

The search for the codification of ecocide in the internal and external legal systems: is there a unity of understanding of the crime?

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Abstract

Is there a confluence of understanding on what ecocide means for the different countries that have taken on the task of defining it? The current study examines the existing ecocide laws in the world, since 1990, and the most recent bills. The analysis takes into account: ecocentrist and anthropocentrist views in laws and bills; the wording of the norm; and the range given to the mens rea and the actus reus. We can make two main observations: first, international debates – especially the ILC draft Code – have a strong influence on national approaches, and second, many of the definitions are rather vague and incomplete. Today, there are a few laws and bills that address the crime more fully, better respecting the principles of criminal law. It is concluded that there is still no uniformity in the understanding of what ecocide is, but there is an increase in the definitions of the crime, evidencing the advance in the understanding of ecocide in recent years.

Keywords: ecocide; definition of the crime; laws and bills; codification of the crime.

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Introduction

This work seeks to briefly portray how ecocide was and is discussed in existing laws and bills around the world, in order to assess whether there is a unity of understanding about the crime in penal codes and parliaments of States.

The human and environmental consequences of Agent Orange during the Vietnam War triggered mixed reactions. The global nature of environmental degradation has received much attention among politicians and civil society, with some consensus on the need for action at the international level; there was no convergence, however, on which measures were necessary. As environmental disasters not directly linked to armed conflicts occurred, the need for an international legal approach became more explicit.

At the United Nations (UN) level, environmental protection was linked to international peace and security in the following decades. The UN's International Law Commission (ILC) was responsible for the first efforts toward a possible international codification of the criminal protection of the environment, mainly in the 1980s and 1990s. After rounds of deliberations on a draft Code of Crimes against the Peace and Security of Mankind, the existence of an environmental crime committed by an individual², remained excluded from the final text, only maintaining criminal liability for severe destruction of the environment in a context of war³.

The idea of 'ecocide', obscured at the international level, became a reality in the 1990s in some Asian States, with a vague/generic definition and difficult delimitation of scope in a practical case. . However, the exclusion of crime at the international level cooled the discussion in other regions of the globe, especially after the creation of the International Criminal Court (ICC) in 1998. The subject would be renewed with the return of the

² Article 26, on liability for an environmental crime perpetrated by an individual 'was removed from the Code altogether. The final version adopted by the ILC only mentioned the intentional creation of 'widespread, long-term and severe damage to the natural environment' within a war context under Article 8.23' (Malhotra, S. (2017). The international crime that could have been but never was: An English school perspective on the ecocide law. *Amsterdam Law Forum*, 9, 49, p. 49, p. 53).

³ Article 8°, 8(2)(b)(iv), Rome Statute.

environmental agenda in the climate field, evidenced by successive IPCC reports⁴, pointing to a need for global action against the greenhouse effect. Linked – in speech – to the climate crisis, ecocide has returned to legislative houses as bills in recent years, bringing varied definitions and scope.

This study presents the existing ecocide laws and the bills in progress, to assess whether there is a uniform understanding of what ecocide is.

Ecocide in national laws

After the international push in ecocide studies, which took place during the Vietnam War and then by the ILC, some countries developed their own definition of the crime in national legislation concomitant with the ILC draft Code⁵. After Vietnam adopted a provision in 1990, many successor States resulting from the dissolution of the Soviet Union also included ecocide as a crime in their legislation.

Only recently have other States addressed the issue. The list of national and international initiatives is scattered and partially included in information hubs on ecocide, especially “*Ecocide Law*”⁶, which is usually cited as a source by the absolute majority of the doctrine and by the legislators themselves, when explaining their proposals. This paper seeks to locate all possible initiatives on the subject, in the form of law or bills and to identify which legal elements and difficulties are revealed to actors attempting to codify ecocide.

⁴ Link: <https://www.ipcc.ch/reports/>.

⁵ ‘The few notable evolutions that have emerged remain somewhat haphazard and uncoordinated. Their subject matter, the intensity of the prohibitions involved, and the modes of enforcement vary considerably. This uncoordinated approach is in stark contrast to the many areas of international criminal law that have become highly structured over the years, most notably through the operation of international criminal tribunals’ (Mégret, F. (2011). The problem of an international criminal law of the environment. *Columbia Journal of Environmental Law*, 36, 195, p. 201).

⁶ Links: <https://ecocidelaw.com/> and <https://www.stopecocide.earth/>.

