

ECOCIDE: FROM GLOBAL HISTORICAL DEVELOPMENT TO VIETNAMESE CONTEXT

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Abstract

Vietnam had incorporated the criminalization of ecocide into its domestic legislation before receiving international acknowledgment, emphasizing the importance of prosecuting serious environmental damage to enhance the efficacy of the criminal justice system. However, after this initial initiative, ecocide gradually receded from prominence within Vietnam's legal framework.

In the contemporary context, it is crucial to realign the focus on this matter. This article explores the rationales advocating for the acknowledgment of ecocide as a global criminal offense under the Rome Statute, in conjunction with Vietnam's historical encounter with ecocide and its treatment as a criminal violation in domestic law over the preceding four decades.

Keywords: agent orange, ecocide, environmental crimes, international criminal law, Vietnam

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Before the concept of ecocide defined as the large-scale destruction of the environment and the movement to classify it as an international crime under the *Rome Statute of the International Criminal Court* (ICC) gained attraction, Vietnam had already recognized ecocide in its domestic criminal law as early as 1985. While achieving global legal consensus on this issue remains challenging, discussions on ecocide highlight the need to strengthen criminal justice, particularly through the rigorous prosecution of severe environmental harm. This article, employing historical analysis and comparative legal methodology, explores the overlooked history of ecocide in Vietnam's domestic law and its evolution on the international stage. Furthermore, it provides analytical insights and recommendations to reinforce the urgency of recognizing ecocide as an international crime in the years ahead.

1. A brief introduction of ecocide

Up to date, there is no consensus on the terminology used for crimes causing particularly serious impacts on ecosystems. Therefore, in this article, the term “*ecocide*” refers to criminal behaviours that deliberately and systematically cause significant harm to the environment on a large scale. “*Ecocide*” originates from Greek (*oikos*: home or place to live) and Latin (*caedere*: to destroy or kill), and when combined, in the broadest sense, it

can be understood as the destruction of the natural environment.¹ This term is believed to have been coined by Dr. Arthur W. Galston, an American botanist and bioethicist who served as the Director of Biological Sciences at Yale University.²

The term gained more prominence after World War II and especially during the Vietnam War. Dr. Arthur W. Galston, who was involved in the creation of the toxic agent orange, even proposed an international agreement against environmental destruction in 1970 after witnessing the devastating effects of this toxin on the forests and environmental resources in the battlefields of South Vietnam. The then Prime Minister of Sweden, Olaf Palme, also supported this view, considering the environmental destruction by the U.S. military in Vietnam as a form of ecocide.³ Long-term remediation of these sites has only begun in the last few years, indicating the scale of challenges to ameliorate the environmental impacts of warfare.⁴ The use of agent orange/dioxin on the battlefield for a decade not only devastated the environment and ecosystems but also left heartbreaking consequences for the health of the Vietnamese people for the past 60 years.⁵

The 1972 United Nations (UN) conference saw significant support for recognizing ecocide as a crime, leading to the 1973 draft Convention on Ecocide by Professor Richard A. Falk, proposing it as a deliberate act to destroy ecosystems in war or peace.⁶ Though not adopted, it highlighted early efforts to criminalize ecocide. Initially considered for the Rome Statute (1984–1986), ecocide faced debate over intent, with countries like Australia and Belgium advocating for broader definitions, while others, including the United States (US), United Kingdom (UK), and Netherlands, opposed peacetime inclusions due to liability concerns.⁷ In 1996, the International Law Commission (ILC) excluded ecocide as a standalone crime, limiting it to war crimes.⁸ Efforts to revive ecocide as an international crime resumed in 2010 with Polly Higgins' advocacy, followed by the 2021 Stop Ecocide

- 1 Mehta, S., & Merz, P. (2015). Ecocide – a new crime against peace?. *Environmental Law Review*, 17(1), 3–7. <https://doi.org/10.1177/1461452914564730>
- 2 Chiarini, G. (2022). Ecocide: From the Vietnam War to international criminal jurisdiction? Procedural issues in-between environmental science, climate change, and law. *Cork Online Law Review*, 21, 1–34.
- 3 Greene, A. (2019). The campaign to make ecocide an international crime: quixotic quest or moral imperative?. *Fordham Environmental Law Review*, 30(3), 1.
- 4 McElwee, P. (Spring 2020). The origins of ecocide: revisiting the ho chi minh trail in the Vietnam War. *Environment & Society Portal*, Arcadia, no. 20. *Rachel carson center for environment and society*. <https://doi.org/10.5282/rcc/9039>
- 5 Ban Tuyen giao thanh uy Thanh pho Ho Chi Minh. 2021. 60 years of the agent orange disaster (August 10, 1961 - August 10, 2021) - The pain remains [trans: 60 nam tham hoa chat doc mau da cam 10/8/1961-10/8/2021 - Noi dau van luon con]. <https://hcmcpv.org.vn/tin-tuc/60-nam-tham-hoa-chat-doc-mau-da-cam-10-8-1961-10-8-2021-noi-dau-van-luon-con-1491882180>
- 6 Curcio Lamas, A. (2016). Ecocide: Addressing the large-scale impairment of the environment and human rights. *Master's thesis, Ca' Foscari University of Venice*.
- 7 Article 26 of the Draft Code of Crimes Against the Peace and Security of Mankind stated, “an individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced...”
- 8 Gauger, A., Rabatel-Fernel, M. P., Kulbicki, L., Short, D., & Higgins, P. (2012). *Ecocide is the missing 5th crime against peace*. Human Rights Consortium. updated june 2013. ISBN 978-0-9575210-5-6. Retrieved from: https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf

Foundation's Independent Expert Panel proposing ecocide as a fifth ICC crime, defined as unlawful or wanton acts causing severe, widespread, or long-term environmental damage.⁹ Despite ongoing advocacy, ecocide remains unrecognized in international law, leaving ecosystems vulnerable and highlighting the need for stronger legal protections.

2. Crimes against the environment in international law

2.1. Foundational international principles and customary law upholding environmental protection

The Stockholm Conference of 1972 was a seminal event in global environmental governance, establishing the intrinsic value of the environment and the need for its protection through a non-binding declaration of principles.¹⁰ Described by Joseph Starke as an ethical manifesto, the Stockholm Declaration aimed to guide future global and national environmental strategies and regulations.¹¹ Despite lacking legal enforceability, its principles, notably the duty to prevent transboundary environmental harm, rooted in the 1941 Trail Smelter Rule, significantly influenced international environmental law.¹² This rule, reinforced by cases like *Corfu Channel* and *Lac Lanoux*, mandates States to avoid using their territory in ways that harm others, adhering to the *sic utere* and “good neighbor” principles, with due diligence as a core standard.¹³ Article 22 of the Declaration further emphasized State cooperation to develop international laws on liability and compensation for transboundary environmental damage. Supported by a broad international consensus, the Declaration's principles may have evolved into customary international law, extending State responsibility to shared spaces like the high seas, creating *erga omnes* obligations.¹⁴ This enables States to pursue *actio popularis* claims, protecting collective environmental interests and fostering global accountability.¹⁵

2.2. Ecocide and international environmental crime

First, it is important to clarify the difference between transnational crime and international crime recognized by the Rome Statute of 1998 (“*international criminal crime*” or “*ICC Rome Statute crime*”, hereinafter referred to as ICC Rome Statute crime, IRC). In terms of nature, transnational crime has a level

9 Polly Higgins ecocide crime – ecocide law. Ecocide Law. <https://ecocidelaw.com/polly-higgins-ecocide-crime/>; Mehta, J. (2021). *Statement to the 20th assembly of states parties to the rome statute of the international criminal court*. Stop Ecocide Foundation. https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ASP20.GD.StopEcocide.07.12.pdf

10 Pallemarts, M., “International environmental law from stockholm to rio: Back to the future?”. *REC-TEL*, 13, p. 255.

11 Starke, J. (1989). *Introduction to international law*. Butterworths.

12 Miller, R. A. (2023). Pandemic as transboundary harm: Lessons from the trail smelter arbitration. *International Law and Politics*, 55(2), pp. 266–267.

13 *Corfu Channel (U.K. v. Alb.)*, 1949 I.C.J. 3 (Apr. 9); *Lac Lanoux (Fr. v. Spain)* 24 I.L.R. 101 (1957).

14 Phyffer, J. (2024). Establishing the *erga omnes* character of the obligation to prevent transboundary environmental harm. *University of Pretoria*. <https://core.ac.uk/download/638450982.pdf>

15 The *actio popularis* is discussed in Silagi, M. (1978). Die Popularklage als Fremdkörper im Völkerrecht, *South African Yearbook of International Law*, 10.

of seriousness similar to that of crimes defined in the criminal laws of each country; however, certain crimes, such as organized crime or environmental crime, are more complex. In contrast, international crimes regulated by the ICC Rome Statute are extremely serious offenses that are considered crimes against humanity. Regarding scope, transnational crimes occur in at least two different countries, while IRC can occur within a single country but involves extremely serious human rights violations that necessitate intervention by the ICC for prosecution and trial.

Not only that, international environmental law regulates interactions among States for environmental preservation and sustainable development, while international criminal law (ICL) addresses global criminal activities, primarily focusing on human rights.¹⁶ Environmental offenses lack a clear, universally accepted definition in ICL, which often sidelines environmental protection.¹⁷ Conflicts arise due to international environmental law's emphasis on State sovereignty, allowing States to exploit resources, potentially undermining global conservation. Neoliberal capitalist principles, prioritizing profit and corporate interests, further exacerbate environmental harm.¹⁸ However, treaties like the 1989 Basel Convention on Hazardous Wastes bridge these fields by criminalizing certain environmental acts, mandating States to enforce penalties such as fines or imprisonment.¹⁹ These legally binding measures aim to enhance environmental protection, though challenges persist due to varying national standards and voluntary compliance.

