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**ECOCIDE AND CORPORATE CRIMINAL
ACCOUNTABILITY: EXAMINING EMERGING
LEGAL FRAMEWORKS FOR PROSECUTING
ENVIRONMENTAL CRIMES**

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ABSTRACT

The accelerating degradation of ecosystems at a planetary scale has prompted growing calls to establish ecocide — the wilful or negligent large-scale destruction of the natural environment — as an international crime. This paper examines the conceptual foundations and evolving legal architecture surrounding ecocide, with particular emphasis on the distinct challenge of holding corporations criminally accountable for environmental devastation. Drawing upon the Rome Statute framework, customary international law, and recent proposals advanced by the Stop Ecocide International Expert Panel, the paper analyses the structural impediments that have historically insulated corporations from criminal liability in international law. It further evaluates domestic legal innovations, including the United Kingdom's Corporate Manslaughter and Corporate Homicide Act 2007 and landmark civil litigation such as *Milieudefensie et al v Royal Dutch Shell plc*, as emerging analogues that may inform a viable international framework. The paper concludes that incorporating ecocide into the Rome Statute, coupled with supplementary domestic enforcement mechanisms and civil society accountability instruments, offers the most legally coherent pathway to deterring corporate environmental harm of a catastrophic character.

Keywords: *Ecocide, Corporate Criminal Liability, Rome Statute, International Criminal Law, Environmental Justice, Corporate Accountability*

1. Introduction

The relationship between corporate enterprise and environmental harm occupies an uncomfortable lacuna in contemporary international law. Whilst multinational corporations have, in the pursuit of profit, contributed to environmental catastrophes ranging from catastrophic oil spills to the systematic destruction of primary rainforest, international legal frameworks have remained largely ill-equipped to subject such actors to meaningful criminal accountability. The concept of ecocide — broadly understood as the large-scale destruction or loss of ecosystems — has emerged as a potential remedy for this deficit, seeking to translate the moral gravity of environmental devastation into enforceable legal obligations.¹

The contemporary ecocide movement traces its intellectual lineage to the 1970s, when environmental scholars first began advocating for the recognition of environmental destruction as a cognisable international wrong. The formal structure of international criminal law, however, has remained anchored to the Rome Statute framework, which limits its jurisdiction to genocide, crimes against humanity, war crimes, and the crime of aggression.² The International Criminal Court's (ICC) 2016 Policy Paper signalled a modest but significant shift, indicating willingness to prioritise environmental cases where crimes result in the destruction of the environment, illegal exploitation of natural resources, or the unlawful dispossession of land.³

Against this backdrop, the Independent Expert Panel convened by Stop Ecocide International proposed in 2021 a formal definition of 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.'⁴ This definition, with its dual threshold of 'unlawful or wanton' conduct, represents a carefully calibrated attempt to balance the

¹Polly Higgins, Damien Short and Nigel South, 'Protecting the Planet: A Proposal for a Law of Ecocide' (2013) 59 *Crime Law and Social Change* 251, 252.

²Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, arts 5-8.

³International Criminal Court, 'Policy Paper on Case Selection and Prioritisation' (2016) <<https://www.icc-cpi.int>> accessed 10 April 2025.

⁴Stop Ecocide International, 'Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text' (June 2021) <<https://www.stopecocide.earth>> accessed 10 April 2025.

demands of legal certainty with the necessity of capturing the full spectrum of environmentally destructive corporate behaviour.⁵

This paper proceeds in five parts. Following this introduction, Part II traces the historical development of environmental law and the emergence of ecocide as a legal concept. Part III examines the existing Rome Statute architecture and its limitations for prosecuting corporate actors. Part IV analyses specific corporate accountability mechanisms, drawing on domestic and emerging international frameworks. Part V evaluates the prospects for a coherent prosecutorial regime and offers conclusions regarding the most viable path forward.