Ecocide in penal codes

Ecocide as a crime is still rare in penal codes around the world. Despite the common occurrence of environmental crimes, there is a constant gap in legislation when it comes to massive destruction of the environment. The scale of recent and ongoing environmental damage and the insufficiency of the legal response, however, exposed this deficiency.

The context of the creation of the term 'ecocide' (defoliating chemical attacks during the Indochina War, in the 1960s and 1970s), therefore, served as a stimulus for the first nation to codify it as a crime.

Vietnam (1990)

Concurrent with the advancement of studies on ecocide at the ILC, either as an autonomous crime or as a crime against humanity, in 1989, Vietnam, a country that suffered attacks by Agent Orange against its forests during the War of Indochina, drafted its own law against massive environmental damage.

The 1990 Penal Code (Art. 278) provided that practicing ecocide, 'destroying the environment, in times of peace or war, would constitute a crime against humanity'⁷. The simplicity of the text of the law, without an explanatory rule, was repeated in the Penal Code of 1999 (Art. 342). The maintenance of ecocide as a crime against humanity also took place in the current Penal Code of 2015, in Chapter XXVI (Art. 422)⁸. This time, the term 'ecocide' was omitted, leaving environmental destruction as a way of committing it.

It should be noted that, in Vietnam's 1999 and 2015 Codes, ecocide and genocide were considered conducts included in crimes against humanity. Although Vietnam is not a State Party to the Rome Statute, the inspiration for this understanding came from the ILC discussions. Before confirming what the crimes of the Code would be, the idea of including

⁷ Link: https://ihl-databases.icrc.org/customary-ihl/por/docs/v2_cou_vn_rule45.

⁸ Link: <https://wipolex.wipo.int/en/text/446020>.

at least four groups was concrete: crimes against humanity, genocide, war crimes and the crime of aggression⁹.

Thus, the lack of depth and clarity as to what would constitute 'ecocide', seen during the ILC debates, was also reflected in the Vietnamese texts, which were vague and of limited use as a legislative reference, at least at the international level. The same lack of clarity appears in the texts produced by the countries resulting from the dissolution of the Soviet Union in the 1990s.

Former Soviet Republics (1996 to 2003)

After Vietnam, other countries in Asia and Eastern Europe also included ecocide in national penal codes, to refer to the most serious environmental crimes that cause or may cause massive destruction to the natural environment¹⁰. Russia, which signed but did not ratify the Rome Statute, was the first of these. However, legislative and academic activities in this area decreased with the advance of the Cold War and the socioeconomic stagnation of Russian society¹¹. Thus, from the late 1980s onwards, the development of international criminal law, compared to the European experience, was held back.

The last move in this direction was the inclusion of Chapter 34 in the Russian Penal Code of 1996. Among other crimes were the crimes of genocide (Art. 357), use of prohibited methods of war (Art. 356), and public appeals to unleash an aggressive war (Art. 354). Ecocide, dissociated from war, was in Art. 358:

Article 358. Ecocide. Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of 12 to 20 years¹².

⁹ Morton, J. S. (2000). *The International Law Commission of the United Nations*. University of South Carolina Press, p. 41.

¹⁰ Estupiñan-Silva, Rosemerlin (2016). Desafíos y respuestas transnacionales frente a los crímenes ambientales. *Revista de Direito Internacional*, 13(3), 30, p. 39.

¹¹ Esakov, Gennady. International Criminal Law in Russia Missed Crimes Waiting for a Revival. *Journal of International Criminal Justice*, v. 15, n. 2, p. 371-392, 2017, p. 372.

¹² Link: https://www.legislationline.org/download/id/4247/file/RF_CC_1996_am03.2012_en.pdf.

Like Vietnam, Russia also drew inspiration from discussions arising from the ILC, including naming Chapter 34 with the same name as the ILC Code: 'Crimes against the peace and security of humanity'.

The collapse of the USSR in 1991 redrew the map of the region, with several post-Soviet nations emerging¹³, whose Russian influence was (and still is) determining. Of the 15 new internationally recognized States, nine included, at different times, ecocide as a crime in national penal codes.

The Kyrgyz Penal Code of 1997¹⁴ repeated, in Art. 374, the crime stipulated in art. 358 Russian. It even copied Chapter 34, giving it the same name, similar to Tajikistan (1998)¹⁵, which criminalized ecocide in Art. 400; Art. 131 of Belarus Penal Code (1999)¹⁶; Art. 441 of Ukraine Penal Code (2001)¹⁷; Art. 136 of Moldova Penal Code (2002)¹⁸ and Art. 396, of Armenia Penal Code (2003)¹⁹. Kazakhstan did the same, which it included in its Penal Code²⁰ (first, in 1997, transposing to Art. 169 of the current 2014 Code), with no distinction for offenses in peacetime or war.