Given the points, the significance of a robust and contemporary international criminal framework for addressing severe environmental transgressions cannot be overstated. Such a framework may serve as a pivotal deterrent against deleterious practices, potentially functioning as a pre-emptive measure. This is critical as the traditional framework of international environmental law primarily relies on state responsibility, which has shown limited effectiveness in addressing environmental challenges through formal dispute settlement.²⁰ Efforts are underway to expand individual criminal responsibility to cover environmental harm, yet this approach faces limitations by solely targeting natural persons and not corporate entities.²¹ Recognizing this, the recent ILC Draft

16 Jenkin, A. (2022). The case for an international crime of ecocide. *New Zealand Journal of Environmental Law*, 26, pp. 221-244.

17 Stahn, C. (2019). A critical introduction to international criminal law. *Cambridge University Press*, p. 108.

18 Aparac, J. (2020, June 4). ICL and environmental protection symposium: international criminal law as a tool for corporate responsibility for environmental crimes (Part I). *Opinio Juris*. <https://opiniojuris.org/2020/06/04/icl-and-environmental-protection-symposium-international-criminal-law-as-a-tool-for-corporate-responsibility-for-environmental-crimes-part-i/>

19 Yadav, D. S. (2022). Ecocide: The missing convention. *International Journal of Law Management & Humanities*, 5, pp. 445-458.

20 McLaughlin, R. (2000). Improving compliance: Making non-State international actors responsible for environmental crimes. *Colorado Journal of International Environmental Law and Policy*, 11(2), pp. 377, 381, 389; Brunnée, J. (2005). International legal accountability through the lens of the law of state responsibility. *Netherlands Yearbook of International Law*, 36, pp. 21, 55.

21 Proposals at the Rome Conference suggesting the incorporation of a framework for the criminal ac-

Principles on the Protection of the environment in relation to armed conflicts acknowledge the role of corporations in environmental crises and emphasize the need for States to regulate and hold them accountable.²² Irrespective of the aforementioned limitations and difficulties, the implementation of a universal law addressing widescale ecosystem damage, relevant in peacetime and conflict situations, is likely to establish a broad international stigma, thereby enhancing deterrence on a global scale.²³

Returning to the topic of ecocide, it is particularly significant because the Rome Statute and the International Criminal Court lack a distinct legal mandate to address actions that result in environmental harm beyond situations of international armed conflict. Specifically, while Article 8(2) (b)(iv) of the Rome Statute criminalizes serious environmental harm in the context of international armed conflicts,²⁴ prosecuting acts that harm the environment in the context of war or international conflicts under the Rome Statute is also very challenging as it requires satisfying other elements such as intent and launching an attack with full awareness of the potential human casualties and environmental damage. Moreover, the threshold for prosecution under the Rome Statute is very high as it stipulates that the harm caused must be “clearly excessive in relation to the concrete and direct overall military advantage anticipated”.

On the other hand, ecocide focuses entirely on acts of natural destruction, causing environmental damage unlawfully or arbitrarily and not just during war or conflict. Another element of the crime of environmental destruction is that it must be carried out with the awareness that it is likely to cause serious and widespread or long-term damage to the environment.

In conclusion, addressing acts that seriously harm the environment from an international criminal law perspective is relatively new as there is no specific or comprehensive legal regime that allows for the direct application of criminal sanctions for these acts within the general framework of international law.²⁵ From this objective reality, we highlight the necessity of supplementing the crime of ecocide to the Rome Statute of 1998 in order to serve the strong deterrent and punitive purposes against acts of extermination and destruction of nature more easily.

countability of legal entities in the Statute were ultimately turned down. See, van den Herik, L., & Letnar Cernič, J. (2010). Regulating corporations under international law: From human rights to international criminal law and back again. *Journal of International Criminal Justice*, 8(3), p. 725. <https://doi.org/10.1093/jicj/mqq031>

22 ILC, Protection of the environment in relation to armed conflicts: Draft principles on protection of the environment in relation to armed conflicts (20/05/ 2022) A/CN.4/L.968.

23 Palarczyk, D. (2023). Ecocide before the international criminal court: simplicity is better than an elaborate embellishment. *Crim Law Forum*, 34, 147–207. <https://doi.org/10.1007/s10609-023-09453-z>

24 Referencing laws that center on human rights violations such as crimes against humanity or genocide to address environmental harm poses a challenge because these provisions primarily target actions affecting humans rather than directly addressing environmental issues.

25 Gillett, M. G. (2018, June 19). *Prosecuting environmental harm before the International Criminal Court*. s.n., S.I. <https://hdl.handle.net/1887/62738>

3. Ecocide: Legal issues and commentary in international criminal law

During the Conference, the term “ecocide” was also introduced on an international platform.²⁶ While the Conference deliberated on a range of topics encompassing international pollution and environmental degradation, the discourse surrounding ecocide during wartime emerged as a focal point of discussion, drawing attention to the urgent need for global action on such pressing environmental threats. Subsequent advancements in the realm of international environmental law and discourse, inspired by the core principles articulated in the Stockholm Declaration, have prompted a re-examination of the concept of ecocide across various contexts.

