

Ecocide's evolving relationship with war

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Abstract

This article examines the evolving relationship between ecocide and the regulation of war, tracing its conceptual development from a war crime to a broader environmental offence. Using a social constructivist approach, it explores how scientists, legal scholars and policymakers shaped the emergence of ecocide in response to environmental destruction during the Vietnam War. While early legal frameworks linked ecocide to armed conflict, contemporary advocacy has expanded its scope to include peacetime environmental harm. After exploring the factors that influenced that broadening in scope, the article considers whether and how contemporary formulations of ecocide might impact future attempts to ensure accountability for wartime environmental destruction. It argues that legal principles such as *lex specialis* limit ecocide's applicability in conflict, even as domestic efforts seek to challenge these constraints. The article concludes that while ecocide's legal recognition is growing, its capacity to address conflict-related environmental harm remains uncertain, highlighting the need for continued efforts to explore how existing international crimes can be used to encompass ecological destruction.

Keywords

ecocide, international criminal law, social constructivism, environmental harm, war

1. Introduction

In this article, I examine how diverse actors, historic contexts and social processes have informed ecocide's conceptual emergence and development, with a specific focus on the concept's evolving relationship with the regulation of war. To do so, I adopt a 'social constructivist' approach which understands legal norms as socially constructed, contextually informed and continually contested phenomena (see e.g. Nadelmann, 1990; Finnermore & Sikkink,

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1998; Landefeld, 2019; Sandholtz, 2007). In adopting this approach, I seek to centre the individuals, organisations, states and other ‘norm entrepreneurs’ that have advocated for the development of ‘ecocide’ as a legal concept (Finnermore & Sikkink, 1998). Drawing on a rich literature on the social construction of international law, I explore the relationship between advocacy and historic incidences of environmental harm, how individual beliefs inform advocacy strategies (Finnermore & Toope, 2001), and how advocacy is, in turn, shaped and constrained by political and legal contexts (Finnermore, 2003; Landefeld, 2019).

Much of the contemporary literature on ecocide either grapples with ecocide’s definitional challenges (e.g. Robinson, 2022; Minkova, 2023), critiques criminal law as a response to environmental harm (Cusato & Jones, 2024; Knox & Whyte, 2025) or highlights specific case studies of ‘ecocidal’ violence (e.g. Short and Crook, 2022; Walters, 2023). There is an increasingly uniform summary of ecocide that often accompanies this literature. This highlights key developments (e.g. Richard A. Falk’s proposed Convention, Polly Higgins’ proposal to the International Law Commission, the Stop Ecocide Expert Panel’s 2021 definition), but is relatively superficial in its explanation as to how these developments came to be. This is not a criticism, if one is focusing on definitional challenges or theoretical critiques, then a superficial history may be sufficient. However, by using social constructivism, I seek to add something distinct and helpful to this existing discourse. I cite these developments (amongst others) but also take a closer look at why and how some forms of environmental harm come to be labelled as crimes, revealing power dynamics and hierarchies of legal influence that might otherwise remain unnoticed. A fully comprehensive history of ecocide is beyond the scope of one article, but my aim is to provide a somewhat ‘thicker description’ (Geertz, 2008) of ecocide’s development. Rather than debating the relative merits of various definitions, I seek to reveal the historically contingent and politically negotiated nature of ecocide’s legal and normative construction. This approach allows me to move beyond a linear or static account and instead situate ecocide within the broader context of shifting political imaginaries, legal cultures and advocacy strategies. In doing so, I offer a response to calls for greater exploration into how ecocide norms spread and evolve across different contexts (Hansen, 2025) while exploring ecocide’s evolving relationship with war.

In the Parts that follow, I track ecocide’s emergence from a desire to enhance the protection of the environment during armed conflict (Part 2) through its subsequent evolution into a concept that is oriented around the need to curtail the excesses of corporate crime and extractivism, and to respond to the ever-more urgent climate crisis (Part 3). I explore how advocates have pursued criminalisation at international, regional and domestic levels, and how ‘ecocide’ has been defined in these different jurisdictions. I then analyse the continued relevance of ecocide as a pathway to criminal accountability for conflict-related environmental harms (Part 4). Ecocide does not enter a vacuum, but sits alongside, overlaps with, and in some cases conflicts with existing norms and frameworks (Finnermore & Sikkink, 1998: 897). I therefore interrogate how existing and proposed crimes of ecocide at domestic and international levels might interact with the matrix of laws that can apply to the conduct of conflict, including international humanitarian law, international criminal law and domestic law. I argue that the concept’s evolution, while potentially offering pathways to greater criminal accountability for environmental harm in general, does little to address the pre-existing problems associated with prosecuting conflict-related environmental harm (Part 4). Thus, I argue that initiatives that explore other avenues for pursuing accountability for such crimes, such as the International Criminal Court’s (ICC) draft policy on how to investigate and prosecute crimes against the environment using existing international criminal law (ICC OTP,

2024) remain important regardless of ecocide's introduction as a fifth core international crime.

2. Ecocide's conceptual grounding in war

This section focuses on the role played by high-profile instances of conflict-related environmental destruction in the emergence of 'ecocide' as a descriptor of atrocity; the impact of scientists, legal academics and international policy makers in pushing for ecocide's recognition as a crime against peace; and the criminalisation of environmental warfare at international and domestic levels throughout the late 20th century.

2.1. *Herbicidal warfare and the birth of ecocide*

It is generally accepted that ecocide – meaning to 'kill' (-cide) our 'home' (eco-) – initially emerged as a descriptor for the USA's use of environmental warfare during the Vietnam War. While contemporary discourse has come to be dominated by legal experts, the term was first coined by scientists seeking to raise the alarm about the impact of new weaponry and tactics on the environment. Their work in drawing attention to this harm was crucial – groups of scientists gained permission to investigate the impacts of herbicides in Vietnam, cultivated relationships within governments and militaries and agitated for herbicidal weapons' international prohibition (Zierler, 2011: 9). The US commenced use of herbicides in 1965; as early as 1967, over 5,000 scientists and physicians, including 127 members of the US National Academy of Sciences, had petitioned the US government to cease the use of 'anti-crop chemical weapons' in Vietnam (Hornig, 1967). The first calls to criminalise 'ecocide' are often attributed to Professor Arthur W. Galston, a plant biologist and chair of the Department of Botany at Yale University, who called upon the United Nations to formulate 'a proposal against ecocide' in 1970 (Knoll & McFadden, 1970). Galston's doctoral research had been used to develop the herbicide known as 'Agent Orange'; he self-identified his guilt as motivating his passion to end its use (Zierler, 2011: 17).

The scientists seeking to condemn herbicidal warfare did not align with broader environmental movements, nor did they congregate around a broader political position (Zierler, 2011: 19). Instead, early campaigns were characterised by a shared, narrower commitment to the regulation of war. For example, speaking at the 1972 International Non-Governmental Organizations Conference on Disarmament, Professor of Botany Arthur H. Westing decried the fact that the 'ecological dimensions of warfare' had 'been almost universally ignored in the past', citing the Vietnam War as demonstrating the urgent necessity of criminalising ecocide (Westing, 1974). The same year, the Prime Minister of Sweden condemned the 'ecocide' of the Vietnam War at the UN Stockholm Conference on the Human Environment (Björk, 1996). Other state representatives, including Indira Gandhi from India and Tang Ke from China, denounced the Vietnam War on similar terms (Tord, 1996), as did attendees at various unofficial events that accompanied the Conference (Björk, 1996; Gauger et al., 2012).