The Penal Code of Uzbekistan (1994) has a Chapter (Eight) on crimes against peace and humanity, but separates them from massive damage to the environment, allocating them in

¹³ For the Russian Federation, there are still currently six unrecognized states in the post-Soviet space: the Pridnestrovian Republic of Moldova (Transnistria, 1990), the Republic of South Ossetia (1990), the Republic of Nagorno-Karabakh (Artsaque, 1991), the Republic of Abkhazia (1994), the Luhansk People's Republic (2014) and the Donetsk People's Republic (2014) (TOLSTYKH; GRIGORYAN; KOVALENKO, 2019, p. 81). Regarding the last two territories, Donetsk and Lugansk, inserted in Ukraine, their independence was recognized by Russia in February 2022, during the invasion of that country. (Link: <https://www.jurist.org/news/2022/02/putin-signs-decrees-recognizing-independence-of-eastern-ukraine-regions/>).

¹⁴ Link: <https://wipolex.wipo.int/en/text/248664>.

¹⁵ Link: <https://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview>. Tajikistan has been a signatory to the Rome Statute since 5 May 2000.

¹⁶ Link: <https://www.ilo.org/dyn/natlex/docs/SERIAL/54631/52413/F1800922194/BEL54631%20Rus.pdf>.

¹⁷ Link: <https://www.legislationline.org/documents/action/popup/id/16257/preview>.

¹⁸ Link: https://www.legislationline.org/download/id/8281/file/Moldova_CC_2002_am2018_en.pdf. Moldova ratified the Rome Statute on 12 October 2010.

¹⁹ Link: <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>.

²⁰ Link: https://www.legislationline.org/download/id/8260/file/Kazakhstan_CC_2014_2016_en.pdf.

Chapter 14, from 'crimes related to the protection and conservation of the environment'. The art. 196 brings a disposition closer to ecocide, despite not naming it, considering it as pollution or damage of land, water, or atmospheric air, resulted in mass disease incidence of people, death of animals, birds, or fish, or other grave consequences²¹. By pointing to 'pollution' as the only means of causing such damage, it restricts the scope of the norm, by virtue of the principle of legality.

Finally, the Georgian Penal Code (1999), reflecting international crimes, foreshadows crimes against humanity (Art. 408), crime of aggression (Arts. 404 and 405), genocide (Art. 407) and crimes under international humanitarian law (Arts. 411, 412 and 413). It also adds crimes about weapons of mass destruction (Art. 406) and ecocide (Art. 409), maintaining the structure of the crime similar to that of neighboring countries on the continent, but subdividing the penalty according to the period in which the crime is committed²².

Georgia is a signatory to the Rome Statute²³, and there is even an ongoing investigation authorized by the ICC Prosecutor's Office for alleged crimes committed in armed conflict, which took place between July 1st and 10th October 2008, in and around South Ossetia²⁴.

The differences between the 'ecocide' definitions are, in general, negligible, with a quite vague description of the crime, its circumstances and elements, and with sentences ranging from fine (with legal restrictions, in Uzbekistan) to life imprisonment (Georgia, in case of war) and death penalty (Vietnam). The return of attention to the environment through criminal law in the late 2000s promoted a revisitation of the theme, this time with different theoretical foundations, giving rise to more modern laws, such as that of Ecuador.

Ecuador (2014)

²¹ Link: <https://www.legislationline.org/documents/action/popup/id/8931>.

²² Link: https://www.legislationline.org/download/id/9995/file/GEO_CC_July%202021_eng.pdf.

²³ Kyrgyzstan (8/12/1998), Armenia (1/10/1999), Uzbekistan (29/12/2000), and Ukraine (20/01/2000) signed the Rome Statute but did not ratify it.

²⁴ Link: <https://www.icc-cpi.int/georgia>, access on Apr. 20th, 2022.

Ecuador's legal system for protecting the environment is a pioneer on the planet, in breaking the anthropocentric paradigm. Based on the *Buen Vivir* philosophy²⁵, the 2008 Constitution is plurinational²⁶, creating the 'rights of nature', in its Chapter 7. In other words, nature becomes not a mere object, but a subject of rights. Nature, or *Pacha Mama* (Mother Earth), can, therefore, be the author of lawsuits, claim rights and, above all, must be recognized as 'inalienable life'²⁷.