In lieu of offering explicit definitions or delving deeply into the theoretical foundations of ecocide, the authors of this paper advocate for the recognition of it as a plausible fifth crime within the Rome Statute of the International Criminal Court. Like mentioned before, it is noteworthy that while the term “ecocide” was initially contemplated as an “international crime” in the early drafts of the Rome Statute, it was subsequently excluded. Nevertheless, the ongoing dialogue and advocacy surrounding the incorporation of “ecocide” as a fifth criminal offense within the Rome Statute of the International Criminal Court persist unabated and have, in fact, gathered momentum over time.

The draft definition and elements of ecocide put forth by the Independent Expert Panel (IEP) holds particular significance, as it represents “the culmination of progress after many years” of legal thinking on this issue. Therefore, within this paper’s framework, the authors will adopt the definition and constituent elements of this crime as set by the IEP as the standard, providing additional commentary where necessary. In addition to proposing additions to Article 5 of the Rome Statute, the IEP dedicated a separate Article 8 bis to further elaborate on this crime.²⁷ The Panel affirmed that 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.

The current IEP’s definition of ecocide lacks precision in assigning criminal culpability, as accountability extends beyond direct perpetrators to encompass those who contribute indirectly, as stipulated in Articles 25(3) (c) and (d) of the Rome Statute.²⁸ Given the broad spectrum of potential contributors to severe ecocide cases, pinpointing the specific individuals

26 Yadav, D. S. (2022). *supra* note 1.

27 Stop Ecocide Foundation (June 2021). *Independent expert panel for the legal definition of ecocide*. Commentary and Core Text.

28 Hamilton, T., & Tiernan, M. (2022, March 21). *Who could be held responsible for ecocide under the Rome Statute? Rethinking SLIC*. <https://rethinkingslic.org/blog/criminal-law/115-who-could-be-held-responsible-for-ecocide-under-the-rome-statute/>

implicated becomes a formidable challenge. The definition proposed by the IEP neglects to confine responsibility to those chiefly accountable for ecocide perpetration. Moreover, the IEP analysis omits concrete instances of ecocide to substantiate its assertions. To enhance clarity, Article 28 of the Rome Statute should be consulted for a more refined delineation of the individuals subject to liability based on their varying degrees of involvement in environmental harm.

The absence of specific underlying acts in the IEP's definition of ecocide is striking as it stands in contrast to the framework of all established core international crimes delineated in the Rome Statute.²⁹ Firstly, it goes against the core tenet of the principle of legality, which emphasizes the importance of clear and specific laws, especially in the realm of criminal legislation.³⁰ Without clear parameters, individuals risk arbitrary prosecution and imprisonment. Secondly, the lack of specificity undermines the symbolic power of ecocide as an international crime, potentially leading to varied interpretations that dilute its intended impact. However, it could also be argued that while a list of acts offers clarity and predictability, it may not capture the complexity of environmental harm adequately.³¹ The challenge lies in defining clear and concrete prohibited conduct within the realm of international environmental law, which often lacks straightforward prohibitions and involves nuanced considerations. While a list of acts can highlight concerns and set standards of care, it may not inherently render actions unlawful or subject to criminal prosecution.

Besides that, the IEP has meticulously analysed and proposed a balanced approach between the varying thresholds of environmental harm severity defined in international conventions.³² By advocating for a midpoint between the disjunctive and conjunctive criteria, the IEP strives for consistent and appropriately severe categorization of ecocidal acts. This balancing act is crucial as the IEP seeks to define a standard that encompasses a wide spectrum of severe environmental harms without compromising on thresholds or setting them unreasonably high. However, a key point of contention arises from the divergence in standards between ecocide, which employs a blend of

29 Genocide enumerates its underlying acts in Article 6(a) to (e), crimes against humanity in Article 7(1)(a) to (k), war crimes in Article 8(2)(a), (b), (c), and (e), and aggression in Article 8bis(2)(a) to (g). See: Gillet, M. (2023, June 21). *A tale of two definitions: Fortifying four key elements of the proposed crime of Ecocide*. <https://shorturl.at/WzC7n>.

30 The principle of legality in international criminal law mandates that individuals can only be held accountable for conduct that was already defined as a crime, with associated penalties, at the time the act was committed. This principle, encapsulated in *nullum crimen sine lege* and *nulla poena sine lege*, safeguards against retroactive application of laws. It is enshrined in Article 15 of the ICCPR and Article 22 of the ICC Statute, emphasizing that crimes must be clearly defined and strictly interpreted in favor of the accused. Customary international law and treaty law must also align with this principle to ensure that violations are criminalized under recognized legal frameworks, thereby upholding individual criminal responsibility without ambiguity or retroactive effect.