Although international criminal law was in its infancy, war crimes experts also shaped the discussion in influential ways, drawing parallels with the crime of genocide. In 1972, John H.E. Fried, the former Special Legal Consultant to the US War Crimes Tribunal in Nuremberg, published a paper noting that 'in a purely formalistic sense, the world legal order has, because of the very enormity and novelty of the phenomenon, not yet included [ecocide] in its vocabulary' (Fried, 1973: 43). He argued that to claim that ecocide was legal

'would be as impermissible as to claim that Hitler's extermination camps were not illegal because the name of genocide was at that time not part of international law' (Fried, 1973: 43). The following year Professor Richard A. Falk, a leading expert on war crimes who had attended the Stockholm Conference's side events, published his proposed International Convention on the Crime of Ecocide (Falk, 1973). Falk was outraged by the 'depravity' of the US's strategies in Vietnam (Falk, 1973: 80) and similarly framed the attacks on the environment as akin to genocide, describing the US's tactics as extending 'the indiscriminateness of warfare carried out against people to the land itself' (Falk, 1973: 80). Falk drew a clear link between ecocide and military action, defining ecocidal acts as: the use of weapons of mass destruction, chemical herbicides, bombs, bulldozing for military purposes, modifying weather as a weapon of war, and the forcible removal of human beings or animals (for military or industrial objectives) (Falk, 1973). Both Fried and Falk shared the belief that the laws of war had been developed prior to an awareness of the need to protect the natural world, but that international law could be adapted or expanded to meet this new challenge.

This early push for ecocide's criminalisation can be contextualised within the broader discussion that emerged out of the Vietnam War concerning the need to protect the environment in times of armed conflict (Pantazopoulos, 2023: 80). As Zierler (2011) argues, the ecocide campaign was able to gain traction due to the particularities of the specific historical moment. The horrors of the Vietnam War facilitated what Sikkink has described as a tactic of 'information politics' (Sikkink, 2002: 45, see also Schnyder, 2023), meaning the strategic use of information to push for change. The 'political, moral, and strategic calamity of the Vietnam War', the widespread condemnation of the US's tactics, the war's impact on global security debates and Cold War strategy, and growing fears over the possibility of nuclear war, all facilitated a focus on the criminality of environmental warfare. At the same time, the birth of an environmental movement in the US and other Western states (Rootes, 2004) created circumstances that supported a reckoning with extreme acts of environmental destruction (Zierler, 2011).

This double consciousness is evident in Westing and Falk's work. In an early reference to some of the legal issues that have lingered in debates concerning ecocide's definition, Westing argued that ecocide should be limited to military activities (although he acknowledged this may be short sighted), but should *not* be limited to intentional acts, as intent was 'essentially irrelevant' (Westing, 1974). For Falk, while his calls for criminalisation were informed by his awareness of 'the extent to which man's normal activities are destroying the ecological basis of life on the planet', he explicitly advocated focusing on environmental warfare. For both, this appears to be at least in part a strategic choice. For Westing, ecocide as a war crime offered a concept that was easier to codify, as 'military activity can be rather clearly and simply defined (an important consideration in the drafting of an appropriate legal instrument) and infractions readily recognized' (Westing, 1974: 27). As he argued, 'it becomes a little difficult to decide upon the precise limits of ecocide' once a broader range of human activity is considered (Westing, 1974: 26). For Falk, it seemed easier to garner support for such a crime from those states where the 'ecological agenda' was perceived as a less urgent priority (Falk, 1973: 80), and that the 'public outrage over the desecration of the land at a time of rising environmental consciousness, creates a target of opportunity comparable to Nuremberg' (Falk, 1973: 84). Thus, in a process sometimes referred to as 'incremental norm transplantation' (Farrell, 2001) or 'grafting' (Schnyder, 2023), ecocide's advocates ensured that their campaign resonated with broader normative changes that were happening

at the time, focusing on a distinct and comprehensible form of environmental destruction and linking it to the wider outrage around practices of warfare.

2.2. Cementing *Ecocide's* conflict nexus

The concept of 'ecocide' did not make it into any formal international legal documents in the aftermath of the Vietnam War. However, concerns regarding conflict's impact on ecosystems were shared by states, as was a growing awareness that the laws of war were 'drafted and evolved in a pre-ecological frame of mind' (Falk, 1973: 88, see also Fried, 1973). Two key legal developments sought to correct this oversight. In 1977, explicit environmental protections were introduced through the Additional Protocol I to the 1949 Geneva Conventions to regulate the conduct of international armed conflicts, strengthen protections for civilians and civilian objects, and update international humanitarian law to accommodate developments in warfare since World War II. The Additional Protocol now prohibits methods and means of warfare which are 'intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment' (Article 35 of Additional Protocol I), as well as attacking the environment by way of reprisal (Article 55 of the Additional Protocol I). During the same time period, the 1978 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) was negotiated and entered into force, prohibiting the use of environmental modification techniques that have 'widespread, long-lasting or severe effects as the means of destruction, damage or injury' to another ENMOD State Party (Article 1).

These developments arguably cemented ecocide's nexus to conflict in ways that restricted other formulations of an international environmental crime. For example, in 1978, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities considered the potential extension of the Genocide Convention to include 'cultural genocide' and 'ecocide'. These debates both diverged and overlapped with the advocacy outlined above. For instance, reflecting Fried and Falk's approach, the Government of Romania argued that ecocide's inclusion in the Genocide Convention would better reflect the 'acts of genocide likely to be committed nowadays' (Ruhashyankiko, 1978: 130). This gained little traction in the debate, with the Sub-Commission finding that it would be prejudicial to the Genocide Convention to include 'cases which can only have a very distant connexion [sic] with that idea' (Ruhashyankiko, 1978: 134). Some also shared Westing's concerns about the risks of an imprecise crime. In an early indicator of their resistance to the criminalisation of environmental destruction, the UK government submitted that ecocide 'had no definition...and it would appear that the term is incapable of carrying any precise meaning'. They argued that it 'would be used in certain debates for the purposes of political propaganda' and it would be therefore 'inappropriate' to include the term in the Genocide Convention (Ruhashyankiko, 1978: 130). Ultimately, the Sub-Commission noted that 'the question of "ecocide" has been placed by states in a context other than that of genocide' (Ruhashyankiko, 1978: 134), re-asserting its narrower nexus to armed conflict.

In 1985, the Special Rapporteur for the Prevention of the Crime of Genocide, Ben Whitaker, raised the possibility of ecocide's connection to genocide again, flagging the connections between ecocide and the genocide of Indigenous peoples (Whitaker, 1985: 17). A British human rights lawyer with a background in minority rights and what would come to be better understood as Indigenous rights, Whitaker highlighted that Indigenous populations were often the 'silent victims' of 'adverse alterations, often irreparable, to the

environment' (Whitaker, 1985: 17). Although this argument would be reasserted and further developed in genocide-ecocide scholarship and Indigenous rights literature and advocacy in years to come (e.g. Short & Crook, 2022), and despite Whitaker raising the possibility of an optional protocol in the absence of consensus, his advocacy on this point came to nothing.

2.3. Criminalising environmental warfare

The international consciousness regarding humankind's impact on the environment continued to grow throughout the following decades (see e.g. the UN General Assembly's (UNGA, 1982) 'World Charter for Nature'), and the debate over whether and how to criminalise severe environmental destruction continued. The 1990 to 1991 Gulf War re-situated protecting the environment during conflict 'high on the global agenda' (Tarasofsky, 1993: 17), with Iraq's calculated use of oil as a weapon of war providing a devastating reminder of conflict's environmental impacts (Roberts, 1993). As the unprecedented scale of the destruction became clear, the term 'ecocide' re-emerged as a descriptor for environmental atrocity (Cutter, 1991). Responses to Iraq's actions included UN calls for greater compliance with and incorporation of existing laws of war (UNGA, 1992), the unprecedented UN Security Council creation of a compensation fund (UNSC, 1991), and renewed academic, legal and policy interest in how to curtail war's environmental excesses (e.g. Hulme, 1997; Sands et al., 1991; Tarasofsky, 1993; Verwey, 1995).

