

GUEST LECTURE · 12 May 2026 · Online · 17:00-19:00

Democritus University of Thrace, School of Law
LLM International Criminal Justice

The Crime of Ecocide

From the Vietnam War to the International Criminal Court

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“*Humans are inseparable from
the natural world.*”

— Rebecca Hamilton, Harvard Human Rights Journal (2025) p 70

PART I (17:15-18:00)

The Genealogy of Ecocide

- 1970: Vietnam and the birth of a word
- From Falk's draft Convention to the ILC's deletion
- Domestic ecocide laws: dormant for decades, now activated

Art 8 (2)(b)(iv)

- In force since 2002. Zero prosecutions. Why?
- December 2025: the ICC's first Policy on Environmental Damage

PART II (18:15-19:00)

The 21st-century push

- Polly Higgins
- Independent Expert Panel definition
- "Unlawful or wanton"
- Hamilton

Current Trajectory

- Vanatu, Fiji & Samoa
- Domestic & regional action
- ICL

The Genealogy of Ecocide

From Vietnam herbicides to the International Law Commission, and why a peacetime version was negotiated out by 1996.

AGENT ORANGE: LAST CHAPTER OF THE VIETNAM WAR

Source: Retro Report

1970: Vietnam and the birth of a word

ETYMOLOGY

oikos (>*oἶκος*)

[Greek] = house, home

caedere

[Latin] = to kill, to cut down



Arthur Galston

Galston was a US biologist who identified the defoliant effects of a chemical later developed into Agent Orange. Subsequently a bioethicist, he was the first in 1970 to characterise massive damage and destruction of ecosystems as ecocide.



1961-71

Operation Ranch Hand: U.S. sprays herbicides across South Vietnam, Laos, Cambodia.



Feb 1970

Galston coins “ecocide” at a Washington Conference on War & National Responsibility



Jun 1972

In his opening speech at the United Nations Stockholm Conference on the Human Environment (which adopted the Stockholm Declaration), PM Olof Palme referred to the Vietnam war as ecocide.

Source: <ecocidelaw.com/history>

Takeaway: coined by scientists, entered international vocabulary at an environmental conference -> hybrid concept from the start.

From Falk's draft Convention to the ILC's deletion



1973

Richard Falk's draft International Convention on the Crime of Ecocide

Clear link between ecocide and military action:

- weapons of mass destruction
- chemical herbicides, bombs, bulldozing
- weather modification as a weapon
- forcible removal for military/industrial aims

The grammar of the Genocide Convention grafted onto environmental destruction, “the fifth international crime.”



1986 - 1996

ILC Draft Code and its deletion

Art. 26 (1991): criminalised any individual “who wilfully causes or orders the causing of *widespread, long-term and severe* damage to the natural environment.”

- no requirement of armed conflict
- this threshold formula migrated to Art. 8(2)(b)(iv)
- **standalone offence deleted by 1996**

“The working group considered that the time was not yet ripe for declaring attacks on nature as such crimes against the peace and security of mankind.”

— Christian Tomuschat
Crimes against the environment. *Environmental Policy and Law*, 26(6), 242–243

Source: <ecocidelaw.com/history>

Domestic ecocide laws: dormant for decades, now activated

1985 / 1999

Vietnam

Environmental “crime against humanity” (1985); explicitly named “ecocide” in the 1999 Penal Code.

1996

CIS Model Penal Code

“Crime against peace and security” = massive destruction of flora/fauna, contamination capable of ecological catastrophe.

Still in force

Post-Soviet states

Russia, Ukraine, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Armenia, Moldova.



2022 → DORMANT NO LONGER

Ukraine activates Article 441 of its Criminal Code

- Kakhovka Dam destruction (June 2023)
- Attacks on Zaporizhzhia nuclear power plant
- Multiple investigations under Art. 441 by the Prosecutor General: first time in 30 years the domestic crime is used in active conflict.

<https://www.climatecounsel.org/warcrimes>

Article 8(2)(b)(iv)

The existing framework, and why, in nearly twenty-five years, no one has ever been prosecuted under it.

