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GENOCIDAL ECOCIDE: RECONTEXTUALIZING ENVIRONMENTAL VIOLATIONS

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Abstract

The word 'ecocide', meaning 'killing one's home' or 'environment,' has become increasingly relevant in modern warfare, where the deliberate destruction of ecosystems is used to threaten populations by stripping away their means of survival. Rather than pursuing ecocide as a separate international crime, this research advocates for recontextualizing environmental destruction within existing genocide jurisprudence, building upon the 1978 UN Sub-Commission proposal and 1985 Whitaker Report recommendations to include ecocide within the genocide framework. This paper argues for expanding the legal definition of genocide under Article II of the Genocide Convention to explicitly recognize environmental destruction as a genocidal method when used to annihilate protected groups by targeting their ecosystems.

*The paper advances climate justice as central to human rights discourse by examining how widespread environmental devastation in armed conflict can amount to genocide under international humanitarian law. It challenges the narrow interpretation of *dolus specialis* as requiring direct intent and instead advocates for knowledge-based or consequence-driven intent models. Through doctrinal analysis of legal frameworks and case studies, including the Vietnam war, Israel-Gaza conflict, Russia-Ukraine war, and the 1990 Gulf War, the paper aims to integrate ecocide into genocide jurisprudence and proposes adaptations for causation and evidence using scientific tools.*

This approach further draws on Rob Nixon's concept of slow violence to show how environmental destruction, dispersed across time and space, can produce genocidal outcomes through the gradual and cumulative degradation of ecosystems². The critiques center on the legal complexities of proving genocidal intent in the environmental sphere, the formidable challenges of establishing causation for long-term and widespread environmental harm, and the practical feasibility of prosecuting "genocidal ecocide" within existing international legal

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² Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard Univ. Press 2011)

frameworks.

Keywords

Ecocide, Genocide, *dolus specialis*, Climate Justice, Environmental War Crimes, Rome Statute

Introduction

The practice of using the environment as an instrument of mass destruction is not an entirely novel idea. Modern armed conflicts made possible by advanced technologies and catastrophic weaponry, extend beyond traditional battlefields. They are now being waged against ecosystems, destroying the environment that sustains life itself. The extent and impact of environmental damage during times of war are increasing along with climate change, exposing serious flaws in the way international law handles such kinds of harm.³

The concept of ecocide is becoming increasingly popular worldwide. It calls into question how people perceive and deal with the environment and whether international law can effectively address the relationship between environmental degradation, human rights, and war. Transnational pollution, water theft, soil contamination, and attacks on food systems are a few instances of actions that are changing the traditional norms of warfare. Additional instances include nuclear weapons and atmospheric nuclear testing. These acts go well beyond traditional combat and jeopardize state sovereignty, which has long been revered in international affairs.⁴ When environmental harm intentionally threatens a population's survival, we are compelled to pose a pivotal question: where do we delineate the boundary between collateral damage and ecocide?

The primary issue this paper seeks to address is how international law ought to deal with the intentional destruction of environments especially when these attacks are meant to render areas inhabitable and populations unviable. In contemporary legal discourse, *ecocide* has emerged as a term describing extreme acts of environmental destruction that go beyond “collateral damage.” Such acts encompass industrial-scale pollution, deforestation, attacks on water and agricultural systems, and scorched-earth tactics, whether or not accompanied by direct violence against human life.

³ International Committee of the Red Cross (ICRC), *The Environment and Warfare*, <https://www.icrc.org/en/law-and-policy/environment-and-warfare> (last visited Oct. 30, 2025)

⁴ Stop Ecocide Foundation, *Legal Definition of Ecocide*, <https://www.stopecocide.earth/legal-definition> (last visited Oct. 30, 2025)

Traditionally, elevating a crime to genocide requires proof of specific intent (*dolus specialis*), demanding 'something more' than mere general intent. This stringent requirement creates a primary gap when confronting environmental crimes that attempts to eradicate populations yet result in no comparable legal repercussions.⁵ This paper argues that when environmental degradation is weaponized to destroy a group's means of survival, being food, water and land, it should be recognized as an act of genocide. While not every instance of environmental damage during wartime would qualify as genocide, this paper proposes a re-evaluation of *dolus specialis* to include knowledge-based intent, supported by scientific evidence and demonstrable patterns of harm.