It may be that the legal developments of the previous decades had somewhat sensitised states to international legal restrictions on environmental warfare, reflecting what Sandholtz and Stiles (2008) have identified as the 'cyclical nature' of norm change. As they note, norm change is not a discrete episode but is shaped by previous disputes and the rules and precedents developed in earlier cycles, as well as new triggering events and disputes (Sandholtz and Stiles, 2008: 323–325). Reflecting earlier debates as well as the contemporary context, 5 years after the end of the Gulf War, the International Law Commission (ILC) adopted the final text of the draft Codes of Crimes Against the Peace and Security of Mankind, criminalising:

in the case of armed conflict, using methods or means of warfare not justified by military necessity in the knowledge that they will cause widespread long-term and severe damage to the natural environment, thereby gravely prejudice the health of survival of the population, and such damage occurs. (Article 20(g))

While the Code's prohibition on environmental warfare was far narrower than the international humanitarian legal principles from which it drew inspiration, agreement had been relatively 'easily reached' on including crimes against the environment 'under the cloak of war crimes' (Tomaschat, 1996: 243). By contrast, resistance emerged to expanding the law beyond the armed conflict context (Tomaschat, 1996: 242). Attempts to introduce environmental destruction as either an autonomous crime or a crime against humanity¹ were defeated at early stages in the drafting process, albeit the latter only narrowly.² Christian Tomaschat, a member of the working group who had developed proposals for an environmental war crime and crime against humanity, has reflected on this process in an often-cited article. His reflections offer insights into the state of mind of ILC members (chosen for their expertise in the doctrinal and practical aspects of international law):

It is very clear from these texts that 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. Indeed, it felt that this level of criminal offence was reached only if, over and above injury to the environment, damage was inflicted on human beings. On the other hand, it is also clear that the working group viewed attacks on the environment as an indispensable element of a draft Code designed to protect humankind against dangers that actually threaten it in the contemporary world. (Tomuschat, 1996)

Although the ILC's membership is not made up of formal political appointments (UNGA, 1947), the ILC was not immune to international politics or the interests of its members' states (Morton, 1999). The arguments made by the ILC's members reveal some of the concerns that restrained a more robust definition. For example, the US member Robert Rosenstock urged caution against expanding the law beyond its established limits and argued that 'crimes against the environment were lacking in any legal basis either in internal law or in international law',³ echoing the UK's resistance to the expansion of genocide in the 1970s. Adopting a different angle, the People's Republic of China member Mr Qizhi He expressed concerns about the need to ensure states' right to exercise self-defence, arguing that scorched earth policies were justified 'for the purpose of maintaining [a state's] territorial integrity and independence'.⁴

By the time international crimes were codified in the Rome Statute of the permanent International Criminal Court in 1998, precedent existed for the prohibition of conflict-related environmental harm, but relatively narrowly, and without any equivalent crime against humanity, autonomous crime of ecocide or similar (ICC, 1998: Art.8(2)(b)(iv)). The Rome Statute, which has been described as 'the most influential reference point' in international criminal law' (Robinson, 2024a: 282), considers environmental destruction a war crime if it will cause disproportionate harm, meaning: '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'. This language draws from Article 35 and 55 of Additional Protocol I, retaining the cumulative approach while introducing additional thresholds in the form of 'clearly excessive' harm when weighed against the military advantage anticipated. A footnote added to the Rome Statute's 'Elements of Crimes' document on the last day of the Rome Statute's negotiations (and thus with no deliberation) further specifies that 'this knowledge element requires that the perpetrator make the value judgement as described therein. An evaluation of that value judgement must be based on the requisite information available to the perpetrator at the time' (Robinson, 2024a, citing ICC, 2011: fn37). This crime has been critiqued as being too vague, too narrow, and for being almost impossible to prosecute in practice (see e.g. Cusato, 2017; Heller & Lawrence, 2007; Smith, 2013). Although there have been recent discussions about the applicability of this war crime to the invasion of Ukraine (Johnson, 2023; Maruf, 2024), to date, there have been no successful prosecutions or indictments of this war crime at the ICC or elsewhere. This does not mean there are no further pathways to international criminal accountability for environmental destruction. An extensive literature has explored how other atrocity crimes might be used, including directly attacking civilian objects, pillage, and starving civilians by depriving them of objects indispensable to their survival (see e.g. Anton, 2016; Freeland, 2005; Martini and Sarliève, 2021; Paulose, 2021). Yet to date, these have also remained unused for this purpose. Scholars have suggested a range of reasons for this, ranging from the pragmatic challenges around proof (Cusato, 2017), to the political power dynamics that silence those advocating for accountability (Repez & Atanasiu, 2019), to the assumption

that atrocities manifest as ‘spectacles’, obscuring the targeting of the natural world from view (DeFalco, 2022).

The above subsections demonstrate how specific incidences of conflict-related environmental harm, combined with wider geopolitical contexts and the growing awareness of environmental issues more broadly, prompted both the birth of ‘ecocide’ as a concept and the subsequent crystallisation of an international environmental war crime. It has also shown how a reticence to expand international law and/or over-criminalise the military choices of states appears to have limited the final product, resulting in a crime widely critiqued for its impracticality. This process of restriction reflects the crucial role of power in the construction of international legal norms. As noted by Freeman in the context of human rights, international agreements are inevitably the product of the balance of power between political interests (Killean & Short, 2025), leading ‘not to their more secure protection but to their protection in a form that is less threatening to the existing system of power’ (Freeman, 2002: 85). By the 1990s, the term ‘ecocide’ itself had disappeared from international legal documents and debates (although not entirely from scholarship, see e.g. Gray, 1996), and by the time it re-emerged in the 2010s it had changed significantly from its original formulations. However, debates were not only occurring at the international level, as explored in the following subsection.

2.4. Domesticating ecocidal crimes against peace

During the 1980s and 1990s, the concept of ecocide gained traction in a small number of domestic jurisdictions, where to this day it is possible to find examples of ecocide defined as a crime against peace. Reflecting international debates, domestic approaches to ecocide reflect the environmental, conflict-related or other challenges facing those involved in the concept’s development at the time. Arguably, the earliest example can be found in Vietnam’s 1985 Penal Code. I say ‘arguably’ because the term ‘ecocide’ does not explicitly appear in an English translation until the creation of the 1999 Penal Code. However, the 1985 Code’s translation includes an almost identical environmental ‘crime against humanity’:

Art. 278. Crime Against Humanity

Any person who during peacetime or wartime commits an act that results in the mass annihilation of the population of an area, that destroys sources of life, that sabotages the cultural and spiritual life of a country, or that upsets the foundations of a society with the intent to undermine that society, or who commits other acts of genocide or acts that cause destruction of life or the natural environment, shall be imprisoned for [a term of] 10 to 20 years, life imprisonment, or death. (1985 Penal Code, emphasis added)

Art. 342. Crime Against Mankind

Those who, in peace time or war time, commit acts of annihilating en-mass population in an area, destroying the source of their livelihood, undermining the cultural and spiritual life of a country, upsetting the foundation of a society with a view to undermining such society, as well as other acts of genocide or acts of ecocide or destroying the natural environment, shall be sentenced to between ten years and twenty years of imprisonment, life imprisonment or capital punishment. (1999 Penal Code, emphasis added)

The specific word ‘ecocide’ is absent again in the 2015 translation of the Code, although the reference to ‘destroying the environment’ remains.

Vietnam's recognition of an environmental crime against humanity, whether specifically termed ecocide or not, can be largely attributed to the country's lived experience of the concept. The Vietnamese National Liberation Front (the targets of the US's herbicidal warfare) and their allies in North Vietnam had played a central role in drawing the world's attention to the destructive impacts of Agent Orange (Zierler, 2011: 21), including through the denouncement of ecological warfare its own war crimes committee in the 1960s. The 1985 Penal Code – the first to follow the end of the war and reunification of Vietnam – reflects Vietnam's 'condition of having endured a long and bitter civil war' (Quigley, 1988: 353) and its desire to implement an 'indigenous', socialist approach to penal policy (Quigley, 1988). The Preamble to the 1985 Code makes this clear, describing the Code as '[summing] up the experiences of our country in the struggle against and prevention of infractions over the past few decades, while providing for future infractions'.