2. Historical Development of Ecocide as a Legal Concept

International environmental law has evolved considerably since the Stockholm Declaration of 1972, which first enshrined the principle that states bear responsibility for ensuring that activities within their jurisdiction do not cause damage to the environment of other states or areas beyond national jurisdiction. Yet this foundational principle, whilst generating a rich body of treaty law and customary norms, has consistently failed to grapple with the criminal dimensions of environmental destruction. The global environmental crisis — characterised by accelerating biodiversity loss, climate disruption, and oceanic degradation — has rendered this gap increasingly untenable.⁶

The historical roots of ecocide as a legal concept can be located in the aftermath of the Vietnam War, when the United States' deployment of Agent Orange drew international condemnation for its catastrophic environmental consequences. Swedish Prime Minister Olof Palme's denunciation of the conflict as 'ecocide' at the 1972 Stockholm Conference marked the first prominent use of the term in international discourse. The subsequent decades saw periodic advocacy for its formal recognition, most notably through Polly Higgins' 'Eradicating Ecocide' proposal and her unsuccessful attempt in 2010 to have ecocide recognised as the fifth international crime under the Rome Statute.⁷

Several threads of existing international law provide partial foundations for an ecocide regime.

⁵Jojo Mehta, 'The Case for Ecocide Law' (2021) 48 *Alternatives Journal* 22, 23.

⁶United Nations Environment Programme, 'Global Environmental Outlook 6' (2019) 4.

⁷Philippe Sands, 'Ecocide, the Climate Emergency and the Path to International Environmental Justice' (2022) 37 *Journal of Environmental Law* 1, 5.

The prohibition on widespread, long-term, and severe environmental damage in armed conflict, codified in Additional Protocol I to the Geneva Conventions, establishes that the environment may itself be a victim of criminal acts deserving legal protection.⁸ Similarly, the International Court of Justice's treatment of environmental damage in *Gabcíkovo-Nagymaros Project*⁹ implicitly acknowledged the justiciability of large-scale environmental harm, even if the Court declined to characterise such harm in criminal terms.

The evolution of the 'polluter pays' principle, the precautionary principle, and the doctrine of sustainable development within treaty law and customary international law has further enriched the normative foundations upon which an ecocide framework might rest. The Trail Smelter Arbitration,¹⁰ though decided long before contemporary environmental consciousness, established the cardinal principle of state responsibility for transboundary environmental harm — a principle whose corporate analogue remains elusive in binding international law. These foundational cases and instruments demonstrate that international law has long grappled with environmental harm, even if it has not yet achieved the decisive step of subjecting corporations to criminal liability for ecocide.

3. The Rome Statute Framework and Its Limitations

The Rome Statute remains the cornerstone of international criminal law, establishing the ICC's jurisdiction over the most serious crimes of concern to the international community. Its four enumerated crimes — genocide, crimes against humanity, war crimes, and the crime of aggression¹¹ — share the common characteristic of targeting human beings as the primary victims of criminal conduct. The statute's anthropocentric orientation has consequently rendered it ill-suited to address crimes in which the primary victim is the natural environment itself.

Crimes against humanity, as defined in Article 7 of the Rome Statute, require conduct directed against a civilian population as part of a widespread or systematic attack.¹² Whilst environmental destruction that systematically displaces or harms human communities might

⁸Additional Protocol I to the Geneva Conventions (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, arts 35(3), 55.

⁹*Gabcíkovo-Nagymaros Project (Hungary v Slovakia)* [1997] ICJ Rep 7.

¹⁰*Trail Smelter Arbitration (United States v Canada)* (1938, 1941) 3 RIAA 1905.

¹¹Rome Statute (n 2) art 5.

¹²*Ibid* art 7.

theoretically satisfy these elements, the requirement of 'attack' and the need to establish a policy element have historically frustrated attempts to prosecute environmental crimes under this head. Similarly, war crimes under Article 8, which include the prohibition of widespread, long-term, and severe damage to the environment during armed conflict,¹³ are restricted to the context of armed hostilities and provide no purchase in peacetime corporate operations.