Through legal analysis and case studies, this paper demonstrates why the recognition of ecocide is not just necessary, but urgent in a world where ecological collapse is increasingly being deployed as a method of warfare.

Evolving Jurisprudence and Scholarly Discourse

Raphael Lemkin, who first coined the term *genocide* in 1944 through his seminal work *Axis Rule in Occupied Europe*, conceptualized it to mean far more than mass killing. He combined "genos" (tribe or race) and "cide" (killing), Lemkin located genocide in both the physical and cultural destruction of a group.⁶ For him, culture was indispensable to group survival, and its annihilation through modes such as the destruction of leadership, institutions, traditions, and symbols signified the erasure of a community's future contributions to humanity. Although Lemkin initially sought to embed cultural genocide within the Genocide Convention, political opposition led to its exclusion, narrowing subsequent interpretations of the crime to questions of mass killings and intent.

The 1970s saw the birth of "ecocide" as a direct response to the environmental destruction during the Vietnam War, where the US deliberately targeted Vietnam's rainforests and ecosystems with chemical defoliants and herbicides, infamously "Agent Orange." The term was first coined by biologist Professor Arthur W. Galston during the Conference on War and National Responsibility held in Washington, D.C. Vietnam later became the first country to

⁵ Benjamin Meiches, Desire, International Law, and the Problem of Unintentional Genocide, in *The Politics of Annihilation: A Genealogy of Genocide* 139, 139–68 (2019)

⁶ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation – Analysis of Government – Proposals for Redress* 79–95 (Carnegie Endowment for International Peace 1944)

formally codify "ecocide" into its domestic law in 1990.⁷

Legal scholars and activists have attempted to define and expand upon this. Professor Richard Falk was among the first to highlight how environmental destruction had become a strategic weapon of war. Falk identified acts such as widespread herbicide spraying, mass deforestation with Rome Plows, and weather modification through cloud seeding as strategic tools of warfare. He argued that such acts constituted clear violations of international law and proposed the need for recognizing ecocide as an independent international crime. His proposals laid crucial groundwork for later legal developments, framing environmental harm as an offense against humanity itself.⁸

Harry W. Pettigrew, in his 1971 article "A Constitutional Right of Freedom from Ecocide" represents one of the earliest efforts to link environmental destruction as a constitutional issue. He defined ecocide as the substantial destruction of an integral part of a particular ecosystem or the unreasonable degradation of the environment in general.⁹ He emphasized the need for a major shift in legal thought and criticized current legal remedies like strict liability and nuisance as being inadequate for the extent of environmental devastation. His work was crucial as it bridged environmental harm and human rights.

In 2010, international lawyer Polly Higgins proposed ecocide be added as the fifth international crime against peace, alongside genocide, war crimes, crimes against humanity, and the crime of aggression¹⁰. Her proposal led to the creation of the Stop Ecocide campaign, which has since garnered significant momentum among scholars, policymakers, and activists worldwide. Building on the scholars' previous efforts, Higgins expands this further by defining ecocide as acts or omissions by senior actors, whether in peacetime or conflict, that cause or contribute to serious ecological, cultural, or climate-related damage. As per Higgins, ecocide becomes legally significant when the harm is widespread, long-term, or severe, such that it robs inhabitants of their peaceful enjoyment of life.¹¹

⁷ 'History', Ecocide Law, <https://ecocidelaw.com/history/> (last visited 27 April 2025)

⁸ Richard A. Falk, Environmental Warfare and Ecocide — Facts, Appraisal, and Proposals, 4 BULL. PEACE PROPOSALS 80, (1973)

⁹ Harry W. Pettigrew, A Constitutional Right of Freedom from Ecocide, 2 Env'tl. L. 1 (1971)

¹⁰ Greene, Anastacia, "The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?" (2019) 30 Fordham Environmental Law Review 1

¹¹ Ecocide Law, MISSION LIFEFORCE, <https://www.missionlifeforce.org/ecocide-law> (last visited Apr. 27, 2025)

Rob Nixon's "slow violence" concept describes a gradual, often invisible form of destruction, dispersed across time and space, typically unrecognized as violence itself. He emphasized its profound impact on marginalized communities, whose suffering is frequently disregarded. Nixon highlights how the "contested science of damage" and corporate "strategies of distantiation" further obscure accountability and render these harms unseen.¹² This paper uses the concept of slow violence to methods deployed in international armed conflicts, adopting a backward and consequence-based approach, to argue for classifying such environmental destruction, or ecocide, as a component of genocide, particularly concerning its effects on these vulnerable populations.