Vietnam may also have been influenced by the debates throughout the 1980s and 1990s regarding the environmental destruction's criminalisation. Certainly, at the time of the 1999 Code's drafting, Vietnam had expressed a desire to enhance international cooperation by better reflecting international and transnational legal frameworks (Diem, 2008; Gillespie, 2005; Thu, 2020). Notably, despite its relatively revolutionary approach to environmental atrocity, Vietnam's 1985 and 1999 Codes have been criticised for being otherwise weak in their approach to environmental crime (Dinh & Nguyen, 2020), mirroring the international reticence to conceptualising environmental criminality too broadly. It is also notable that the ecocide provision does not appear to have been used, further developed or clarified since being codified 40 years ago.

Vietnam was not the only state to criminalise ecocide on its terms during this period. Over the course of the 1990s and 2000, the Russian Federation (1996); Kazakhstan and the Kyrgyz Republic (1997); Tajikistan (1998); Belarus and Georgia (1999); Ukraine (2001); Moldova (2002); and Armenia (2003) each introduced a crime of ecocide. The backdrop for this can be found in the breakup of the Soviet Union and attempts to navigate and formalise the relationships between its former states. Following the Soviet Union's dissolution, on the 8th of December 1991 Russia, Ukraine and Belarus signed an *Agreement on the Creation of the Commonwealth of Independent States* (CIS) (Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova and Tajikistan later joined; Georgia and Ukraine have since withdrawn in response to Russian aggression). This Agreement committed the new states to cooperation in the fields of environmental protection, peace and safety, and in the fight against organised crime (Articles 6-7). It also explicitly acknowledged the 'planetary nature' of the 1986 Chernobyl nuclear disaster, and agreed to work together the 'minimise and overcome' its effects (Article 8).

To harmonise their approaches to criminal law, the Members developed a 1996 Model Criminal Code and Criminal Procedure Code. These included a section devoted to crimes against the peace and security of mankind, which, in turn, formed a model for the national criminal codes of the CIS states (Trikoz, 2003; Sayapin, 2023). The resulting domestic criminal codes are alike, and in some respects, mirror the internationally accepted definitions of international crimes (Neto, 2023). However, they contain a broader range of war crimes than those codified in Article 8 of the ICC's Statute (Abashidze & Trikoz, 2009). Reflecting the discussions happening in international fora at the time, as well as the states' shared legacy of environmental destruction due to large-scale industrialisation, resource extraction and military activities during the Soviet era, the codes contain variations of the following crime of 'ecocide' in their list of crimes against peace:

Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty.

As with Vietnam, the definition of ecocide contained in these codes differs from both the war crime developed by the ILC and the definition contained within the Rome Statute (most CIS states have yet to ratify the Rome Statute). Yet, it is explicitly classed as a crime against peace and security, rather than a ‘criminal offence against the environment’ – a chapter that also appears across the states’ criminal codes (Duiunova et al, 2024). Most of the former Soviet Union states have also made statements extending their universal jurisdiction to ecocide, apart from Georgia and Russia (the latter resists universal jurisdiction entirely). While cementing their framing of ecocide as a serious international crime, there are no examples of states exercising universal jurisdiction in this way, and the absence of an internationally agreed-upon crime of ecocide would make such initiatives politically contentious. As will be discussed in Part 4, to date, there have only been limited attempts to initiate investigations into ecocide, in part due to the lack of precedent and clarity regarding the crime’s parameters.

Taken together, these examples do three things. First, they challenge the implicit centralisation of authority in international legal institutions that has characterised much of the debate around ecocide. They demonstrate that national efforts shaped by localised political opportunities, legal traditions and strategic actors generated early alternative models for the criminalisation of severe environmental harm. The continued role of domestic initiatives is explored further in Part 3.3. Second, the examples reflect how historical, ecological and socio-political contexts, as well as broader trends in international law and geopolitical shifts, impacted the framing and limited domestic recognition of ecocide. Finally, the domestic states show the first shifts away from an explicit ecocide-conflict nexus. The Vietnam definition explicitly allows for ecocide in times of war or peace, while the former USSR states’ approach seems to infer, but does not explicitly require, a nexus between ecocide and conflict. Continuing this theme, the following section turns to the concept’s evolution to a greater focus on peacetime-related offending.

3. Ecocide in war and peace

The 21st century movement to criminalise ecocide exists in a very different political, social and legal context from the one from which the concept emerged. Two differences are worth noting. First, the legal landscape had changed. The work of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), and particularly the creation of the permanent ICC, had facilitated the codification of international criminal law and the cementing of individual criminal liability as a means of addressing atrocities. This has created a focal point for ecocide advocacy; while some have argued for a new international environmental court (Jain and Soni, 2021), an international convention amongst willing states (Robinson, 2022), or domestic criminalisation (Ryngaert, 2024), much of the most high-profile advocacy (discussed below) for ecocide’s criminalisation has focused on the ICC as the appropriate forum for its implementation. This strategy is reflective of a belief in the power of international courts to effect normative change, a belief that has become increasingly common in broader norm-building discourse (Sandholtz, 2017) but has also been critiqued for its naivety concerning the reality of courts’ capabilities (Knox & Whyte, 2025).

Second, although climate change was a known phenomenon when ecocide's criminalisation was first proposed (see e.g. Keeling, 1970), the scale and extent of its implications were not a major part of public discourse until at least the 1980s (Grant, 2019). By the time ecocide had begun to regain prominence as a topic of legal and policy debate in the 2010s, climate change had grown to be a topic of global concern. More than that, there was a growing awareness that we exist in a time of ecological polycrisis, caused by fossil fuel use, pollution and biodiversity depletion caused by unsustainable extractivism, rapid growth and industrialisation (Heinberg & Miller, 2023). In 2000, chemist Paul Crutzen and botanist Eugene Stoermer coined the term 'the Anthropocene' to describe human impact on the living environment (Crutzen & Stoermer, 2000), and by 2009, environmental scientists were indicating the likelihood that humans had transgressed the planetary boundaries necessary for survival (Rockström, 2009). While scientists have not played the same central role in more recent campaigns to criminalise ecocide, even this short summary demonstrates the crucial role of scientific expertise in continuing to draw attention to the urgent need for intervention to protect the environment.

Against such a backdrop, it is understandable that from the 1990s onwards, campaigns to criminalise ecocide reoriented around the need to curtail the excesses of extractivism and corporate environmental damage (see e.g. Gray, 1996; Higgins, 2015; Martin-Chenut et al., 2015; Promise Institute, 2021; Stop Ecocide Independent Expert Panel, 2021). This does not mean that critiques of the limitations of existing environmental war crimes ceased (e.g., Freeland, 2015; Gillett, 2022). Nor did efforts to improve accountability for conflict-related environmental harm (ICC OTP, 2024). Rather, contemporary ecocide campaigns have arguably grown more ambitious in their normative goals, scrutinising the entrenched norms that enable and excuse environmental destruction in the pursuit of profit (Raymond et al., 2014) and adopting language that equates the climate crisis with ecocide (Proedrou & Pournara, 2024). This section analyses some of the high-profile 21st-century efforts to criminalise ecocide, focusing primarily on those that led to the development of the widely supported 2021 definition.

3.1. The norm entrepreneurship of Polly Higgins

The 21st-century resurgence in interest in ecocide's potential is often attributed to the work of Polly Higgins. Higgins in many ways epitomises Finnermore and Sikkink's (1998) concept of norm entrepreneurship, whereby individual or groups of actors advocate for normative change. Norm entrepreneurs can encompass states, organisations or individuals characterised by a willingness to leverage legal argumentation, strategic advocacy and moral persuasion to challenge the status quo and introduce new normative frameworks. In the context of non-state actors, scholarship has demonstrated how attempts to shape norms can include both the enforcement of existing laws in the absence of adequate state action, and challenges to the limitations of existing legal frameworks (Eilstrup-Sangiovanni & Sharman, 2022). This section explores how Higgins' work exemplifies some of the methods through which norm entrepreneurs push for normative and legal change.

