damage to or loss of ecosystem(s) of a particular territory, whether during war or in peace, and emphasized that it was a crime against nature and future generations. Placing Ecocide in the context of the international legal framework of crimes against humanity, Gray proposed the crime of ecocide to be defined as an offense against the very environment, guided by the qualities of gravity, permanence, and transboundary character [3]. The urgency of considering ecocide an independent crime, rather than wartime environmental destruction, is presented with tragic practice due to such incidents as the reported nuclear contamination accident of the Kharkiv Institute of Physics and Technology in the ongoing conflict in Ukraine. These are extreme cases, which can bring about devastating, extensive and prolonged environmental destruction against civilians and ecosystems well beyond the zone of actual fighting, which are a reminder that extreme ecological damage is not only dependent on a declared state of war but needs legal classification on its own [1].

The most advanced and legally minded definition of the Independent Expert Panel is the one developed in 2021 and is known as the 2021 version. It had three important components: The actus reus is composed of unlawful or wanton acts of which the term wanton can be taken to imply a level of recklessness or disregard of the consequences of their actions such as to continue with a large-scale infrastructure development in a tropical rainforest despite scientific evaluations that its failure is irreversible. The mens rea necessitates understanding of some unfreezing of a significant probability of grievous injury, in such a way that it extends previous intimate thought to the capacity to consciously involve in the hazard by corporate directives or state government agency. The consequence element requires severe and either widespread or long-term environmental damage, a 2-level threshold that aims to include a broader typology of harm. These terms will require references to international standards in order to be operationalised. An example is that widespread may be considered as being damage that is spread throughout the territory of at least two or more states, and long-term may be compared to the standards applied by the UN Environment Programme, where widespread damage usually is decades-long or lasts more than 50 years, which is a permanent rearrangement of the ecosystem [5].

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This definition brings a paradigm shift to international law. It separates an extreme environmental damage, once considered as a grave offence due to its age-old context of connection with war crimes (Article 8(2)(b) (iv) of the Rome Statute), and entrenches it as a discrete offence that may but by no means should be committed in peace time [8]. The latter change is premised on the fact that the existing outlook is shifted towards a more anthropocentric one, in which the environment is safeguarded solely based on human needs (such as health or property), to an ecological approach in its core. Ecocentric approach to international criminal law acknowledges such legal interest on environment as a legal protection interest per se which takes into consideration the value of nature and integrity of ecosystem as such [9]. The introduction of Ecocide in the Rome Statute would therefore be a massive philosophical and a legal development as this would settle the role of the Court to the understanding that peace, security and human dignity are key preconditions founded in the stability of human biological system.

3. Arguments against incorporating ecocide into the Rome Statute

Amendment of the Rome Statute is deliberately a hard road, and this amendment demands some wide agreement among States Parties. Ecocide incorporation experiences a set of issues that are closely related: specification, liability and political goodwill.

3.1. The legal-definitional and practical hurdles

Although the 2021 definition offers a very essential background, a challenge exists in the application under the strict evidentiary standards of the ICC. The most important words are subject to interpretation. It is incredibly difficult to demonstrate that a corporate CEO or state official had some "knowledge" of a substantial probability of a serious degree of environmental harm. The litigant can refer to scientific uncertainty, challenged impact evaluation, or chain-of-causation to journey this mind [7]. There are also no clear legal measures of what is severe, widespread or long-term damage, which is also harmful. The scientific evidence would be quite challenging and highly disputed to establish whether a particular instance of deforestation, pollution, or ecosystem fragmentation is sufficiently bad enough to qualify under the threshold, and overstretch the existing forensic capacity of the ICC, and result in uneven jurisprudence [3]. One of the most important related issues is how to differentiate between criminal ecocide and legal but also effective industrial or developmental life. The legal hazard lies in how to take out an exact definition that may only address the most offensive, outrageous, or just plain destructive actions without criminalising the necessary economic operation under appropriate consideration.