In recent years, efforts to codify ecocide as an international crime have gained momentum. The Stop Ecocide Foundation convened an Independent Expert Panel, which in 2021 proposed a definition framing ecocide as "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."¹³ However, ecocide has not yet been recognized as a separate crime in international legislations such as the Rome Statute. Article 8(2)(b)(iv) of the Statute prohibits environmental damage in armed conflict, but only under exceptional stringent thresholds. This makes it difficult to hold states and actors accountable for deliberate environmental destruction, even when it results in irreversible harm.

Case Studies

Vietnam War

The Vietnam War stands out as one of the most notorious examples of a country deliberately using chemical warfare to harm another. The long-lasting effects of this militant act (Operation Ranch Hand) are still deeply felt in Vietnam, where the country has yet to fully recover. The United States used chemical defoliants and herbicides, particularly "Agent Orange," which contained high levels of dioxin, a chemical extremely toxic to the human body. The chemical infiltrated water systems, foods such as certain fish (a staple of the Vietnamese diet), and vegetation, which eventually ended up affecting the citizens and their children¹⁴. Studies estimate around 400,000 deaths were caused due to cancer and other dioxin-related illnesses,

¹² Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (2011)

¹³ Independent Expert Panel for the Legal Definition of Ecocide, Stop Ecocide Foundation, Legal Definition of Ecocide, <https://www.stopecocide.earth/legal-definition> (last visited Apr. 27, 2025)

¹⁴ Duong Trung Le, Thanh Minh Pham & Solomon Polachek, *The Long-Term Health Impact of Agent Orange: Evidence from the Vietnam War*, 155 *World Dev.* 105813 (2022)

and around one million people live with disabilities as a direct result. Extensive areas—7.7 million acres of forest were rendered barren, leading to ecosystem collapse and a dramatic reduction in biodiversity. Consequently, the citizens' health was adversely impacted, ranging from birth defects to diseases like leukemia, mobility impairment, epilepsy, and severe reproductive health issues, disproportionately impacted children, infants in utero, and subsequent generations.¹⁵

Shockingly, the US made an attempt to justify its actions. Fred Anderson, a scholar from the U.S. Army War College, went as far as to praise the “strategic advantages” of herbicidal warfare in Vietnam, arguing that it reduced American casualties, revealed enemy ambush sites, and destroyed the National Liberation Front's food resources.¹⁶ American efforts at remediation and compensation have only benefitted U.S. veterans; while Vietnam as a state has received little in direct reparations

Thus, the Vietnam War sets a precedent for slow violence risking the health and livelihoods of people deemed “disposable”. When an entire community is deprived of safe food, water, and a healthy gene pool through deliberate state action, it mirrors the genocidal intent of destroying a people by systematically dismantling the conditions necessary for their survival.

Gulf War

The 1991 Gulf War is widely regarded as one of the most devastating man-made environmental disasters in history. It is also one of the few instances in which reparations for environmental damage caused during armed conflict were formally mandated by an international body. As Iraqi forces retreated, more than 600 Kuwaiti oil wells were set ablaze, releasing around 3.5 million tons of crude oil and causing massive spills in the Persian Gulf. Chemical fallout, ruined soils, loss of animal habitats, and contamination of critical aquifers followed.¹⁷ Additionally, an estimated 800,000 ton oil spill occurred in the Persian Gulf as a direct result of the conflict. Iraq accepted these liabilities as part of the ceasefire agreement. The war also left behind 1.6 million landmines and over 100,000 tons of unexploded ammunition, causing long-term irreversible environmental consequences.