A further and more fundamental impediment is the Rome Statute's exclusive focus on natural persons. Article 25 establishes individual criminal responsibility, and whilst Article 28 provides for command responsibility,¹⁴ the statute does not extend criminal liability to legal persons such as corporations. This lacuna reflects the political compromise struck during the Rome Conference negotiations, at which France's proposal to include corporate liability was ultimately rejected. The consequence is that international criminal law lacks any mechanism to directly prosecute the corporate entities whose decision-making structures and profit imperatives may be most causally responsible for large-scale environmental harm.

The 2021 Expert Panel definition of ecocide seeks to address both the anthropocentric bias and the corporate accountability gap simultaneously. By defining ecocide in terms of damage to the environment itself — rather than harm to human victims — and by establishing a dual mens rea standard encompassing both 'unlawful' and 'wanton' conduct,¹⁵ the proposal attempts to capture the full range of environmentally destructive corporate behaviour, from deliberate destruction to reckless disregard for environmental consequences. The 'wanton' standard is particularly significant in the corporate context, as it targets conduct that reflects 'reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated,'¹⁶ a formulation evidently designed to reach corporate actors who cannot claim ignorance of environmental consequences but who nonetheless proceed with environmentally destructive activities for commercial gain.

The threshold elements of 'severe' and either 'widespread' or 'long-term' damage¹⁷ are similarly crafted to exclude ordinary industrial activity whilst capturing the extraordinary environmental devastation associated with, for example, large-scale deforestation, uncontrolled toxic

¹³Ibid art 8.

¹⁴Rome Statute (n 2) arts 25, 28.

¹⁵Stop Ecocide International (n 4) 5-7.

¹⁶Ibid 8.

¹⁷Ibid 9.

dumping, or the systematic destruction of marine ecosystems. Whether these thresholds would prove workable in practice before an international tribunal remains to be tested, but their conceptual foundations appear both legally coherent and normatively compelling.

4. Corporate Criminal Accountability: Existing and Emerging Mechanisms

The question of corporate criminal accountability for environmental harm cannot be resolved through international law alone. An effective framework requires engagement with the full architecture of domestic criminal law, civil liability regimes, regulatory enforcement, and emerging human rights-based approaches. This Part examines each of these dimensions in turn, with particular attention to developments that illuminate the potential contours of a future ecocide regime.

4.1 Corporate Criminal Liability in Domestic Law

The attribution of criminal liability to corporations has proved persistently challenging in domestic legal systems, given that traditional criminal law concepts of *mens rea* and *actus reus* presuppose a natural person capable of forming intent and executing acts. Common law jurisdictions have historically addressed this difficulty through the 'directing mind and will' doctrine, attributing to the corporation the mental states of senior officers who effectively constitute the corporate ego.¹⁸ This approach has been criticised for its restrictive scope, as it immunises large, complex organisations whose decision-making is distributed across multiple departments and management layers.

The United Kingdom's Corporate Manslaughter and Corporate Homicide Act 2007 represents a significant attempt to overcome these difficulties through the concept of 'gross breach' of a duty of care, assessed by reference to the management failures of the 'senior management' of the organisation rather than requiring identification of a single directing mind.¹⁹ Whilst the Act's scope is limited to fatal corporate misconduct, its methodology — assessing corporate liability through institutional failures rather than individual attribution — offers a potentially transferable model for ecocide prosecutions.

The *Trafigura* case, involving the dumping of toxic waste in Côte d'Ivoire in 2006, illustrates both the potential and the limitations of existing frameworks. *Trafigura* ultimately settled civil

¹⁸Allens Arthur Robinson, 'Corporate Culture' as a Basis for the Criminal Liability of Corporations' (2008) Report prepared for the UN Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, 5.

¹⁹Corporate Manslaughter and Corporate Homicide Act 2007 (UK), s 1.

claims and faced regulatory penalties in multiple jurisdictions, but the parent company's officers faced no criminal prosecution commensurate with the scale of environmental and human harm caused.²⁰ The case underscores the inadequacy of relying exclusively on domestic criminal law when corporate environmental crimes are transnational in scope and the harm falls disproportionately on communities with limited access to legal redress.