A practising barrister in England, Higgins first became interested in Wild Law and Earth Jurisprudence theories (see e.g. Higgins, 2011) after attending a course at Schumacher College, a holistic science college for ecological studies (Dove, 2022). She proceeded to quit her legal practice to pursue environmental activism (Monks, 2011) and in 2010, she

submitted a draft law of ecocide to the ILC. This definition is premised on a duty of care and strict liability and is applicable in times of peace or conflict (Higgins, 2012, 2015):

acts or omissions committed in times of peace or conflict by any senior person within the course of State, corporate or any other entity's activity which cause, contribute to, or may be expected to cause or contribute to serious ecological, climate or cultural loss or damage to or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished.

While the ILC took no action, the knock-on effects of Higgins' work have been remarkable. Her proposal sparked a grassroots citizens' movement called End Ecocide on Earth, established in 2012 using the EU's European Citizens Initiative procedure to call for the European Parliament to recognise the crime of ecocide. This group drafted their definition for inclusion in the ICC's Rome Statute (End Ecocide on Earth, 2016) as well as pressuring the European Parliament (successfully, as discussed below). Higgins' collaborative research project with the University of London drew attention to the – at the time – largely forgotten history of ecocide (Gauger et al., 2012), and informed a subsequent definition proposed by a collection of French jurists with specialisms in criminal law, environmental law, international law and related sub-disciplines (Martin-Chenut et al., 2015; Neyret, 2014).

Perhaps most influentially, Higgins started her organisation, initially named Ecological Defence Integrity, laterly Stop Ecocide. This organisation encompassed the Earth Protectors Trust Fund, a fund that assisted Small Island States in participating at the annual Assembly of the ICC's State Parties, thereby supporting them in becoming the future advocates of a change to the Rome Statute (Quinn, 2017). Co-founded with local environmental activist Jojo Mehta, Stop Ecocide has continued to evolve in the years since Higgins' death in 2019. In 2025, it encompasses Stop Ecocide International (SEI), multiple national and regional branches and a wide web of associated environmental activism networks, discussed further below. As an aside, it is worth noting Higgins' broader impact on environmental activism. Her other endeavours included presenting a proposal for a Universal Declaration of Planetary Rights (Higgins, 2009) which was subsequently taken up by Bolivia and adopted at the 2010 World People's Conference on Climate Change and the Rights of Mother Earth, and supporting the birth of Extinction Rebellion during the last years of her life (Gaia Foundation, 2019; see also Stop Ecocide, n.d.-a, n.d.-b).

Higgins has had a particular impact on what Finnemore and Sikkink term 'the norm cascade', or socialisation of actors to become norm followers (Finnemore & Sikkink, 1998: 896; see also Risse and Sikkink, 1999). Her blend of legal expertise and evocative language (e.g. her emphasis on humanity's duty towards the earth) and her competency at using diverse media and policy platforms (from Ted talks to UN forums) made her particularly effective in this form of norm entrepreneurship. Higgins also knew that she could not bring about change alone. Her mobilisation of a broader network of activists, lawyers and policy-makers and the institutionalisation of her vision through the creation of the Stop Ecocide Foundation further reflects norm diffusion literature, in particular the emphasis on interpersonal connection and shared projects as a means of facilitating broader networks of norm followers and entrepreneurs (Merry, 2006; Subotić, 2012). Her efforts contributed to a legacy that exemplifies how norm entrepreneurs use ideas, expertise, advocacy and collaboration to contest existing power structures, shape new understandings and influence political and legal

systems. Continuing the theme of Higgins' legacy, the following section further explores the global influence of Stop Ecocide.

3.2. Stop Ecocide's growing hegemony

In recent years, Stop Ecocide International, its regional and domestic branches and its broader network of affiliates have come to dominate a significant amount of the public discourse around ecocide's criminalisation. Although the organisation's strategies have evolved over time, SEI primarily focuses on amending the ICC's Rome Statute to include ecocide as the fifth crime under its jurisdiction. To that end, SEI and its affiliates have developed a multidisciplinary, transnational network of norm entrepreneurs, comprising legal experts as well as 'laypeople' (i.e. actors who are not recognised as legal experts but contribute to law's development, see Zeigermann, 2024). In the words of SEI:

With 15 years of experience in this space, and with teams and associate groups in 50 + countries, we work with diplomats, politicians, lawyers, corporate leaders, NGOs, indigenous and faith groups, influencers, academics, grassroots campaigns and many more.

While comprising a range of actors and perspectives, SEI has retained a strong emphasis on a unified message. SEI shares 'guidelines' with its affiliates and has been known to expel factions that breach these guidelines. In 2024, Stop Ecocide Netherlands was expelled from the organisation in response to an article written by its director Babs Verhoeve, in which she raised the question of whether the Israeli army's destruction of nature in Gaza could constitute a war crime. On one reading, the expulsion of Stop Ecocide Netherlands is indicative of SEI's priorities: a spokesperson explained the decision as being to maintain 'political neutrality', explaining that Stop Ecocide focuses on ecocide as a response to the climate crisis to ensure 'impartial communication at a diplomatic and political level' (Straver, 2024). Such a claim marks a sharp distinction from earlier ecocide campaigns' explicit embeddedness in particular political moments and movements. It also reflects a tendency Koskenniemi has observed in international law advocacy more generally, whereby actors present deeply political legal arguments as 'neutral' (Koskenniemi, 1990). Certainly, a discourse analysis of Stop Ecocide's public-facing documentation reveals a strong emphasis on challenging industrial harms and corporate immunity, rather than the conflict-related harms that informed earlier campaigns (Schnyder, 2023: 58). However, SEI's claims to 'political neutrality' are arguably undermined by its public statements regarding acts of 'ecocide' in the Russian war of aggression in Ukraine (Stop Ecocide, 2024), suggesting that it is not neutrality but political positioning that is taking place.

In 2021, the charitable Foundation of Stop Ecocide convened an Independent Expert Panel of high-profile international criminal law and environmental law experts to develop a new definition of ecocide. This Panel chose to forego any reference to war or peace in their proposed amendment to the Rome Statute, describing 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.

The accompanying commentary states that the proposed crime of ecocide is to be seen as distinct from the 'existing crime of severe damage to the environment during armed conflict',

with the new crime ‘reflecting the fact that today, most severe environmental damage occurs during times of peace’ (Stop Ecocide Independent Expert Panel, 2021). In her discussion regarding the panel’s approach, panellist Christina Voigt noted that the panel was ‘undivided in its intention to address non-military-related environmental damage’ (Voigt, 2023: 274). However, nothing in the definition itself limits the crime to peacetime or details its relationship with the environmental war crime (Ambos, 2021), and Jojo Mehta has since stated that ecocide should be recognised as ‘applying in both peacetime and conflict’ (Stop Ecocide, 2024). Academic commentators have both referred to it as such (Hansen, 2025) and challenged any such application (Ambos, 2021). This is discussed further in Part 4.

Since its introduction in 2021, this definition has achieved an almost hegemonic status in debates around ecocide’s criminalisation, despite extensive critiques in the literature regarding its inclusion of a proportionality test (Minkova, 2023; Burke & Celermejer, 2021), the complexity of its harm threshold (Robinson, 2022), its unusual *mens rea* requirements (Bienfait, 2024) and its general workability (Heller, 2021). This literature has evolved into a sustained debate concerning the balance between a workable offence and the desire to condemn environmental damage (Killean & Short, 2025; Robinson, 2024b), while also sparking more critical scholarship regarding the turn towards criminal law to address ecological crises (Knox & Whyte, 2025; Cusato & Jones, 2024). Nonetheless, the SEI definition has continued to act as a ‘reference text’ for states and others interested in pushing forward a new crime (Negri, 2022: 28).