3.2. Locus of control and legal personality complexities

Strong and multi-layered agents tend to commit ecocide in most cases, and this presents different challenges when it comes to allocating blame. The ecological harms being the worst are mostly as a result of state-sanctioned projects or multinationals. The ICC, however, can only exercise its jurisdiction over natural persons. The provision of individual corporate leaders with liabilities of ecocide involves liftings of the corporate veil and the demonstration of their forthcoming, individual accountability of a policy and decision that results in the common destruction, that constitutes a high standard of evidentiary burden [7]. The example of the Amazon rainforest destruction serves as an illustration of the given predicament as laying blame on the multinational agribusiness companies, local suppliers, and even the state agencies that might have either silently approved or even

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promoted it is breathtakingly intricate [7]. It is even more problematic to put the state in the dock over ecocidal actions which are confounded by the principles of state immunity, and subtleties of legal requirements of establishing the conduct of a non-state military force as being attributable to a state in international law [1]. Moreover, although ecocide is typically caused not by an individual attack, it is usually caused by a combination of actions and policies over time. The fact that individuals are not criminals individually (but are the result of a diffuse web of causation) is a new and grim challenge to the international criminal law [1].

3.3. Obstacles in the political and consensus-building

Ecocide is a serious headwind to amending Rome Statute and hence is essentially a political process.

One of the most outstanding challenges is the North-South divide. The developing states consider the Ecocide agenda as a suspicious endeavor and have been afraid of the agenda being used as a weapon to suppress their economic growth and resource autonomy, which are some of the conditions of ecological conditionality. On the other hand, not all developed states and corporations will agree, because the possible liability of their past and present externalised environmental costs to the economic models [1,10] make them resistant. Issues of sovereignty are also very powerful. Environmental regulations. It is one of the areas of state sovereignty, and the establishment of an international crime of Ecocide is seen as an unreasonable encroachment into domestic policy options and the management of natural resources by some states [3]. Lastly, there is an institutional capacity and attention, which puts forward a practical argument about politics. Mass critics argue that the ICC itself is already stretched and lacking resources. The inclusion of a new and forensically complex crime into the system would lead to a diversion of attention, funding and prosecutorial efforts by the Court on its core mandate which is dealing with genocide, crimes against humanity and war crimes [11].

4. New case of inclusion- normative and practical

Nevertheless, convincing arguments based on legal principles, practical need, and global injustice indicate the presence of ground to include the Ecocide.

4.1. Compliance with the principle of gravity

Rome Statute has limited itself to the most severe crimes of interest to the world as a whole. The magnitude of damage wrought by ecocide in all of its potential forms whether it involves causing hundreds of species to become extinct and causing large areas of the Earth to become inhospitable or destabilizing global climate systems that allow all civilizations to exist on isn much smaller than nations would like to admit. This scale of damage qualifies and even extends the gravity threshold on which all fundamental international offenses are based [3]. In the Anthropocene era, the mass destruction of ecology, as scholars such as Branch and Minkova believe, is one of the main threats to planetary security and human civilisation itself, a crime against the stability of the Earth system [10]. What can be serious is not only the immediate human suffering, direct or indirect, but the destruction of the ecological modes of future life and society. This redefining of gravity as systemic, environmentally disastrous is a much-needed development of the principle that can keep pace with modern dangers. More so, the transnational character of ecological damages- pollution, climatic impacts, or reduction of the biosphere, which in one state, invariably accompany the others, serves the purpose of being an issue of international interest, disproving the claim that it is purely a

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national issue. Even the definition of a core international crime has to change in such a way it incorporates the activities threatening the common heritage of humanity, the preconditions to peace, and ecocide certainly has to belong to this category.

4.2. Sealing a critical accountability gap

The current international environmental law is based mainly on the responsibility of the state and soft- law, which have been found ineffective in stopping or punishing the most heinous offenders. The law on human rights provides limited redress, and usually in retrospect.

Making Ecocide a criminal offense at the ICC would offer an essential post punitive instrument and an effective precautionary measure, moving after those individuals who scheme, command, or intentionally allow such devastation.

4.3. Moving towards ecological justice and systemic integration

The acknowledgement of Ecocide is justified. It affects the most vulnerable groups, indigenous people, and the future generation disproportionately who do not cause ecological degradation but deal with its effects. Its inclusion would mean that the international legal order addresses ecological integrity as central good Significantly, this would mark a key move in the effort to ensure the environmental protection becomes central to the core international public policy. It goes even further than anthropocentric structure to ecocentric one, realizing the justifiable worth of nature.

5. Roadmap to incorporation: a step-by-step approach

Considering the immense challenges, a realistic, multi-pronged, and staged approach has the highest chances of achieving positive results.

