
Dr. Matthew Gillett's Proposed Definition of Ecocide¹

Ecocide means wilfully² committing any of the following acts and thereby causing³ severe damage to the natural environment⁴ that is also widespread or long-term:⁵

- a.) killing, harming, or removing protected flora or fauna;⁶
- b.) destroying or damaging ecosystems or wild animal habitats;⁷
- c.) destroying or damaging natural heritage;⁸
- d.) trafficking or dumping hazardous substances;⁹
- e.) releasing, emitting, or introducing harmful quantities of substances or energy into the air, water, or soil;¹⁰

¹ See Matthew Gillett, *Prosecuting Environmental Harm before the International Criminal Court*, (Cambridge University Press, 2022), Chapter VI.

² Wilfulness, in this context, encompasses direct intent, as in purpose or virtual certainty regarding the environmental harm, as well as voluntarily assuming the risk of such harm occurring, when undertaking the underlying act. A person who genuinely takes appropriate and available measures designed to avoid environmental harm is not wilfully accepting the risk of environmental harm and therefore would not meet this element of the crime.

³ Whereas some versions of ecocide, and the war crime in article 8(2)(b)(iv), are formulated inchoately (not requiring the environmental damage to actually occur, but only that the acts involve a risk of environmental harm), the formulation proposed herein requires a result to be shown. Requiring a result ensures that only the most serious instances of environmental harm constitute ecocide. Nonetheless, if a person takes action that commences the execution of ecocide by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions (other than the person's abandonment of the effort to commit the crime, or prevention of the commission of the crime, as long as the person completely and voluntarily gave up the criminal purpose), the accused may nonetheless be liable for attempting to commit ecocide, under article 25(3)(f).

⁴ The term 'natural environment' can be defined in accordance with the definition of the ILC.

⁵ The terms 'widespread', 'long-term', and 'severe', are drawn from API, articles 35(1) and 55(2), as well as the 1991 Draft Code of Crimes Against the Peace and Security of Mankind, article 2, the Rome Statute, article 8(2)(b)(iv), and are also found in the 1981 Conventional Weapons Convention, the ICJ's nuclear weapons decision, and the ICRC customary law study. Various interpretations have been given to these terms in those contexts, as discussed above (particularly in relation to the war crime under article 8(2)(b)(iv) of the Rome Statute and the ENMOD Convention). Sub-paragraph 3 of the definition below further explains the role of these qualifiers.

⁶ This provision draws on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), which has over 180 State Parties and requires the domestic criminalization of its key prohibitions.

⁷ This provision draws on the Convention on Biological Diversity (1992), which has over 190 State Parties. Although the Biological Diversity Convention does not explicitly require the domestic criminalization of its key prohibitions, article 8(k) requires State Parties to '[d]evelop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations'.

⁸ This provision draws on the World Heritage Convention of 1972, which has over 190 State Parties. Under the Convention, States are obliged to do their utmost to protect natural heritage, including through legal measures: e.g., article 4 and article 5, though it does not explicitly require the domestic criminalization of its key prohibitions.

⁹ This provision draws on the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989), which has over 170 State Parties and requires the domestic criminalization of its key prohibitions.

¹⁰ This provision draws on *inter alia* the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972), which has over eighty States Parties, and its 1996 Protocol; the Convention

- f) causing or contributing to the large-scale emissions of greenhouse gases or the destruction of greenhouse gas sinks or reservoirs;¹¹
 - g) any other acts of a similar character, where those acts involve unsustainable harm to the natural environment.¹²
 - 2. Irrespective of whether it qualifies as any of the acts listed in paragraph 1, conduct shall not be considered ecocide if it is both (a) strictly in accordance with international law, particularly international environmental law, and (b) authorized by a competent national authority.
 - 3. In order to fulfil the definition in paragraph 1, the damage to the natural environment must be severe, while also being either widespread or long-term (or both). Consequently, in all cases the anticipated damage must be severe, but no one of the qualifiers can be significant enough on its own to satisfy the definition of ecocide. Moreover, the severe, widespread, and/or long-term nature of the harm may be established on the totality of the conduct at issue, which may include multiple underlying acts.
 - 4. The terms of paragraph 1 shall be interpreted in accordance with international law, particularly environmental law.
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on Prevention of Pollution from Ships (1973), which has over 150 State Parties, and its 1978 Protocol; the Convention on Long-Range Transboundary Air Pollution (1979), which has over fifty States Parties; the Montreal Protocol on Substances that Deplete the Ozone Layer (1989), which has 197 State Parties; and the EU Directive on the Protection of the Environment through Criminal Law (2008). Several of these instruments and provisions require domestic criminalization, such as the 1989 Montreal Protocol.

¹¹ This provision draws on *inter alia* the UN Framework Convention on Climate Change (UNFCCC), which has over 190 States Parties.

¹² The term 'unsustainable' may draw on principles of environmental law such as weighing social and economic benefits, the precautionary principle, the preventive principle, the 'polluter pays' principle, intergenerational equity, and common-but-differentiated responsibilities attributed to developing countries.