¹⁵ *Id at 15*

¹⁶ C. Martin, *Spray and Spray-Legume Pastures on the Rhodic Haplustox Underlain by Gneiss in the Brazilian Amazon*, Nat'l Agric. Library, U.S. Dep't of Agric.

¹⁷ Peter H. Sand, 'Catastrophic Environmental Damage and the Gulf War Reparation Awards: The Experience of the UN Compensation Commission' (2011) 105 *Proceedings of the Annual Meeting (American Society of International Law)* 430

Despite being the largest compensation award ever granted for environmental damage resulting from armed conflict, the Gulf War remains an exception, not the rule. The impact has been largely underwhelming in terms of precedent, as other states have rarely been held similarly accountable for environmental destruction committed during wartime and for post-war operations.¹⁸

The burning of oil wells in Kuwait not only caused immediate devastation but also left behind persistent tarcrete deposits that continue to alter soil composition. Decades later, the region still grapples with long-term soil degradation, water contamination, and heightened respiratory illnesses. This goes back to the fact that even when the environmental damage here was acknowledged, the broader harm to ecosystems and the survival of affected populations is rarely framed as a crime of such magnitude that it warrants the same condemnation as genocide.

Israel-Gaza Conflict

Israel's strict land surveillance and occupation policies have extended far beyond conventional military control, reshaping the landscape itself. These practices reveal how environmental harm can be deployed as a tool of war. Beyond visible forms of violence such as airstrikes and blockades, Israel has employed subtler forms of environmental harm that fall under the concept of "slow violence." This includes the uprooting of native Palestinian olive trees, the deliberate afforestation with non-native species such as the European pine,¹⁹ the destruction of water infrastructure and repeated assaults on Gaza's aquifers, wetlands, and farmlands. Over time, the olive tree came to represent more than a mere source of livelihood; it became a symbol of Palestinian resistance, deeply tied to identity and sovereignty.²⁰

Since the imposition of the Gaza blockade in 2007, the territory's environment has been under continuous attack. Desalination plants, ancient water sources, and the wetlands of Wadi Gaza have been damaged or destroyed. Farmlands have been poisoned, fruit trees uprooted, and food sovereignty dismantled. The use of military toxins such as white phosphorus has contaminated the soil, air, and water, with long-term health consequences that are not yet fully measurable.²¹ Around 70% of Gaza's water systems, including desalination plants and pipelines

¹⁸ *Id* at 18

¹⁹ Irus Braverman, 'Uprooting Identities: The Regulation of Olive Trees in the Occupied West Bank' (2009) 32(2) *Political and Legal Anthropology Review* 237

²⁰ *Id* at 20

²¹ Vanessa Farr, 'The Ecocide of Palestine' (23 October 2024) *Women's International League for Peace and*

have been destroyed or severely damaged, plunging two million residents into crisis conditions. Access to clean water has fallen 95%, far below minimal humanitarian standards, resulting in outbreaks of disease, failed agriculture, and mass displacement²²

In Palestine, environmental destruction is weaponized, stripping communities of the means to adapt, survive, and resist under occupation. Traditional sustainable farming practices have been severely undermined, and the population's ability to withstand environmental stressors has been dismantled.

The ongoing conflict in Gaza is both a humanitarian disaster and a climate justice crisis, embodying a clear example of settler-colonial ecocide. It represents the targeted erasure of a people's future by eliminating the environmental conditions necessary for life.²³

Russia-Ukraine

The breach of the Kakhovka Dam in June 2023 resulted in devastation on a continental scale, resulting in a catastrophic flood that devastated several towns and cities. The destruction led to the contamination of vital drinking water sources and agricultural land, while approximately 150 tonnes of industrial waste were discharged into the Dnipro River, further exacerbating the environmental and humanitarian crisis.²⁴ It would be neglectful to overlook the fact that Ukraine has one of the biggest and most sophisticated nuclear power systems in the world. The Zaporizhzhia Nuclear Power Station, which is currently occupied by Russia, greatly increases the likelihood of an ecological disaster, especially considering past incidents in which environmental damage has been purposefully caused during the continuing battle.²⁵