5.1. Legislative pathway

The most direct way is the formal amendment to the Rome Statute which is under the initiative of the States Parties. Nonetheless, such a procedure must be dealt with cautiousness.

An advocacy-technical clarification approach should be of a two-phase approach. It should be provided with a special working group of lawyers, scientists and state representatives who will further refine the definition of the year 2021 within the frames of the Assembly. These would work out elaborate interpretive principles, case studies, and evidentiary criteria to define the mens rea of knowing, operationalizable conditions of severe, widespread or long-term harm and could give a clear line between criminal ecocide and lawful conduct, to oversee main issues of vagueness [7]. The latter stage would be focused on vocal diplomatic coalition-building. The advocates should aim at establishing a cross-regional alliance of friendly states of the Global South and North. To reduce upfront political opposition, a new mechanism of opt-in amendments may be suggested. The crime of ecocide would at first be limited by the State Parties that participate in the amendment; this will be similar to the first method adopted in the crime of aggression. With such a mechanism, early adopters are in a position to proceed ahead whereas other involved nations can observe how it is being applied, which can establish a broader consensus in the long run.

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5.2. Judicial pathway

Although it has not been formally amended as yet, the ICC itself has a normative agenda for severely destroying the environment, which it is quite capable and must pursue by progressive interpretation of its current mandate.

Under the existing legislation, prosecutors are in a better position to prosecute large-scale environmental crimes, where the circumstances support them. As an example, environmental devastation committed as a systematic assault on civilians. This may be indicated as another inhuman act of crimes against humanity. Equally, environmental harm caused at an armed conflict must be made a stern prosecution as a war crime per Article 8(2)(b)(iv) [10]. Prosecuting these types of cases successfully would establish essential precedences, establish the institutional experience of the Court to handle intricate environmental evidence, and would assist in establishing jurisprudential premises to an independent crime. At the same time, the Office of the Prosecutor ought to take the initiative of building internal capacity and create a unit of consulted experts on environmental crimes independent working unit equipped with scientists, ecologists, and legal experts. More crucially, it would convey a strong message that the international Court is keen to deal with the environmental aspects of atrocity crimes.

5.3. Complementary pathways

Such similar efforts beyond the ICC structure are needed in order to gain momentum and develop complementary legal systems. The negotiation of an independent UN Convention on the prevention and punishments of Ecocide is one of the pathways that would be necessary. The details of primary commitments by states through such a treaty, may include mechanisms of international cooperation and assistance and would go so far as to create another monitoring commitments body through treaty. This convention-building would contribute to strengthening the international agreement on the meaning and the aspects of what the crime entails, potentially leading to the creation of customary international law on the topic, which, in its turn, would promote the cause of introducing the topic into the Rome Statute [7]. Regional leadership may also be a strong driving force. Such regional organisations as the European Union, the African Union, or even individual nations can be the first to criminalise ecocide in their domestic or regional legislation. The current debates in the EU on the need to criminalize gross environmental destruction within its directives framework are excellent instances [11]. These local projects generate realistic projects, show that is possible, and create political impetus that might eventually get into the global process. On all roads, the further promotion of civil society organizations, legal professionals and movements such as the Stop Ecocide Foundation is essential in refining societal opinion, managing governments power, and ensuring the issue is not removed off the international agenda.

6. Conclusion

Whether including Ecocide in the Rome Statute is a matter that brings elements of law, morals and even existence to the forefront of global survival. The discussion indicates that significant trade-offs include creating a watertight legal definition, developing workable attribution and ultimately treading a geopolitical divide that is fractured. The challenge of these hindrances is not insurmountable, or do not belie the strong reasons to act.

Contemporary ecological devastation is usually serious and cross-border; this qualifies the essential starting point of international criminal law, which is gravity. Such harms are not

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accountable thus a significant failure in global governance in the present state. Finally, the concept of ecocide is an essential development of international law-a straightforward reaction on the crisis of Anthropocene. It confirms one major tenet: the nature of the ecosystems on this planet is the universal concern of humanity and needs the highest protection of the law.

Thus, this is why a multi-pronged, long-term, and tactical approach is justified. By sharpening the legal definition, employable strategies within current ICC, formations of alliances on the state level, and subsequent parallel treaties, the international community should follow the route of turning Ecocide into one of the core International crime. It is not just another legal-technical move explained, but it is a radical investment in the future of intergenerational justice and the planet people know to be home.

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