31 Robinson, D. (2022). Ecocide – Puzzles and possibilities. *Journal of International Criminal Justice*, 20(2), 313–347. <https://doi.org/10.1093/jicj/mqac021>

32 The 1977 First Additional Protocol to the Geneva Conventions ('API'), 1996 Rome Statute, 1976 Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques ('ENMOD') and 1991 International Law Commission draft of an international crime of wilful and severe damage to the environment.

conjunctive and disjunctive elements (“severe and either widespread or long-term damage to the environment”), and Article 8(2)(b)(iv), which strictly adheres to a conjunctive model (“widespread, long-term and severe damage to the natural environment”). The underlying ambiguity revolves around whether States will be willing to uphold these conflicting formulations.³³

Furthermore, the IEP’s work on clarifying the actus reus of *ecocide* has been instrumental as they have defined key terms such as “severe”, “widespread” and “long-term” in the commentary. Their clarification of “severe” as encompassing grave impacts on human life and various environmental elements, including cultural resources, demonstrates a nuanced understanding of the complexities involved. Moreover, the IEP’s inclusive interpretation of “widespread” to extend beyond strict geographic boundaries and encompass various scales of impact reflects a holistic perspective on environmental damage. Lastly, their definition of “long-term” as encompassing irreversibility or the inability for natural recovery within a reasonable timeframe showcases a forward-looking and preventive stance towards addressing *ecocide* effectively. However, the definition of “environment” as proposed by the IEP lacks specificity, leading to ambiguity in determining what acts may qualify as *ecocide*. Depending on the interpretation of “environment” to include vast concepts like the entire earth system or more specific entities like forests or animal species, the threshold for establishing *ecocidal* damage varies significantly. Without a clear delineation of what falls under the term “environment”, the scope of liability for *ecocide* remains uncertain.

Next, the mens rea of the crime of *ecocide* comprises two main facets:³⁴ (i) when the perpetrator undertakes actions “knowing that such actions are likely to cause significant harm to the environment” and (ii) when the actor acts “recklessly”, demonstrating a “heedless disregard” for the potential harm that could result. The phrase “substantial likelihood” is employed here to describe the culpability of the crime of *ecocide* and closely aligns with the principle of *dolus eventualis*. This principle posits that the perpetrator foresees the possibility of harm or consequences arising from their actions but proceeds regardless. The standard of culpability appears to be lower than that stipulated in the Rome Statute, where Article 30 requires proof of “intent and knowledge” for a perpetrator to be criminally responsible.³⁵ Some argue that the Panel’s culpable aspects are incongruent with Article 30 of the Rome Statute, which mandates demonstrating a direct intention to cause harm or knowledge that harm will occur in the ordinary course of events in reality. However, this could still be acceptable as Article 30 also

33 Palarczyk, D. (2023), *supra* note 23.

34 Greene, A. (2021). Mens Rea and the proposed legal definition of *ecocide*. *Völkerrechtsblog*. doi: 10.17176/20210707-135726-0

35 Badar, M. E. (2009). *Dolus eventualis* and the Rome Statute without it?. *New Criminal Law Review: An International and Interdisciplinary Journal*, 12(3), 433–467. <https://doi.org/10.1525/nclr.2009.12.3.433>

allows for a flexible determination of intent and fault through exceptions.³⁶ Nonetheless, in the commentary published by the Panel, there is a lack of further explanation on what this phrase means, creating difficulties in determining the consequences of ecocidal actions stemming from human or non-human factors. This could be seen as a shortcoming, as the Panel could have referred to detailed legal interpretations of the phrase “substantial likelihood” established in the appellate judgment in the case brought by the *Prosecutor v. Tihomir Blaškić* under the jurisdiction of the former Yugoslav Criminal Tribunal (ICTY).³⁷ The Panel could have also referred to the Strugar decision by the Appeals Chamber of the ICTY that underscores the significance of the term “substantial likelihood” concerning the “had reason to know” criterion.³⁸ This term elucidates the specific level of awareness essential for a superior to be deemed responsible for crimes committed by their subordinates. According to the ICTY, this standard does not mandate proof of a definitive and high risk but rather an acknowledgement of the potential for unlawful actions.

Not only that, within the concept of ecocide introduced by the Panel, there are dual requirements that not only demand proving “knowledge” of potential harm to the environment but also the disproportionate recklessness impacting society and the economy. These dual conditions complicate the prosecution process, necessitating the perpetrator to recognize both the potential harm to the environment and the clear extent of it in relation to the expected benefits.