The text of Article 8(2)(b)(iv)



ROME STATUTE · ARTICLE 8(2)(b)(iv)

*It is a war crime, in international armed conflict, to intentionally launch 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 be **clearly excessive** in relation to the concrete and direct overall military advantage anticipated.*

WIDESPREAD

Large geographic area

AND

LONG-TERM

Measured in decades

AND

SEVERE

prejudices health, survival,
ecosystem

+ CLEARLY EXCESSIVE

vs. concrete & direct overall military
advantage anticipated

Source: API arts. 35(3) & 55 (conjunctive “and”) — not ENMOD (disjunctive “or”). The Rome Statute chose the harder formula.

* ICC, *Elements of Crime*, (2013) footnote 36 p 13

In force since 2002. Zero prosecutions. Why?

0

prosecutions,
indictments, charges,
or preliminary examinations

Kuwait 1991 – Kakhovka Dam – Gaza – Sahel – Sudan

1

Threshold extraordinarily high

Three cumulative requirements (: widespread AND long-term AND severe) each individually demanding.

2

Proportionality favours the defence

Almost any operation can be defended as serving some “concrete and direct overall” military advantage.

3

Mens rea approaches *dolus directus*

Elements of Crimes (footnote 36): the perpetrator must have made the value judgement themselves.

4

Only international armed conflict

Kampala did not extend the provision to NIACs, where most modern environmental destruction occurs.

5

The aesthetic bias of international criminal justice

[DeFalco](#): ICC machinery built for spectacular human suffering, not [Rob Nixon's](#) “slow violence.”

See also: Klean (2025) Ecocide’s evolving relationship with war (2025); Cusato (2017) Beyond symbolism: Problems and prospects with prosecuting environmental destruction before the ICC; Repez , Atanasiu (2019) A “silent victim” of armed conflicts. Acta Universitatis Danubius: Relationes Internationales; DeFalco (2022) Invisible atrocities: The aesthetic biases of international criminal justice.

December 2025: the ICC's first Policy on Environmental Damage



ANNOUNCED 4 DEC 2025 · DEPUTY PROSECUTOR KHAN · ASP, THE HAGUE

Even without a new crime, environmental destruction can already be prosecuted at the ICC, if it satisfies the elements of an existing crime.



Genocide [§24]

Prosecutor v. Al Bashir, ICC-02/05-157-AnxA (14 July 2008), para. 174: destruction of “wells, water pumps, crops, livestock” as part of the charge.



Civilian objects [§41]

Because the natural environment is generally recognised as civilian in character, intentionally attacking any element of the environment, such as a field or forest or body of water, would be a war crime unless the attacked object was a military objective at the time of the attack



Pillage [§42]

War-crime vehicle for prosecuting illegal natural-resource extraction in armed conflict.



Article 28(b) [§19]

Senior corporate officers as non-military superiors
(bridge to your 26 May lecture)

The policy does not create a crime of ecocide, but it ends the era of total inaction.

1 5 - M I N U T E B R E A K

The 21st-century push

Polly Higgins, Stop Ecocide, and the 2021 Independent Expert Panel definition.



Source: Stop Ecocide International <youtube.com/watch?v=RG1yC2y2Fq4>

Polly Higgins: the indispensable “norm entrepreneur”

Polly Higgins

Scottish barrister
1968 - 2019



- Quit practice in 2010
- Published *Eradicating Ecocide* (2010)
- Submitted draft amendment to the ILC: ecocide as the “fifth crime against peace”
- Co-founded what became Stop Ecocide International

“ Higgins's definition

Extensive damage to, destruction of or loss of ecosystems of a given territory... to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished.

Applied in peacetime AND in armed conflict

No nexus to war.

Strict liability → no *mens rea* requirement

A duty of care on those in superior responsibility, regardless of intent.

Neither feature survived into the 2021 Expert Panel definition. The move was deliberate.

The 2021 Independent Expert Panel definition

Co-chaired by *Philippe Sands QC* & *Dior Fall Sow* · Deputies: *Kate Mackintosh* & *Richard Rogers* · 12 members



OPERATIVE DEFINITION · NOW BEFORE THE ASSEMBLY OF STATES PARTIES

Ecocide means 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.