Its hegemony is arguably the result of several interlinked factors. One is the pre-existing global profile of SEI (and Higgins in her time), which helped to establish the Panel as an authoritative voice that could be trusted to inform these definitional debates (Foucault, 1980). Another is the established expertise of those chosen to participate, which further positions the ‘Expert Panel’ as a particularly authoritative ‘epistemic community’ (Haas, 1992); the Panel’s website and commentary draw extensive attention to the members’ credentials in international criminal and environmental law. The Panel’s use of language drawn from existing international criminal law provides additional normative legitimacy. As panellist Christina Voigt explained, the panel intentionally analysed not only existing international criminal law, but ‘jurisprudence of international courts, including the ICC, ICJ, ITLOS and existing international treaty law and custom’ (Voigt, 2023: 273). This made it difficult to reject the definition without appearing to reject both legal and environmental expertise and established knowledge (Escobar, 1998).

This definition has subsequently spread through multiple pathways of norm socialisation. For example, in the ICC context, it has been taken up by Vanuatu, Fiji and Samoa, who in September 2024 submitted a formal proposal for an amendment to the Rome Statute, following their initial proposal that such a crime be considered at the ICC’s Assembly of State Parties in 2019 (Harvey, 2024). Beyond the ICC, the definition has been either adopted or used as inspiration for proposals in domestic and regional contexts. In addition to the advocacy of activists within those contexts, this normative spread has been facilitated by the work of the ‘epistemic community’ noted above. A relatively small group of highly esteemed international lawyers and legal scholars, including members of the Expert Panel, have engaged in effective collective action through a process of continued ‘deliberation’ (Schnyder, 2023). Exercising influence through their connections to elite legal and scholarly institutions, they have facilitated the spread of the 2021 definition through continuous discussion across multiple forums regarding its significance and practical application (Schnyder, 2023). These deliberations have been furthered by key individuals who have emerged at the forefront of

debates at regional levels (e.g. advising the EU and the Council of Europe) and as advisors to politicians in specific domestic jurisdictions (see e.g. Ecocide Law Advisory). The impact of this work is explored further below.

3.3. Cohesion and fragmentation in domestic law

As the 2021 definition has gained momentum, there has been an observable shift in SEI's approach and public-facing discourse (e.g. in the content on the organisation's website, revamped in 2024). While retaining a focus on the introduction of ecocide as an international crime, a greater emphasis on supporting domestic and regional developments has emerged over the last few years. This shift can arguably be understood as a strategic response to the challenges associated with introducing a new international crime, the concept's normative evolution and the norm cascade happening across domestic contexts (Robinson, 2023).

Ecocide's inclusion in the Rome Statute will require potentially years more advocacy and diplomacy. At least a two-third majority of the ICC's States Parties will need to be in favour of the amendment, and a final text of the proposed amendment will require discussion and agreement amongst the State Parties (Mackintosh & Oldring, 2022). While a final discussion could take place at a 'Crime Review Conference', this process has rarely been used: there has only been one such conference to date. Alternatively, a 'Working Group on Amendments' could be tasked with evaluating a proposed amendment. This can take a long time; it took two decades for the crime of aggression to be adopted despite the definition being agreed upon very early on (Chin, 2023). If the Expert Panel definition is used as a starting point, the entire text will still be scrutinised, with opinions sought from interested parties both officially and unofficially, creating space for both political and corporate interests to influence the process (Hansen, 2025; Killean and Short, 2025). As SEI is well aware, the road to an international crime remains potentially long and challenging.

By contrast, there are signs of progress at a domestic level (Hansen, 2025; Robinson, 2023), and the impact of SEI and the Expert Panel has been significant. A wave of ecocide bills followed on the heels of the Expert Panel's 2021 definition (e.g. Spain (Catalunya), Mexico, The Netherlands, Italy, Scotland and the UK, Brazil) with varying levels of success at the time of writing (May 2025, see also Killean & Short, 2024). It also appears to have directly impacted an important regional development: the 2024 European Union's 'European Directive on the Protection of the Environment through Criminal Law'. This Directive will, in turn, lead to further domestic developments, due to its requirement that states introduce qualified offences 'comparable to ecocide' (Preamble, para 21). While the term 'ecocide' is not used in the main text of the Directive, its preamble recognises that ecocide is being discussed in international fora and may already be covered by some EU Member States' laws. The Directive's main text identifies 'qualified criminal offences' in ways broad enough to encompass war or peace, defining them as those which relate to conduct listed in the Directive and which cause one of the following:

- (a) the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site, or*
- (b) widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water. (Article 3(3))*

The inclusion of offences ‘comparable to ecocide’ can in part be attributed to the longstanding European Citizens’ Initiative campaign discussed above (End Ecocide in Europe, 2012), which had long focused on the European Parliament as an object of advocacy. When it came to drafting the Directive, it can also be attributed to the interventions of the Green Members of the European Parliament within the Parliament’s various committees, who advocated for recognition of the work being done to criminalise ecocide at international and domestic levels (Faure, 2024: 155; Pereira, 2024: 159). Various arguments were put forward in support of introducing something akin to ecocide, including ‘the globalisation of business activities’ which could result in EU companies being involved in criminal activities outside EU territory and particularly in ‘developing countries’,⁵ necessitating ‘more awareness about environmental crime and damage worldwide’ and recognition of international efforts to strengthen ‘the legal framework by including a definition of ecocide’.⁶ The Committee on Development further observed that ‘On several occasions, the European Parliament has called for the establishment of ecocide as a criminal offence to safeguard human rights and democracy, biodiversity, the climate and environmental defenders’.⁷

The influence of the Expert Panel is also evident in various submissions made by the Parliament’s committees during the drafting of the Directive. The Expert Panel’s definition is referred to as the ‘most comprehensive and recent definitional work available’⁸ and the definition that should guide a crime of ecocide within the Directive and across EU Member States.⁹ Several Committee rapporteurs argued for the double pronged approach of supporting the inclusion of ecocide in the ICC’s mandate,¹⁰ and the EU and its Member States taking the lead in pushing ecocide’s recognition.¹¹ Others advocated for approaches more common in the context of international crime. For example, some issued calls for universal jurisdiction for serious environmental crimes ‘in particular in relation to ecocide’,¹² to ‘avoid the externalisation of environmental damage’.¹³ This did not make it into the Directive, although extraterritorial jurisdiction is envisioned in some cases (Article 12(2)). Nor did the argument (made by several committees) that there should be no limitation period for ecocide crimes. These exclusions arguably indicate an awareness of the differing role of domestic and international criminalisation.

The above developments may push states towards greater harmonisation in their approach to ecocide and entrench the shift towards understanding ecocide as a peacetime offence. However, recent initiatives evidence the contingent and context-dependent nature of ecocide’s development, as well as a lack of a unified understanding regarding its definition.

In 2021, France introduced a new ‘Climate and Resilience Law’, which added new Articles to the French Environmental Code, including a qualified ecocide offence. In their review of this development, Artuad et al (2023) cite the work of French jurists and prominent ecocide advocates such as Valérie Cabanes and Laurent Neyret as having a particular impact, as well as the broader international advocacy of SEI. In contrast to earlier formulations, this approach to ecocide is also contextualised by a specific focus on climate change. In particular, the French government’s awareness of the global nature of the problem (as controversially exemplified by President Macron’s framing of the Amazon’s management as ‘ecocide’) and attempts to increase its resilience to its effects.