Ukraine has attempted to prosecute Russia for such acts since ecocide is a crime under the country's penal law. We ought to remember that Ukraine is one of the only countries aggressively pursuing accountability for environmental harm caused by conflict. This situation demonstrates how ecocide is not simply a byproduct of conflict but increasingly a weapon of

Freedom

²² Factsheet, UNITED NATIONS, <https://www.un.org/unispal/document-category/factsheet/> (last visited Sept 20, 2025)

²³ Laurent A. Lambert, *Ecocide as Genocide: A Human Security Approach to "Utter Annihilation" in Gaza* (2024), Arab Ctr. for Research & Policy Studies

²⁴ 'The Environmental Cost of the War in Ukraine' *International Relations Review* <https://www.irreview.org/articles/the-environmental-cost-of-the-war-in-ukraine> (last visited 27 April 2025)

²⁵ Andriy Kostin, *Ecocide as a weapon of war* (International Bar Association, 21 May 2024) <https://www.ibanet.org/Ecocide-as-a-weapon-of-war> (last visited 27 April 2025)

war itself. Environmental manipulation turns into a tactical instrument. The victim state feels obligated to concentrate its limited resources on survival and reconstruction rather than defense when its vital life-supporting systems, like agriculture or water, are severely damaged. This is a contemporary example of the "scorched earth" strategy, which aims to devastate an enemy's environment in order to weaken them.²⁶

On 2 March 2022, the International Criminal Court (ICC) Prosecutor officially announced the opening of an investigation into the situation in Ukraine, following multiple state referrals. This move has been lauded as a step towards recognition of ecocide as the 5th international crime against peace triable in international criminal courts.²⁷

The intentional destruction of vital ecological infrastructure, including dams and nuclear facilities, goes far beyond incidental damage caused by war. It constitutes a deliberate strategy aimed at destabilizing populations by cutting off access to safe water, fertile land, and reliable energy. Such acts meet the criteria of ecocide because they are purposeful, extensive in scale, and inflict long-lasting, irreversible damage on both the environment and human survival. Thus, this case supports the argument that environmental destruction is increasingly weaponized in modern warfare to achieve political and military objectives, not simply as an unintended consequence.

In Canada and Australia, government policies aimed at "assimilation" of indigenous communities have involved forced dispossession, resource extraction, and sustained environmental degradation. In Canada, multiple tribunals have found that residential schools, forced relocations, and tainted lands contributed to the destruction of the conditions necessary for indigenous group survival. Fueled by policy and profit, such destruction results in intergenerational trauma, food insecurity, health crises, and cultural erasure.²⁸ Many now argue these constitute forms of peacetime genocide and call for recognition of "ecological genocide" within international criminal law.

²⁶ Bronwyn Leebaw, 'Scorched Earth: Environmental War Crimes and International Justice' (2014) 12 *Perspectives on Politics* 770

²⁷ International Criminal Court, 'Situation in Ukraine' <https://www.icc-cpi.int/situations/ukraine> (last visited 27 April)

²⁸ Lauren J. Eichler, Ecocide Is Genocide: Decolonizing the Definition of Genocide, 14 *Genocide Stud. & Prevention* 104, 104–21 (2020)

Legal Analysis

Presently, the only mention of environmental destruction in the Rome Statute is found in Article 8(2)(b)(iv), which 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 would clearly be excessive in relation to the concrete and direct overall military advantage anticipated."²⁹ No successful prosecutions have occurred under this article, reflecting the difficulty in proving intent and disproportionate harm, given the ambiguities, the subjective mens rea, and the prioritization of military necessity. Despite its promise, Article 8 provides limited accountability for ecological destruction in war.³⁰

Other international legislations, such as the Geneva Conventions and the ENMOD Convention, also address wartime environmental harm, with Article 1, paragraph 1, of ENMOD stating that "state parties undertake not to engage 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."³¹ It prevents state parties from manipulating the environment as a means of warfare.³² While there are international legislations for environmental destruction during peacetime, there is no comprehensive international legislation that criminalizes environmental destruction as a standalone crime within the context of armed conflict.