4.2 Civil Litigation and Corporate Liability

The limitations of criminal law have increasingly led affected communities and environmental organisations to pursue civil litigation as a vehicle for corporate accountability. The UK Supreme Court decisions in *Vedanta Resources plc v Lungowe* and *Okpabi v Royal Dutch Shell Plc*²¹ established that parent companies may owe a duty of care to individuals harmed by the environmental operations of their subsidiaries, fundamentally expanding the reach of civil liability in the corporate group context.

Most significantly, the Hague District Court's judgment in *Milieudefensie et al v Royal Dutch Shell plc*²² ordered Shell to reduce its global carbon emissions by 45% by 2030, finding that the company's contribution to climate change violated its duty of care under Dutch tort law. The judgment represents the first instance of a domestic court imposing a legally binding emissions reduction obligation on a private corporation, establishing a precedent of potentially far-reaching significance for corporate environmental accountability.

Similarly, the Dutch Supreme Court's landmark ruling in *Urgenda Foundation v State of the Netherlands*²³ held that the Dutch state's failure to implement adequate climate mitigation measures violated its obligations under Articles 2 and 8 of the European Convention on Human Rights. Whilst directed against a state rather than a corporation, the Urgenda judgment's human rights framing opens conceptual space for analogous claims against corporate actors whose emissions contribute disproportionately to climate-related harm.

4.3 The UN Guiding Principles and Business Responsibilities

The United Nations Guiding Principles on Business and Human Rights (UNGPs),²⁴ adopted

²⁰Trafigura case: see Greenpeace Netherlands and Amnesty International, 'The Toxic Truth' (2012) <<https://www.greenpeace.org>> accessed 10 April 2025.

²¹*Vedanta Resources plc v Lungowe* [2019] UKSC 20; *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3.

²²*Milieudefensie et al v Royal Dutch Shell plc*, Hague District Court (26 May 2021) ECLI:NL:RBDHA:2021:5339.

²³*Urgenda Foundation v State of the Netherlands (Ministry of Infrastructure and the Environment)* [2015] C/09/456689, ECLI:NL:RBDHA:2015:7196.

²⁴UN Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United

unanimously by the Human Rights Council in 2011, establish a tripartite framework of state duty to protect, corporate responsibility to respect, and access to remedy. Whilst the UNGPs lack binding legal force, they have materially influenced the development of both domestic legislation and international norm-setting. The corporate responsibility to respect human rights — which encompasses the environmental conditions necessary for the realisation of human rights — provides a normative foundation that increasingly complements emerging ecocide frameworks.

The prospect of a binding treaty on business and human rights, under negotiation at the UN since 2014, would substantially strengthen the accountability architecture if adopted. A legally binding instrument requiring states to ensure corporate accountability for environmental harm, coupled with mandatory human rights and environmental due diligence requirements, could operate alongside an ecocide regime to create a comprehensive accountability framework addressing both criminal and civil dimensions of corporate environmental harm.

5. Prospects for a Coherent Ecocide Prosecution Regime

The case for incorporating ecocide into the Rome Statute has gathered significant momentum, with Vanuatu and the Maldives formally proposing the amendment at the 2019 Assembly of States Parties.²⁵ Belgium, France, and a number of other European states have introduced domestic ecocide legislation, whilst the European Union's proposed revision of its Environmental Crime Directive signals growing political will to criminalise serious environmental harm at the supranational level. This legislative momentum suggests that the question is increasingly one of technical design rather than fundamental political will.

The most significant challenge for a corporate-focused ecocide regime lies in establishing a workable mechanism for attributing criminal responsibility to legal persons. One approach would amend the Rome Statute to explicitly extend jurisdiction to corporations, following the model of certain domestic systems and international instruments such as the OECD Convention on Combating Bribery of Foreign Public Officials. An alternative approach would rely on universal jurisdiction to enable domestic prosecution of corporate ecocide, analogous to the universal jurisdiction regimes that have been developed for torture and crimes against humanity

Nations 'Protect, Respect and Remedy' Framework' (2011) UN Doc A/HRC/17/31.