The Law was also directly informed by the 2019 Citizens’ Climate Convention. This involved a group of 150 randomly selected people, who were mandated to define measures to reduce greenhouse gas emissions at least 40% by 2030 (compared to 1990) while maintaining a spirit of social justice. President Macron committed to submitting their proposals to a referendum, a vote in Parliament or direct implementation. Among the Convention’s

proposals was the crime of ecocide, originally defined as ‘any action causing serious ecological damage by participating in the manifest and non-negligible overstepping of planetary limits, committed with knowledge of the consequences that would result and that could not be ignored’ (Frémont, 2020).

The resulting legislation is somewhat different from that proposed by the Citizens’ Convention. The Law introduces new general offences of polluting the environment (Art. L. 231-1), and abandoning waste (Art. L. 231-2), both of which can lead to the qualification of ecocide if there is an element of intent (Art. L. 231-3), and – in the case of abandoning waste – the acts result in serious and long lasting (at least 7 years’) damage to health, flora, fauna or the quality of the air, soil or water (Art. L. 231-3). It therefore creates an aggravated version of existing domestic environmental offences, rather than a new crime. The definition does not reflect the SEI Expert Panel definition and has been critiqued for both ‘trivialising’ ecocide to ‘the rank of a simply misdemeanour’ (Stop Ecocide n.d.-a, n.d.-b) and weakening the development of an international crime by introducing such a distinct domestic crime (Navacelle, 2021). Such an approach seems to contradict Article 296 of the Law itself, which requires the government to ‘report to Parliament on its efforts to ensure that ecocide is recognised as a crime that can be tried by international criminal courts’.

Yet, while it has also been critiqued for being ‘mostly symbolic’ (Marolleau, 2022), investigations are already taking place. Since 2022, the Health and Environment Unit of the Marseilles judicial court has been investigating pollution in Grézieu-la-Varenne, an area outside Lyon, and the sale of houses on land polluted with hydrocarbons and heavy metals by the Mercier industrial laundry corporation, which operated on the site between 1959 and 2000 (Lamy, 2022). The complaint was launched shortly after the introduction of the French Climate and Resilience Act (Lamy, 2022), suggesting that victims of environmental crimes are keen to explore this additional pathway to accountability.

Other states have been more swayed by the Expert Panel. On 22 February 2024, the Belgium Parliament approved a new crime of ecocide (Chini, 2024). Notably, references to ecocide’s conflict nexus have remained: the new crime applies ‘whether it is committed in a time of peace or in a time of war’ and is placed immediately after (but not within) ‘Grave Violations of International Humanitarian Law’, the section containing genocide, crimes against humanity, war crimes and forced displacement. As Bertram (2024) highlights, ‘this positioning cleverly symbolises ecocide’s claim to international criminality without directly equating it to crimes recognised in international treaties’ – it might look like an international crime, but it is formally domestic in nature.

The work of the Expert Panel is acknowledged in the new crime’s explanation, and Belgium’s domestic criminalisation was understood at the time as being part of a broader campaign within Belgium to initiate diplomatic procedures to introduce ecocide at the ICC (Stop Ecocide, 2023). At the 2020 annual Assembly of State Parties to the Rome Statute, Minister of Foreign Affairs Sophie Wilmès prominently called on the international community to consider the ecocide proposal. However, the final version of the domestic crime itself is worded somewhat more narrowly, criminalising:

illegal acts that cause serious, widespread and long-term damage to the environment, knowing that these actions cause such damage, and provided that the acts infringe federal legislation, a binding international instrument, or cannot be located in Belgium. (Article 94)

In contrast to France, where ecocide was introduced in the context of a deliberate debate about how to respond to the risks of climate change, Belgium's new crime is the product of a moment of opportunity given to particular people at the right moment. The moment of opportunity was the 2015 decision to reform Belgium's ancient Penal Code, which dated from 1867 and required substantial reworking (Bertram, 2024). This project was ongoing at the time of the May 2019 federal elections, which delivered seats to progressive parties, including the Belgian and Francophone green parties (Groen and Ecolo), who together made up the second biggest party group in Belgium. One newly elected Ecolo MP was Samuel Cogolati, a long-term environmental activist and legal academic with an interest in global public goods (see e.g. Cogolati & Wouters, 2018). Building on the opportunity presented by the prospect of a new coalition government and working with long-term ecocide campaigner Valérie Cabanes (see e.g. Cabanes, 2016), Cogolati put forward a proposal for a new crime in 2020. This was followed by a parliamentary resolution in June 2021, which flagged the Expert Panel definition,¹⁴ and a legislative proposal later that year.¹⁵ The Minister of the Environment, Zakia Khattabi (also in Ecolo), emerged as an additional vocal supporter of the ecocide proposal (Bertram, 2024).

Taken together, these examples illustrate three points. First, while the Expert Panel's 2021 definition has to some extent created greater cohesion around ecocide's definition, the scope and definition of ecocide remain contested and uncertain. This diversity has been raised as an issue by ecocide activists, who are concerned that this diversity may impact future debates as to how ecocide is to be incorporated into the Rome Statute. Second, the justifications offered for criminalisation reveal how the context has changed since ecocide first emerged. In the French case, ecocide developed from citizens' concerns over how to stem the harms of the climate crisis. In the Belgian case, the 2021 resolution and proposal each flag the climate and biodiversity crises, and the serious environmental harms perpetrated with impunity by Belgian corporations, including overseas. Third, while the crimes' wording does not explicitly preclude wartime offending, the narrative has shifted towards the need for a peacetime, rather a solely wartime, offence. Building on this analysis, the final section considers ecocide's continued relevance to war.

4. Ecocide and current pathways to accountability for conflict-related environmental harm

The above overview has demonstrated how ecocide has gained traction as both an international and domestic offence. Adapted by a range of experts and activists to suit specific contexts and environmental concerns, the crime can now be found across a range of domestic jurisdictions. International debates have taken strides forward, with consensus growing around the Expert Panel's definition as a starting point for a future international crime. This final section returns to the issues highlighted in Part 2. Namely, that the environment is often targeted during periods of conflict, that there are significant challenges associated with pursuing accountability for conflict-related environmental harm, and that the existing international environmental war crime has been widely critiqued as useless. Taking these challenges as its starting point, this section considers whether the push towards ecocide's criminalisation can open new, or broaden existing, pathways to accountability for conflict-related environmental harm.

As discussed above, the proposed crime is to be seen as distinct from the existing war crime, reflecting the prevalence of environmental damage in peacetime. While nothing in the

definition itself limits the crime to peacetime (Stop Ecocide, 2024), there are core legal principles that govern the application of legal regimes to acts perpetrated during conflict that may limit ecocide's application to war. These include *lex specialis* and 'lawful combatant immunity'. Under *lex specialis*, or 'the more specific law overrides the general law', a court should resolve conflicts of legal norms that can apply to the same situation by giving precedence to the more specific rule. This generally means that if a court finds that an armed conflict is taking place, then international humanitarian law is the applicable legal regime (Blank, 2011: 209–211). As Ambos has noted, 'while it would be conceivable to read Article 8ter as a posterior *lex specialis*, the speciality argument would conflict with the narrower scope of Article 8(2)(b)(iv), in fact making the latter provision the more specific crime' (Ambos, 2021).

This principle interacts with the principle of 'lawful combatant immunity' or 'privileged belligerency' in ways that arguably limit ecocide's application. 'Privileged belligerency' means that an individual engaged in armed conflict and recognised as a lawful combatant should not be tried for acts considered lawful under international humanitarian law (Ohlin, 2015). In practice, this means that conduct that could otherwise be considered criminal may not be the subject of a prosecution if it complies with the laws of war. At the ICC, this would likely mean that conflict-related environmental harm would be assessed against the threshold for criminality found in its existing war crime: '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' rather than the threshold found in the proposed crime of ecocide. In domestic courts, a similar analysis might occur, meaning a combatant would be granted immunity from the 'application of municipal law prohibitions... so long as these acts are done as acts of war and do not transgress the restraints of the rules of international law applicable in armed conflict' (Bothe, 2013: 277).