Furthermore, Article II(c) of the Genocide Convention defines genocide as "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." This provision aligns closely with the proposition to situate ecocide within the ambit of genocide. The phrase '*conditions of life*' is particularly significant, as it extends beyond direct killing to encompass measures that systematically undermine a group's survival. Such conditions include Inducing starvation by disrupting agricultural systems or destroying food supplies, Denying access to essential resources such as water, land, or shelter, Creating an uninhabitable environment through widespread ecological destruction that renders

²⁹ Rome Statute of the International Criminal Court art. 8(2)(b)(iv), July 17, 1998, 2187 U.N.T.S. 90, 118

³⁰ R. Killean & D. Short, A Critical Defence of the Crime of Ecocide, 1 *Envtl. Pol.* 1, 1–21 (2025)

³¹ *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques* (adopted 10 December 1976, entered into force 5 October 1978) 1108 UNTS 151 (ENMOD)

³² International Committee of the Red Cross, *The ENMOD Convention: Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques* (ICRC Factsheet, 1976)

continued existence impossible; and Targeting healthcare systems to prevent the treatment of injuries and diseases. By framing environmental destruction as a deliberate imposition of such conditions, ecocide can be understood as a genocidal strategy aimed at annihilating the very foundations of group survival.

The gravest challenge for prosecutions under genocide law is proving intent. Traditionally, genocide requires clear, direct intent to destroy a protected group. Environmental destruction, by contrast, is often incremental, cumulative, or officially justified as militarily necessary.³³ This pushes embracing knowledge-based or consequence-driven intent. This would involve inferring intent from repeated policy decisions with preventative warnings, consistent patterns of harm over time, targeting of life-sustaining systems known to be central to a group's survival, and available scientific evidence about probable or inevitable outcomes. As climate science improves, the ability to measure harm and attribute it to specific policies or attacks will dramatically enhance legal accountability. Similar interdisciplinary methods are envisioned for future International Criminal Court prosecutions, such as the Gulf War compensation regime, which used pooled scientific panels to analyze environmental claims.³⁴

Prosecutor v. Thomas Lubanga Dyilo³⁵ provides an important judicial view on the idea of "harm." The ICC Appeals Chamber acknowledges that harm includes material, psychological, and physical aspects connected to the crime. This perspective is especially important for defining ecocide in international law. Environmental damage brings deep and lasting harm that extends well beyond immediate physical effects. It disrupts both livelihoods and cultural identity. When ecological destruction slowly weakens the basic elements of human life and dignity, this broad view of harm supports the argument for recognizing ecocide within the framework for genocide and war crimes.

Gaps in Enforcement

Despite growing recognition that climate change and environmental destruction spare no nation, state actors and international institutions continue to respond with striking complacency. There isn't a single international criminal code that addresses environmental

³³Kai Ambos, What Does "Intent to Destroy" in Genocide Mean?, 91 Int'l Rev. Red Cross 833 (2009), <https://international-review.icrc.org/sites/default/files/irrc-876-ambos.pdf> (last visited Oct 13, 2025).

³⁴C. Bruch, C. Muffett & S. S. Nichols, Legal Liability for Environmental Damage: The United Nations Compensation Commission and the 1990–1991 Gulf War, in *Governance, Natural Resources, and Post-Conflict Peacebuilding* (London: Earthscan 2016)

³⁵ *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-3129, Judgment on Reparations

degradation. The majority of environmental sanctions are still civil in character, emphasizing mitigation and compensation above punishment or deterrent.

Destruction frequently escapes international accountability, especially when it is carried out by powerful governments or individuals in politically difficult situations, even when it results in fatalities and displacement.