Lastly, ecocide constitutes a crime of endangerment, where the material elements alone are sufficient for liability without actual harm needing to occur.³⁹ Some argue this classification downplays the gravity of the crime by focusing only on whether the acts were committed rather than the actual consequences. Conversely, proponents argue that such categorization facilitates the mitigation of ecological perils without the encumbrance of proving immediate causation, underscoring the importance of anticipating and averting environmental damage.⁴⁰

4. The case of Vietnam: War and environmental harm

4.1. The first country to regulate ecocide in its domestic law

As a country that has suffered greatly from the effects of agent orange used by the US military during the war, Vietnam is acutely aware of the cruelty and consequences of ecocide on humanity. The term “ecocide”

³⁶ Article 30 includes provisions for exceptions wherein the standard mens rea, which necessitates intent and knowledge, is applicable “unless otherwise stipulated” (paragraph 1). Consequently, an article has the prerogative to establish a distinct mens rea requirement, whether more rigorous or lenient, compared to the one outlined in Article 30.

³⁷ *Prosecutor v. Tihomir Blaškić*, Case IT-95-14-A, Appeals Chamber, Judgement, 29/07/2004, §166.

³⁸ *Prosecutor v. Pavle Strugar*, Case IT-01-42-A, Appeals Chamber, Judgement, 17/07/2008, §304.

³⁹ Palarczyk, D. (2023), *supra* note 23.

⁴⁰ Gillett, M. G. (2018, June 19). *supra* note 25.

was first used during the Vietnam War to describe the deliberate targeting of the environment in conflict. Recognising clearly the importance of this inhumane act, Vietnam was recorded as the first country to ratify ecocide in domestic law 40 years ago. In the first Penal Code of the Socialist Republic of Vietnam adopted in 1985, legal experts recognized ecocide as a crime against humanity. Specifically, Article 278 of the Penal Code of 1985 stipulates four main groups of crimes against humanity behaviours: “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 destroying the habitat or destroying the natural environment, shall be sentenced to between ten years and twenty years of imprisonment, life imprisonment or capital punishment”.

The first and second groups of behaviors are essentially like those specified in Articles 7 (Crimes against humanity) and 6 (Genocide) of the Rome Statute (adopted in 1998, 13 years after Vietnam’s 1985 Penal Code was enacted). On the other hand, the acts of destroying the habitat and natural environment exhibit characteristics of ecocide, specifically:

Destroying the habitat is the act of destroying the life of flora and fauna in a specific area. A specific area is a geographical area of importance to the livelihood of a community. The consequences of destroying the habitat are: destruction of villages, vegetation, the killing of animals; land degradation, air and water pollution; destruction of food sources, human and animal habitats; making life for humans, animals, and plants unsustainable.

Destroying the natural environment is the act of disrupting the natural environment, upsetting the balance between its elements. The consequences of destroying the natural environment are disrupting the living conditions of organisms, leading to the destruction of human life. Therefore, destroying the habitat and destruction of the natural environment are essential stages of the extinction process or means of extinction.

The promulgation of the 1985 Criminal Code made Vietnam the first country in the world to regulate ecocide as a criminal offense (the website ecocidelaw.com of the Stop Ecocide Foundation noted this with a slight error: Vietnam criminalized ecocide in 1985, not 1990).⁴¹ Following Vietnam, nine other countries have regulated ecocide as a criminal offense. The reason Vietnam took the lead in criminalizing ecocide undoubtedly stems from historical factors. On 26 June, 1984, presenting the Council of Ministers’ proposal on the draft Part on Crimes of the Penal Code before the National Assembly of Vietnam, Minister of Justice Phan Hien provided the following analysis on Chapter XII – Crimes against peace and humanity:

41 Ecocide Law. (n.d.). *History – Ecocide law*. <https://ecocidelaw.com/history/>

“Our people have been and are victims of crimes against peace, aggression, and crimes against humanity. The long and heroic struggle of our people has contributed to promoting the world people’s movement to strongly condemn these crimes and to build international law. Therefore, the consensus is that this chapter should be in this position.”⁴²

Substantively, Chapter XII codifies offenses recognized under international law. These include crimes against peace and acts of aggression; crimes against humanity, including genocide, crimes against habitat, and crimes against the natural environment; war crimes; the recruitment of mercenaries; and mercenary activities. It can be seen that the act of ecocide is classified alongside international crimes such as genocide, crimes against humanity, and war crimes, and was considered by the Minister of Justice of Vietnam at that time as “crimes recognized under public international law”.⁴³ Thus, Vietnamese legislators consider ecocide not only as a purely domestic criminal offence but also as an international crime.

4.2. Ecocide in Vietnam: Tracing the impacts of imperialism and global capital

It can be argued that when establishing regulations on ecocide in the Criminal Code, Vietnam drew on the experience from the war of national defence against US imperialism.⁴⁴ In October 1980, the Vietnamese government set up a special committee to investigate the consequences of chemical poisoning caused by the US during the war in Vietnam (referred to as Committee 10-80); and at the time the Criminal Code of 1985 was drafted and enacted, Vietnam was still under US embargo.⁴⁵ Therefore, the inclusion of provisions on ecocide in the 1985 Criminal Code was a legal effort to combat the use of agent orange by the US military in Vietnam, as well as to prevent similar events in the future.