ACTUS REUS

unlawful OR wanton

two alternative pathways

MENS REA

substantial likelihood

below Art. 30's "will occur"

HARM

**severe + widespread OR
long-term**

the ENMOD formula

Side by side: Art. 8(2)(b)(iv) vs the 2021 Independent Expert Panel

Dimension	Article 8(2)(b)(iv)	2021 Independent Expert Panel
Context	International armed conflict only	Peacetime AND armed conflict
Threshold	widespread AND long-term AND severe (cumulative, //API)	severe AND [widespread OR long-term] (disjunctive, //ENMOD)
Mens rea	“will occur” + value judgement (footnote 36)	“substantial likelihood”
Balancing	vs. concrete & direct overall military advantage	vs. social and economic benefits (under “wanton”)
Result	Wartime IHL proportionality	Peacetime offence built on wartime proportionality logic

A peacetime crime grafted onto a wartime proportionality structure. Whether that is doctrinally coherent is itself contested.

“Unlawful or wanton” → two doors into criminality



UNLAWFUL

The conventional door

Takes its ordinary meaning. If the act violates applicable national or international law, the requirement is satisfied. The destruction is already prohibited somewhere. Ecocide simply makes it an international crime.

Adds a criminal sanction to existing prohibition.



WANTON

The radical move

*“With reckless disregard for damage which would be **clearly excessive in relation to the social and economic benefits anticipated.**”*

Reaches conduct that is otherwise lawful. A development project with all necessary permits can still be ecocide if its damage is clearly excessive vs. anticipated benefits.

Hamilton (2025): separability vs inseparability



Technical drafting decision or deep normative choice?

THE PANEL'S TEST: SEPARABILITY



HARM

to nature

BENEFIT

to humans

HAMILTON'S CORRECTION: INSEPARABILITY



HARM

to nature + to
humans

BENEFIT

to humans

Hamilton draws on TWAIL scholarship: the separability assumption has colonial roots (Gonzalez; Natarajan & Khoday), and a test built on it risks reproducing international law's complicity in environmental destruction

Current trajectory

Vanuatu, Fiji & Samoa at the ICC. Belgium, France, the EU Directive, Ukraine. Multi-level normative innovation.

9 September 2024: Vanuatu, Fiji & Samoa



New Article 8

- Submitted to UN Secretary-General Guterres under Art. 121(1)
- Adopts the 2021 Expert Panel definition *verbatim*
- Sits alongside the existing crimes in Article 5
- Circulated to all States Parties; Working Group on Amendments may then consider it

Adoption requires a 2/3 majority of the Assembly of States Parties, then ratification, state by state.

Why Vanuatu?

A low-lying archipelago of 80 islands in Oceania. Territory submerging. Food systems collapsing. The state that secured the ICJ Advisory Opinion on Climate Change (July 2025).



Years. Possibly a decade.

Aggression took 1998-2017 to enter into force, and only for ratifying states. The honest case for proponents: the expressive value of criminalisation itself.

Domestic & regional action while the ICC waits



BELGIUM

22 February 2024

First EU state to enact ecocide

New Penal Code places ecocide just after grave violations of IHL, signalling its claimed international character. Definition is narrower than the Panel's (requires unlawfulness).



EUROPEAN UNION

Directive 2024/1203 · Environmental Crime Directive

“Comparable to ecocide”

Word “ecocide” not in operative text; Preamble §21 acknowledges the ICC discussions. Art. 3(3) requires criminalisation of comparable conduct. Most consequential EU env. criminal-law shift in a generation.



UKRAINE

Article 441 in active use since 2022

Ecocide framing as political weight

Most environmental harm will be charged under general war-crimes provisions but the ecocide framing has shaped European public discourse about Russian conduct.

What is ICL actually for, here?

*Ecocide may or may not enter the Rome Statute.
Probably it will, eventually. The more important
question is what kind of crime it will be when it does.*

Rebecca J. Hamilton, *Criminalizing Ecocide* — 38 Harv. HRJ 69 (2025)

Rachel Killean, *Ecocide's Evolving Relationship with War, Env. & Security* (2025)