Ecocide presently occupies a legal gray zone. Despite efforts by leading legal scholars, including Mark Gray and Polly Higgins, to classify such acts as strict liability offenses, this objective remains largely aspirational.³⁶ The *mens rea* requirement for ecocide derives from the standard of the Rome Statute, specifically Article 30(3). It necessitates intent and knowledge, or in some instances, recklessness. Intent is a particularly difficult element to establish in cases of ecocide, as environmental destruction is often a secondary consequence rather than the principal aim.³⁷ The burden of proof that is required remains a major obstacle, especially when intent must be demonstrated. The standard must be adequately balanced that is neither too low nor too high, as setting it improperly could lead either to non-compliance by states or to a failure to establish justice and liability.³⁸

Furthermore, environmental harm often unfolds gradually, making it harder to link the damage to a specific actor or event. This makes prosecution even more tricky and delays legal recourse. Nevertheless, classification is crucial. The recognition of ecocide as a geopolitical crime deserving of both political and economic sanctions is undoubtedly a necessary condition for any meaningful international responsibility. Despite the fact that environmental degradation causes widespread death and a breakdown of livelihoods, it rarely results in legal action. This is a major concern. Instead of being an essential element of survival and sovereignty, the environment is viewed as a helpless and passive victim. Through applying a consequence-based model, genocide might now be contextualized by examining both the consequences and the purpose, as opposed to the high "intent" requirement. The actual harm that agents produce is given priority.

³⁶ Anastacia Greene, 'Mens Rea and the Proposed Legal Definition of Ecocide' (Völkerrechtsblog, 7 July 2021) <https://voelkerrechtsblog.org/mens-rea-and-the-proposed-legal-definition-of-ecocide/> (last visited 27 April 2025)

³⁷ Oscar Van Den Heede, 'Ecocide as the Fifth Core Crime in the Rome Statute' (2022) 55 *New York University Journal of International Law and Politics* 435

³⁸ *Id* at 37

The way environmental damage is treated under international law would be dramatically shifted if ecocide were to be recognized as the fifth international crime. In contrast to civil environmental sanctions, which usually lead to financial penalties or other regulatory remedies, ecocide could potentially be considered a crime under international humanitarian law, when it is intentionally employed as a weapon of hegemony or war. Likewise, the ICC would be able to punish ecocide culprits with the same extent as other crimes against peace, especially when it is perpetrated in conjunction with acts of genocide or mass displacement.

The "polluter pays" principle and the "precautionary principle," which are advantageous in general environmental law but insufficient for large-scale ecological destruction, would also be directly challenged if ecocide were made a crime. Recognizing ecocide as a genocide component also brings attention to the responsible states' disregard for important customary international norms including intergenerational equality, sovereignty over natural resources, and shared but distinct obligations.

Efforts to characterize environmental destruction in war as genocide reflect recognition that such destruction irreversibly damages ecosystems necessary for human survival. This leads to forced displacement, famine, and the erasure of cultures. These consequences align closely with genocide's core aim: threatening the physical and biological continuity of targeted populations.

Limitations and Way Forward

Certain scholars caution against "genocide inflation," warning towards how an ambiguous link between ecocide and genocide could end up undermining both ideas. The increasing inclination to attribute genocide in almost all cases of widespread suffering runs the risk of politicizing criminal cases and reducing the crime's grave nature. However, apathy is unwelcome due to the absence of substantial accountability for catastrophic environmental degradation, especially when it endangers the survival of recognized populations. Therefore, a middle ground better captures the complicated nature of contemporary environmental degradation. International law has begun to respond, albeit without uniformity. The Council of Europe's recent treaty is notable for criminalizing "severe environmental harm" even outside armed conflict, while Pacific Island states and European NGOs have pressed for new language in the Rome Statute.³⁹

³⁹ Council of Europe, Treaty on the Protection of the Environment Through Criminal Law, CETS No. 221 (2025)

Although adding ecocidal crimes to the definition of genocide increases ethical accountability, it also poses certain philosophical and legal challenges. In contrast with ecocide, which by definition frequently includes harm that is indirect, distributed, and occasionally unintentional, genocide was originally intended to capture the intentional eradication of human communities. This distinction makes it even more challenging to apply the strict mens rea criteria of genocide when environmental degradation is not an express goal but rather a by-product of industrial or military strategy.

Furthermore, direct violence has often been given precedence over structural or ecological injury under international criminal law. William Schabas points out that extending the Genocide Convention beyond its human-centric framework may encourage political abuse and ambiguity in interpretation⁴⁰. Therefore, finding a balance between theoretical integrity and moral growth is the aim. One possible middle ground involves treating ecocide not as an automatic form of genocide but as a “genocidal method” i.e. a mode of committing genocide through environmental means when the destruction of life-sustaining systems forms part of a broader plan to eliminate a group. This interpretation recognizes the ecological aspects of destruction while maintaining the distinctive nature of genocide.