This does not mean there could be no possible application of ecocide to wartime criminality. Lawful combatant immunity is not equal in its application, and those fighting on behalf of non-state parties to a non-international armed conflict are not protected by the same immunity from domestic criminal prosecution as members of the armed forces of a party to an international armed conflict (Bothe, 2013; Crawford, 2010). While this inequality has been the subject of academic critique and challenge (e.g. Cassese, 2012; Crawford, 2010), state practice has tended to maintain a distinction between state-sanctioned participation in warfare and unsanctioned participation (Bartels, 2024). These distinctions potentially further limit the impact of ecocide's criminalisation on accountability for conflict-related environmental harm. For example, they could foreclose the expansion of ecocide to encompass states' counterinsurgency efforts, which can involve both deliberate and incidental environmental devastation (Feuer, 2023).

As noted above, some states have already explicitly criminalised ecocide as an international crime, including Russia and Ukraine (see Part 2.4 for the CIS definition). While these crimes were dormant in both jurisdictions for decades, Russia's 2022 invasion of Ukraine reignited exploration into the potential application of the Ukrainian domestic crime of ecocide to the conflict. Investigations have been undertaken in relation to attacks on the Zaporizhzhia nuclear power plant in 2022 (Interfax, 2022), and the destruction of the Kakhovka Dam in 2023 (Kesaieva, 2023). While the latter are predominantly framed as war crimes (also codified in Ukraine's criminal code), 15 have been characterised as ecocide (Petit, 2023). More broadly, Maksym Popov, special advisor for environmental crimes to the Ukrainian Prosecutor General, has identified three categories of potential ecocide crimes associated with the Russian war of aggression in Ukraine: attacks on civilian targets like

water networks and fuel reserves, resulting in the contamination of air, soil and ground-water; hostilities in the Black Sea, threatening dolphins with extinction due to Russian navy sonar; and the partial or complete destruction of forests and nature reserves protected by international conventions. However, Popov has recognised that ecocide ‘is not considered as a full-fledged crime throughout the world’ meaning ‘there is no precedent in the international system’ (Petit, 2023). He has indicated that the majority of environmental war crimes will be pursued through Article 438 of the Criminal Code, which prohibits violations of the rules of warfare in more general terms (Rogers, Mackintosh & Popov, 2024). It may be that the use of ‘ecocide’ language is more valuable as an advocacy tool for Ukraine, as it pursues diverse pathways to restitution and accountability amid its ongoing invasion.

The Ukraine investigations raise the broader question surrounding potential domestic prosecutions of ecocide *as a war crime*, in the absence of a comparable international war crime. International law has always been somewhat fragmented due to the diversity of national legal systems (ILC, 2006). When it comes to international criminal law, no single authoritative definition exists; international and domestic courts may apply similar but slightly different statutes and draw from different sources of jurisprudence (Robinson, 2024a: 282). However, previous instances of individual states applying broader definitions of the laws of war than those contained in accepted international humanitarian law have attracted criticism (Bartels, 2024; Heller, 2008; Ohlin, 2016). There are fears that a multiplicity of domestic laws of war will undermine the universality of international humanitarian law and its goal of ensuring some predictability to the conduct of conflict (Ohlin, 2016: 530). Predictability is practically important from the perspective of combatants and required by the principle of legality – participants in a conflict should be able to make informed choices based on discernible and consistently applied laws (Webb, 2013). Given that ecocide is a crime that potentially comprises elements of international humanitarian law, human rights and environmental law, it has been argued to ‘epitomise’ the risk of diverse approaches to international law (Gillett, 2025: 5).

Taken together, these issues highlight the limitations of ‘ecocide’ as a means of addressing the current limitations surrounding existing environmental war crimes. The concept of ‘ecocide’ has evolved and shape-shifted to reflect different contexts and the emergence of urgent environmental concerns, leading to a greater emphasis on addressing crimes that are predominantly perpetrated during times of peace. The idea that the destruction of the environment should invite a criminal response, and that this might include an international criminal response, has gained significant traction. However, as it stands, the initiatives outlined above do little to address the existing and ongoing challenges surrounding accountability for conflict-related environmental harm. Against this backdrop, the parallel work that is being undertaken to advance the application of international criminal law to conflict-related environmental harm remains a vital component of the pursuit for criminal accountability (e.g. Paulose, 2021; Gillett, 2022, 2025; ICC OTP, 2024).

5. Conclusion

In this article, I have sought to interrogate ecocide as a socially constructed norm. Rather than debating the relative merits of various definitions, I have sought to highlight the ways in which ecocide has been continuously redefined in response to shifting environmental concerns, geopolitical realities and advocacy efforts. Social constructivism emphasises the role of norm entrepreneurs – actors who work to establish, frame and disseminate new international

norms (Finnermore & Sikkink, 1998). The ecocide movement, exemplified by figures such as Polly Higgins and organisations like SEI, illustrates how legal norms emerge through processes of persuasion, socialisation and institutionalisation. Since its emergence in the 1970s, a range of actors have strategically positioned ecocide within existing legal frameworks, aligning it with international humanitarian law, international criminal law and environmental protection initiatives to maximise its legitimacy and traction. While many existing accounts of ecocide focus on the prospects and pitfalls of codifying the crime at the ICC, a social constructivist approach has enabled a closer look at how domestic and regional developments contribute to the norm's construction. In doing so, I have sought to challenge the assumption that international legal codification represents the apex of normative progress. Instead, I have shown that regional and domestic efforts may offer valuable, and even more innovative, approaches to the criminalisation of environmental harm. This emphasis contributes a distinctive perspective to ecocide scholarship, which often privileges international institutions as the primary site of legal meaning-making.

Social constructivism also highlights the contestation and negotiation inherent in norm development. Competing state interests and political calculations shape how ecocide is interpreted and applied, revealing the inherent tensions between legal formalisation and normative fluidity. The fragmentation of ecocide's meaning across different domestic jurisdictions is one example of these tensions. Yet, a plurality of competing strategies is an inherent feature of politics and advocacy, and not necessarily a problem. As I have noted above, it is possible for international crimes to have a diversity of definitions across jurisdictions without it harming the overall normative coherence of the crime. The social constructivist lens suggests that the consolidation of ecocide as an international crime will be a negotiation of meaning, legitimacy and authority across multiple legal and political arenas. As states, legal scholars and activists continue to engage in these debates, the concept's history suggests that the success of ecocide's advocates will ultimately hinge on their ability to frame ecocide as not only a legal necessity but also a moral and political imperative.

Another example of the tensions between legal formalisation and normative fluidity can be found in the continued dominance of international humanitarian law as the framework for addressing conflict-related environmental harm, illustrating how established legal norms constrain emerging legal categories. This dominance, when coupled with the principle of lawful combatant immunity, suggests that even if ecocide were to be recognised as an international crime, its application in wartime contexts would remain constrained. While Ukraine is now attempting to use existing domestic ecocide laws to pursue justice for wartime environmental destruction, the absence of a clear international precedent means that such efforts remain legally challenging and politically sensitive. Thus, initiatives such as the ICC's draft policy on how to investigate and prosecute crimes against the environment using existing international criminal law are an important initiative regardless of ecocide's introduction as a fifth core international crime.

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No ethical approval was needed for this research as it is desk based.

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All sources used in this article are publicly available. There is no original data.

Notes

1. Summary record A/CN.4/SER.A/1986, 30 May 1986.
2. Summary record A/CN.4/SR.2431, 23 May 1996.
3. Summary record A/CN.4/SR.2448, 26 June 1996
4. Ibid, para 23.
5. Opinion of the Committee on Development and Committee on Civil Liberties.
6. Directive's European Parliament Explanatory Statement.
7. Committee on Development, Amendment 17 Justification.
8. This definition is referred to by the Committees on Development, Environment, Public Health and Food Safety; and Civil Liberties, Justice and Home Affairs.
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10. Ibid.
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