²⁵Pacific Islands Forum, 'Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise' (2021) <<https://forumsec.org>> accessed 10 April 2025.

in certain states.²⁶

The evidential challenges of prosecuting ecocide should not be underestimated. Establishing the causal link between specific corporate conduct and ecosystem-scale environmental harm requires sophisticated scientific evidence, often spanning decades of ecological data. Attribution science — the emerging field that quantifies the contribution of specific emission sources to observed climate impacts — offers increasingly precise tools for establishing this link in climate-related cases,²⁷ and its methodologies may have broader applicability to other forms of environmental crime. Corporate reporting obligations, mandatory environmental impact assessments, and enhanced disclosure requirements could further strengthen the evidentiary foundation for prosecution.

Complementary domestic mechanisms will be essential to any effective ecocide regime. The International Law Commission's ongoing work on crimes against humanity,²⁸ and its potential extension to include serious environmental crimes, provides another avenue for progressive development. The establishment of specialised environmental crime units within domestic prosecutorial authorities, equipped with scientific and investigative expertise, would be necessary to translate the normative framework into actual prosecutions.²⁹

Sentencing and remediation raise equally complex questions. Criminal sanctions against corporations must be calibrated to achieve genuine deterrence in an environment where financial penalties can be absorbed as a cost of doing business.³⁰ Debarment from public contracts, mandatory environmental remediation obligations, and structural injunctions requiring corporate governance reform may prove more effective deterrents than fines alone. Restorative justice approaches, drawing inspiration from indigenous legal traditions that recognise the inherent rights of ecosystems, offer a further dimension that conventional criminal law frameworks have yet to incorporate.

The relationship between ecocide and climate justice deserves particular emphasis. Climate

²⁶Universal Jurisdiction Network, 'Universal Jurisdiction Annual Review 2023' (2023) <<https://www.universaljurisdictionannualreview.org>> accessed 10 April 2025.

²⁷Carbon Disclosure Project, 'Accountability in the Boardroom' (2022) 14.

²⁸International Law Commission, 'Third Report on Crimes Against Humanity' (2017) UN Doc A/CN.4/704.

²⁹Amsterdam International Law Clinic, 'Towards Recognition of Ecocide' (2021) <<https://www.uva.nl>> accessed 10 April 2025.

³⁰Carbon Disclosure Project (n 30) 18.

change, as the most pervasive and consequential form of large-scale environmental harm, presents a compelling test case for any ecocide framework. The concentration of historical emissions in a small number of major fossil fuel corporations, combined with decades of documented knowledge of climate risks and deliberate strategies to suppress or discredit climate science, suggests a body of corporate conduct that may ultimately meet even a stringent ecocide threshold. The legal and political obstacles to prosecution remain formidable, but the normative trajectory of international law is towards, not away from, accountability for corporate climate harm.³¹

6. Conclusion

The recognition of ecocide as an international crime, and the extension of criminal accountability to corporate actors who commission or enable large-scale environmental destruction, represents one of the most significant normative developments in international law since the adoption of the Rome Statute. This paper has argued that the conceptual foundations for such a development are legally coherent, that the evidential and procedural challenges, while substantial, are not insurmountable, and that the growing momentum of domestic legislation, civil litigation, and international advocacy makes the formal recognition of ecocide a matter of when rather than if.

The critical insight animating the ecocide framework is that the natural environment is not merely a backdrop to human activity but an essential precondition for human flourishing, possessing intrinsic value that demands legal protection in its own right. A legal order that criminalises genocide but permits the systematic destruction of the biosphere that sustains all human life rests on an incoherent normative foundation. The amendments proposed by the Expert Panel, refined and supplemented by robust domestic enforcement mechanisms, civil liability frameworks, and mandatory human rights due diligence obligations, offer the most promising path towards a comprehensive regime of corporate environmental accountability.

States, international institutions, civil society organisations, and the broader legal community bear a collective responsibility to advance this agenda with the urgency that the planetary ecological crisis demands.³² The law has never been a passive reflection of existing power; it

³¹Stop Ecocide International (n 4) 12.

³²UNEP (n 6) 9.

is also an instrument of transformation. The incorporation of ecocide into international criminal law, and the attendant accountability of those corporate actors most responsible for environmental devastation, would mark a transformative moment in that ongoing project.