Ecuador, which has already suffered massive environmental disasters²⁸, does not mention the term 'ecocide' in its legal system, but it identifies, in 3 Articles of the Penal Code, several conducts that cause serious damage to water (Art. 251), soil (Art. 252) and air (Art. 253). All crimes are within Chapter 4 (crimes against the environment and nature or *Pacha mama*)²⁹.

In common, despite the low penalties compared to the scale of the damage (three to five years in prison), the crimes indicate that the sentence dosimetry will be maximum, when instruments or means result in extensive and permanent. There is even provision for criminal punishment of legal entities (Art. 258), sanctioned by a fine comparable to the penalty of deprivation of liberty.

²⁵ The philosophy of Buen Vivir – or “Bem Viver” – is an alternative path that seeks harmony with nature, reciprocity and solidarity between individuals and communities, as opposed to the concept of perpetual accumulation (Acosta, A. (2019). *O bem viver: uma oportunidade para imaginar outros mundos*. Editora Elefante).

²⁶ Plurinationality refers to a new conception of social organization that seeks to rescue the plurality of ethnic and cultural views in order to rethink the State, emphasizing collective rights (Jacques, F. V. S. (2021). O “buen vivir” e a construção de uma nova sociedade. *Novos Cadernos NAEA*, 23(3), p. 114).

²⁷ Dutra, G. K. M. (2021). O significado de Pachamama para a vida na terra. *Desenvolvimento e Meio Ambiente*, 58, p. 854.

²⁸ For example: ‘Chevron regularly 'sprayed roads with crude oil for maintenance and dust control, and deliberately dumped tons of toxic drilling and maintenance wastes (...) into the environment without treatment or monitoring (...) The health consequences continued as toxic substances spread on land and in the water’ (Crasson, A. (2017). The case of Chevron in Ecuador: the need for an international crime against the environment. *Amsterdam Law Forum*, 9, 29, p. 31).). It came to be considered as crimes against humanity, promptly discarded by the Prosecutor of the International Criminal Court (Lambert, C. (2017). Environmental destruction in Ecuador: crimes against humanity under the Rome Statute?. *Leiden Journal of International Law*, 30(3), 707-729).

²⁹ Organic Criminal Code of Ecuador, 2016, Link: <https://vlex.ec/vid/codigo-organico-integral-penal-631464447>.

Notwithstanding the formal inexistence of ecocide as a crime, there are provisions that, similar to modern law projects, try to punish the most destructive behaviors against the environment. Ecuador has also opened up an alternative path to a relationship with nature, influenced by the holistic approach of indigenous communities, inserting in the legal universe tools that consider it as a party with rights³⁰— and that can directly take advantage of them —, in an ecocentric vision of the Constitution.

However, it should be noted that it is crucial to give a name and form to the conduct of promoting extreme environmental damage: ecocide. Identifying it, whether under an anthropocentric (more common) or ecocentric (especially Andean countries) lens, will promote awareness of similar environmental disasters around the globe, contributing to the construction of new ways of cultural and social recognition of the condition of those who suffer the consequences of the damage³¹ (VARONA, 2020, p. 668). In this vein, Colombia went further, in July 2021.

Colombia (2021)

The 1991 Political Constitution of Colombia³² does not expressly recognize the rights of nature, but it is well established in doctrine and jurisprudence that it contains an ideological charge (Chapter 3) with the essence of commitments to the protection of the environment³³.

In the criminal field, Law 2111³⁴, of July 2021, replaced Title XI (Of crimes against natural resources and the environment), of Arts. 328 to 339 (Special part of offenses in general) of

³⁰ Houck, O. A. (2017). Noah's Second Voyage: The Rights of Nature as Law. *Tulane Environmental Law Journal*, 31, 1, p. 40.

³¹ Varona, Gema. (2020). Restorative pathways after mass environmental victimization: Walking in the landscapes of past ecocides. *Onati Socio-Legal Series*, v. 10, n. 3, p. 668.

³² Political Constitution of the Republic of Colombia, 1991, Link: <http://www.secretariasenado.gov.co/constitucion-politica>, access on May 2th, 2022.

³³ Bagni, S. (2018). Los derechos de la naturaleza en la jurisprudencia Colombiana e Indiana. *Revista Jurídica Derecho*, 7(9), 33-53, p. 44.