However, as Vietnam entered the 21st century, it faced a very different challenge. While during the war against the US, ecocidal acts were carried out by a regular army of a nation, in the present era, the threat comes from corporations – especially multinational conglomerates. With immense financial resources and vast global business reach, many multinational corporations target Vietnam and other developing countries for investment, as these are regions with cheap labor, low environmental standards, and incomplete legal frameworks.⁴⁶ This poses a risk of long-term, large-scale environmental

42 Council of Ministers. (1984, June 26). *Report on the draft amendments to the Criminal Code’s section on offenses: Presented by Mr. Phan Hiền at the 7th session of the 7th National Assembly*. National Assembly of Vietnam. <https://noidung.quochoi.vn/tulieuquochoi/anpham/Pages/anpham.aspx?AnPhamItemID=3552>

43 *Ibid.*

44 Cusato, E. (2018). From ecocide to voluntary remediation projects: Legal responses to ‘environmental warfare’ in Vietnam and the spectre of colonialism. *Melbourne Journal of International Law*, 19(2), 494–520. <https://classic.austlii.edu.au/au/journals/MelbJIL/2018/17.html>

45 National Steering Committee. (2013). *Comprehensive Report on agent orange/Dioxin Contamination at Three Hotspots: Bien Hoa, Da Nang and Phu Cat Airbases. Hanoi, Vietnam*. Ministry of Natural Resources and Environment.

46 Vietnam encounters challenges in environmental policy coherence, marked by a labyrinth of laws and strategies that lack integration and alignment. Non-compliance with regulations persists due to limited enforcement capacity and motivations influenced by conflicting priorities, undermining the efficacy of environmental ini-

destruction carried out systematically by foreign corporations. Over the years, there have been numerous examples worldwide of ecocidal actions perpetrated by foreign corporations in developing countries.⁴⁷ In Vietnam, there have been many incidents that have caused widespread environmental damage over the years, such as the Vedan Company's discharge of wastewater polluting the Thi Vai River.

Initially, the 1985 Criminal Code only stipulated some provisions regarding conventional environmental crimes, scattered in Chapter VII "Economic Crimes" and Chapter VIII "Crimes Infringing upon Public Order, Safety, and Administrative Management Order."⁴⁸ Subsequently, in the 1999 Criminal Code, to align with environmental protection regulations in specialized fields, conventional environmental crimes were specified within a dedicated chapter: Chapter XVII consisting of 10 articles.⁴⁹ By the 2015 Criminal Code (amended and supplemented in 2017), Chapter XIX on "Environmental Crimes" comprises 12 articles.⁵⁰ However, the handling of environmental crimes in Vietnam remains very limited, with few cases being prosecuted and processed.⁵¹

As delineated by the preceding data and numerical figures, despite being a trailblazer in enshrining ecocide as a criminal offence within national legislation, Vietnam has yet to apply this provision in practical prosecution. Instead, the country predominantly pursues cases of environmental pollution under established conventional environmental crimes contained in the Criminal Codes.

5. Conclusion and recommendations for Vietnam

The authors argue that Vietnam needs to promptly refine its regulations on ecocide independently from conventional environmental crimes, as ecocide, being fundamentally graver and distinct in essence from traditional environmental offences, poses a unique set of challenges. Furthermore, despite its delineation in Article 278 of the 1985 Criminal Code – now designated as Article 422 in the 2015 Vietnamese Criminal Code with subsequent

tatives. These obstacles impede progress in addressing environmental issues and fostering sustainable development in Vietnam. See at: Schimbeck, S. *Vietnam's Environmental Policies at a Crossroads: Salinated Rice Fields, Hunted-Out National Parks, and Eroding Beaches – and What We Can Do About It*. Friedrich Ebert Stiftung Foundation.

47 Tregaskis, S. (2018, February 14). *Ten worst "ecocides"*. The Guardian. <https://www.theguardian.com/environment/gallery/2010/may/04/top-10-ecocides?#/?picture=361634449&index=0>; Nguyễn, Đ. L. (2018). Một số kiến nghị hoàn thiện các quy định về tội phạm môi trường. *Tạp Chí Khoa Học Kiểm Sát*, Số 04. [trans: Some Recommendations for Enhancing Regulations on Environmental Crimes. *Journal of Prosecutorial Science*, 4].

48 Article 180. Violations of regulations on land management and protection; Article 181. Violations of regulations on forest management and protection; Article 195. Violations of environmental protection regulations causing serious consequences; Article 216. Violations of the protection and use of historical, cultural, scenic, and cultural sites causing serious consequences.