Lastly, there are still a lot of evidentiary obstacles. Environmental degradation frequently develops gradually, and the scientific basis for this may be complicated. Rigid interdisciplinary proof that includes environmental forensics, satellite data, and anthropological impact studies is required to link an ecosystem's collapse to an user's particular intent. However, as evidenced by the International Criminal Court's jurisprudence, similar scientific methodologies are already incorporated into growing evidentiary practices in cases involving war crimes, cultural devastation, and displacement. Extending this approach to ecocide would be a natural progression rather than a radical departure.

Going forward, both institutional and doctrinal change are needed to recognize ecocide as either a distinct international crime or a genocidal technique. On the doctrinal front, revising the Rome Statute to include ecocide would represent a landmark development. The 2021 Independent Expert Panel's definition provides a workable foundation, emphasizing “knowledge of a substantial likelihood of severe and widespread environmental damage.”⁴¹

⁴⁰ William A. Schabas, *Genocide in International Law: The Crimes of Crimes* 23-45, 2d ed (2009)

⁴¹ *Id* at 14

The idea to redefine *dolus specialis* to include knowledge-based or carelessly indifferent aim is consistent with this approach. Even if mass mortality was not the ultimate immediate goal, such a change would allow for the prosecution of situations in which the individuals were clearly conscious of the long-term ecological repercussions of their conduct. This development of intent criteria would also represent a turning point in international criminal law, reflecting a growing understanding that in the modern era, ecological collapse and human extermination are intrinsically connected incidents.

In order to address such circumstances, the International Criminal Court may institutionally implement innovative procedures. Environmental forensic units, interdisciplinary prosecuting teams, and specialized scientific advisory panels could guarantee that ecological evidence is as credible as conventional proof of violence. Additionally, working with institutions like UNESCO and UNEP could assist in identifying situations in which environmental harm compromises biological and cultural existence.

Acknowledging ecocide as genocide has significant symbolic and preventative purposes in addition to legal codification. It supports the idea that environmental stability is essential to human rights and peace rather than incidental. By framing environmental destruction as a crime against humanity itself, international law would send a clear deterrent message to both state and corporate actors: that the deliberate poisoning of ecosystems is as condemnable as the deliberate targeting of civilians.

Ultimately, incorporating ecocide within the legal imagination of genocide only strengthens international criminal law. It restores coherence between the material and existential dimensions of survival, acknowledging that annihilating a people's environment is tantamount to annihilating the people themselves.

Conclusion

These days, armaments are not the only weapons utilized in combat; various chemicals and poisons are also employed. Even in the absence of a single gunshot, the environment would have turned into a battleground, leaving its inhabitants as casualties.

Ecocide should be classified as genocide when it is purposefully employed as a means of eradicating cultural identity or displacing people. As demonstrated in Palestine, Ukraine,

Vietnam, and the Gulf War, environmental destruction is now a deliberate act meant to jeopardize life rather than an accidental consequence of combat. Examples of contemporary international regulation that are inadequate are the Rome Statute and the ENMOD Convention. Due to their high standards and insufficient enforcement, they are unable to hold criminals appropriately accountable. To bridge this gap, three policy actions are suggested: First, ecocide must be recognized by the Rome Statute as a distinct crime that the International Criminal Court may try. Second, environmental damage caused by war must be considered a component of genocide. Third, international legal actors must acknowledge that justice for communities and justice for the environment are inseparable.

What we really need, beyond legal reform, is a shift in societal perspective on environmental law itself. The qualms of armed conflict need to be looked at through the environmental lens since war crimes cannot be fully comprehended or prosecuted without considering their environmental consequences. This is already being seen and symbolized in Palestine, where the olive tree stands as a source of sustenance and as an emblem of resistance and cultural survival. Criminalizing ecocide is to declare that the Earth and its people are sacred and must be defended from deliberate harm.

