



CICJ Statement No. 4

ICC States Parties Should Establish a Special Working Group on Ecocide

Berlin, Buenos Aires, Florence, London, Oslo, and Queenstown, 10 December 2023

The Coalition for International Criminal Justice (‘CICJ’) calls upon the States Parties of the International Criminal Court (‘ICC’) to establish a Special Working Group on Ecocide to urgently consider the threats to humankind posed by the ongoing destruction of the natural environment.

“Ecocide, considered for inclusion in the Statute of the ICC more than 25 years ago, is now widely recognised as its missing, fifth category of crimes. Its express inclusion in the Statute is an essential response to the environmental threat now surrounding humankind. This would send a strong signal to national legislators and criminal justice agencies. The ICC should be able to investigate ecocide”, said the CICJ [Steering Group](#).

Longitudinal data from scientists provides irrefutable evidence regarding the breadth of environmental harm, the damage to life-sustaining ecosystems, the pace of global warming, and the global implications for a liveable future. In its annual reports, the Independent Panel on Climate Change (‘IPCC’) has raised increasing concern about the rate of negative environmental changes due to human activity and the consequences for humankind and the planet.¹ In response to a recent IPCC report, UN Secretary-General António Guterres, stated that “the climate time-bomb is ticking”: “every country and every sector” must “fast track climate efforts”.²

Environmental crimes co-occur and intersect with other acts already prohibited by the ICC Statute. In some instances, access to, control over or destruction of the environment may be the motivation behind conduct forming part of war crimes, crimes against humanity or the crime of aggression. It is widely accepted that militarized violence, wherever it occurs, has a severe impact on the environment. This includes the pollution of water, air and soil with long-term implications for agriculture, food security and livelihoods for the affected communities.³

With more scientific data and greater knowledge of the environmental devastation due to pollution and emissions of CO₂ and other greenhouse gases and as a result of armed conflict, the case for including serious environmental destruction is much stronger today than when the ICC Statute was adopted in 1998.

The CICJ, therefore “calls on States Parties to begin preparations to adopt a resolution at its 2024 Assembly Session on the establishment of a Special Working Group on Ecocide to consider and address the inclusion of this crime within the jurisdiction of the Court”, said the Steering Group.

“This is a moment when humankind needs political commitment and the full capacity of its public institutions. International accountability can deter severe environmental harm by States and corporations. As Statute amendments take time, this process must start as soon as possible”, urged Gunnar M. Ekeløve-Slydal, CICJ Director: “It is time for the international justice sector to play its part and for ICC States Parties to engage in the urgent conversation about ecocide as an international crime”.⁴

¹ IPCC, *AR6 Synthesis Report: Climate Change 2023* (<https://www.legal-tools.org/doc/er8weq/>).

² UN Secretary-General, “Secretary-General Calls on States to Tackle Climate Change ‘Time Bomb’ through New Solidarity Pact, Acceleration Agenda, at Launch of Intergovernmental Panel Report”, Press Release, 20 March 2023 (<https://www.legal-tools.org/doc/s11hvv/>).

³ For example, the intentional flooding of agricultural areas in Ukraine and the resulting loss of habitats have caused widespread and long-lasting environmental damage. See Andriy Yermak and Margot Wallström, “Russia is committing grave acts of ecocide in Ukraine – and the results will harm the whole world”, *The Guardian*, 16 August 2023.