49 From Articles 182 to 191.

50 From Articles 235 to 246.

51 Trần, L. H., & Trần, M. C. (2024). Hoàn thiện quy định của pháp luật về xử lý vi phạm trong lĩnh vực bảo vệ môi trường. *Tạp chí Dân chủ và Pháp luật*, 2(413) [trans: Enhancing legal regulations on handling violations in the field of environmental protection. *Journal of Democracy and Law*, 2(413)]

amendments in 2017 – the provision addressing crimes against humanity has remained unaltered and dormant, devoid of practical application for nearly four decades. Both of these reasons underscore the imperative for ecocide to be accorded its dedicated provision within the Vietnamese Criminal Code. In this regard, Vietnam stands to gain valuable insights from nations such as France or Belgium, where the concept of ecocide has been effectively integrated into their respective legal frameworks.

Belgium and France have taken divergent approaches regarding the criminalization of ecocide within their legal frameworks. In Belgium, ecocide is now a level six crime carrying penalties of up to 20 years in prison for individuals and fines of up to 1.6 million euros for corporations.⁵² Under Article 94, ecocide is defined as “deliberately committing, by act or omission, an unlawful action causing serious, widespread and long-term damage to the environment in the knowledge that this act causes such damage.”⁵³ While Belgium’s decision to criminalize ecocide reflects an increasing awareness of the necessity for legal structures that can hold both individuals and corporations accountable for significant harm to the environment, the adoption of a narrower definition of ecocide, requiring deliberate intent and knowledge of harm, raises concerns about loopholes for negligent individuals to avoid accountability.⁵⁴ This contrasts with the IEP’s recommendation of a broader standard focusing on the substantial likelihood of harm. Belgium’s stricter stance may not significantly improve deterrence, potentially only increasing penalties for actions already prohibited under current laws.

In contrast, while the offence of “ecocide” is codified in Article L. 231-3 of the French Environment Code, it is not treated as a standalone crime. Instead, it is regarded as an aggravation of two other environmental offences when they are committed intentionally. These offences include the general pollution of physical and biological environments and the abandonment of waste, outlined in the French Environment Code.⁵⁵ The penalties for ecocide in France are stringent, with imprisonment of up to 10 years and substantial fines for individuals and juridical persons. However, proving ecocide under French law presents challenges, as the damage must be lasting at least seven years and actions must be demonstrated to be intentional.

52 The law is primarily applicable within the jurisdiction of Belgium’s federal authority. This includes areas like the North Sea and nuclear waste management but does not extend broadly across all environmental matters, which are largely governed by regional authorities in Flanders, Wallonia, and Brussels. As such, while the federal government can prosecute ecocide under this new law, many environmental issues remain under regional jurisdiction. Stop Ecocide International. (2025, February 12). *Belgium becomes first European country to recognise ecocide as international level crime - Stop Ecocide International*. Stop Ecocide International. <https://www.stopecocide.earth/2024/belgium-becomes-first-european-country-to-recognise-ecocide-as-international-level-crime>

53 A&O Shearman. (2024, May 29). *Ecocide in Belgium: Hard-to-prove but still significant as part of an evolving global regulatory landscape*. <https://www.aosheaman.com/en/insights/ao-sheaman-on-investigations/ecocide-in-belgium>

54 Savard, C. (2024, March 5). Belgium recognises the crime of ecocide: A (lukewarm) European first. *Oxford Human Rights Hub*. <https://ohrh.law.ox.ac.uk/belgium-recognises-the-crime-of-ecocide-a-lukewarm-european-first/>

55 Soulier Avocats Strategic Lawyering. (2024, September 3). *French climate and resilience law: What impact on environmental criminal law?*. <https://www.soulier-avocats.com/en/french-climate-and-resilience-law-what-impact-on-environmental-criminal-law/>

This requirement for intentional harm could complicate prosecution and overlap with existing laws on water pollution and waste abandonment. France's approach focuses on intentional actions leading to severe and persistent harm, contrasting with Belgium's emphasis on deliberate intent and knowledge of environmental damage.

In conclusion, should Vietnam opt to separate ecocide from Article 422 of the 2015 Vietnamese Criminal Code (amended in 2017) into a distinct provision, a series of crucial steps must be taken. First, Vietnam must provide a clear and precise definition of "ecocide". Second, a careful assessment should be made to determine whether the Belgian or French approach is more appropriate for Vietnam, considering Belgium's standalone provision for "ecocide" versus France's treatment of "ecocide" as an aggravation of other environmental offences committed intentionally. Third, the penalties for ecocide should be heightened, ensuring they are stringent yet harmonious with the existing legal framework and the socio-economic conditions of the Vietnamese populace, to effectively discourage future environmental crimes.

Finally, Vietnam needs to articulate the fundamental constitutive elements of the crime of ecocide with a specific emphasis on the mens rea aspect to ensure clarity and precision in legal interpretation. Besides that, it is also crucial to establish explicit enforcement guidelines for prosecuting both juridical entities and individuals to hold them accountable for ecocide offences. This clarity is particularly essential considering the existing confusion surrounding conventional environmental crimes. These measures are essential for the effective implementation of ecocide legislation in Vietnam and for promoting environmental protection and accountability within the country. ●

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Author Contribution

All authors contributed to the study conception and design. All authors read and approved the final manuscript.

Declarations

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