⁴ For mapping and discussion of key issues in this regard, see Darryl Robinson, “Ecocide – Puzzles and Possibilities”, in *Journal of International Criminal Justice*, 2022, vol. 20, no. 2, pp. 313–347, and Matthew Gillett, *Prosecuting Environmental Harm before the International Criminal Court: Studies of International Courts and Tribunals*, Cambridge University Press,

Although ecocide as such is not addressed by international humanitarian or criminal law, it is not a new concept. Professor Arthur W. Galston coined the term in the 1970s, referring to the use of ‘Agent Orange’ in the Vietnam War by the United States Armed Forces.⁵ Professor Richard Falk described this conflict as “the first modern instance in which the environment has been selected as a ‘military’ target appropriate for comprehensive and systematic destruction”.⁶

Severe environmental harm has occurred in subsequent conflicts, including situations under consideration by the ICC. Natural resources are instrumentalized in numerous ways, *inter alia*, as a component or primary objective of the motivation behind armed conflict, to fund the activities of militia groups and operations, in the pursuit of military advantage, to assert territorial domination over ‘enemy’ communities including through the destruction or appropriation of natural sites of cultural significance, or to impact on food production and sources, clean water supply, and agriculture, fishing and related livelihoods. Each of these acts can result in severe, widespread and long-term harm to the environment and its life-sustaining ecosystems, with grave implications for the affected population. The current provisions of the ICC Statute do not adequately address the harm resulting from environmental destruction.⁷

As regards background, the International Law Commission (‘ILC’) considered the inclusion of serious environmental harm within the Draft Code of Crimes Against the Peace and Security of Mankind in 1991. Only a few States opposed its inclusion as a distinct crime. The ILC nevertheless decided to limit the inclusion of environmental damage to the context of war crimes,⁸ a narrow provision reflected in Article 8(2)(b)(iv) of the ICC Statute.

As of 2017, 176 States have environmental laws; 13 of them, ecocide legislation (normally not applied). States are actively engaged in the UN Framework Convention on Climate Change (‘UNFCCC’), negotiating new agreements, setting emissions targets, outlining sector reforms, and establishing funding mechanisms for countries most affected by climate change. Since the ICC Statute was negotiated, the global community has agreed nine major environmental protocols and adopted 16 international agreements to address environmental destruction. ICC States Parties have joined many of these agreements and earlier environmental conventions.

In March 2023, the UN General Assembly requested an advisory opinion from the International Court of Justice regarding the obligation of States concerning climate change.⁹ On 16 November 2023, the European Union (‘EU’) agreed to include environmental crimes “comparable to ecocide” in its new EU Crime Directive.¹⁰ Once adopted, this directive ensures that conduct causing severe and widespread, long-term or irreversible environmental damage will be codified as a serious criminal offence across EU Member States.



Coalition for International Criminal Justice

Via San Gallo 135r, 50129 Florence, Italy

URL: www.cicj.eu

Twitter: [@_cicj_](https://twitter.com/_cicj_)

2022. See also the draft definition of ecocide proposed by an independent group of experts convened by the Stop Ecocide Campaign (<https://www.legal-tools.org/doc/gnp1fe/>).

⁵ The Climate, “Climate Champ Arthur W. Galston – Coined Term ‘Ecocide’, Ecocide as International Law? Climate Champion Polly Higgins, Vanuatu Asks ICC to Make Ecocide a Crime”, *The Climate Daily*, 13 December 2021.

⁶ Richard Falk, “Environmental Warfare and Ecocide – Facts, Appraisal, and Proposals”, in *Bulletin of Peace Proposals*, 1973, vol. 4, no. 1, p. 80 (<https://www.legal-tools.org/doc/3i5yt4/>).

⁷ For policy briefs on the role of international law in fighting deforestation and other forms of environmental destruction, see PBS Nos. [99 \(2020\)](#) by Sean Patrick O’Reilly, [127 \(2022\)](#) and [139 \(2022\)](#) by Mutoy Mubiala, and [140 \(2022\)](#) by Joshua Castellino, Torkel Opsahl Academic EPublisher (available at <https://toaep.org/pbs/>).

⁸ Anastacia Greene, “The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?”, in *Fordham Environmental Law Review*, 2019, vol. 30, no. 3.

⁹ UNGA Resolution 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023 (<https://www.legal-tools.org/doc/5dcg9y/>).

¹⁰ Council of European Union, Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC – Confirmation of the final compromise text with a view to agreement (<https://www.legal-tools.org/doc/6atj3x/>).