³⁴ Link: <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202111%20DEL%2029%20DE%20JULIO%20DE%202021.pdf>. access on May 2th, 2022.

the Criminal Code of Colombia (2000). The innovation came in Chapter II (damage to natural resources), which included the crime of ecocide in the Colombian legal system (art. 333)³⁵:

Artículo 333. Daños en los recursos naturales y ecocidio. El que con incumplimiento de la normatividad existente destruya, inutilice, haga desaparecer o cause un impacto ambiental grave o de cualquier otro modo dañe los recursos naturales a que se refiere este título o a los que estén asociados con estos, incurrirá en prisión de sesenta (60) a ciento treinta y cinco (135) meses y multa de ciento sesenta y siete (167) a dieciocho mil setecientos cincuenta (18.750) salarios mínimos legales mensuales vigentes.

Parágrafo 1°. Para los efectos de este artículo se entiende por ecocidio, el daño masivo y destrucción generalizada grave y sistémica de los ecosistemas.

Parágrafo 2°. Por impacto ambiental grave se entenderá, la alteración de las condiciones ambientales que se genere como consecuencia de la afectación de los componentes ambientales, eliminando la integridad del sistema y poniendo en riesgo su sostenibilidad.

Among the natural resources referred to in Title XI, subject to protection from the crime of ecocide (heading of Art. 333), are the specimens, products or parts of the fauna, forest, flora, hydrobiological, coral, biological or genetic resources of Colombian biodiversity (Art. 328). In this case, Colombian law offers a significantly longer and more detailed list of legal interests than in the Ecuadorian case.

It is undeniable that the Colombian norm, despite the increase in environmental protection, is of an anthropocentric character, treating nature as a 'resource', to promote socioeconomic development, while doing little to safeguard planetary integrity³⁶.

³⁵ Penal Code of Colombia, Law 599, 2000, Link: https://leyes.co/codigo_penal.htm, access on May 2th, 2022.

³⁶ Du Toit, L., & Kotzé, L. J. (2022). Reimagining international environmental law for the Anthropocene: An earth system law perspective. *Earth System Governance*, 11, 100-132.

With the advent of the new Colombian Code, the environment appears as an autonomous legal asset, but the marks of symbolic law remain³⁷. In addition, the country is criticized for increasing the protection of environmental law, but failing to protect its environmentalists, evidenced by the non-ratification of the Escazú Agreement³⁸, a regional tool for access to information and public participation³⁹ (ALONSO, 2022).

The difficulties of applying national legislation related to the environment are not unique to this country. Despite this, Latin America's pioneering spirit is commendable, both in its adherence to a new criminal law and in the recognition of the rights of nature, offering new tools to discuss the directions of international criminal law, in the environmental field. In the French case, civil society was crucial to the inclusion of ecocide in domestic legislation.

France (2019 – 2021)

Among European countries, France remains prominent in the discourse on criminal protection of the environment. The 21st Conference of the Parties (COP-21) of the UN Framework Convention on Climate Change took place between November and December 2015, where ways to limit the increase of the planet's average temperature below 2 degrees Celsius were discussed⁴⁰. As a result of the Summit, the Paris Agreement was signed⁴¹, establishing strategies and objectives among the countries that ratify it. After the meeting, France sought political leadership in environmental issues of international relevance, including adding a penal response to massive damage to the environment⁴².

³⁷ Izquierdo, Cabrera L.; Mier, Lastra R. E.; Vergara, A. R. (2020). Delitos ambientales en Colombia. Análisis desde la perspectiva de las políticas nacionales de protección de los recursos naturales. *Lecturas sobre derecho del medio ambiente*. Tomo XX.

³⁸ Link: <https://www.cepal.org/pt-br/acordodeescazu>, access on May 2th, 2022.

³⁹ Alonso, Judit (2021). *Colombia persigue los delitos ambientales pero no protege a sus ecologistas*. DW. Actualidad. 26 dez. 2021. Link: <https://p.dw.com/p/42DV5>. Access on Jun. 6th, 2022.

⁴⁰ UN. COP 21. Link: <https://www.un.org/sustainabledevelopment/blog/category/climate-change/cop21/>, access on May 2th, 2022.

⁴¹ UN. *Paris Agreement*, 2015. Link: https://unfccc.int/sites/default/files/english_paris_agreement.pdf, access on May 2th, 2022.

⁴² Jouzel, J., & Michelot, A. (2020). Quelle justice climatique pour la France?. *Revue de l'OFCE*, 165(1), 71-96, p. 82.

In 2019, the National Assembly analyzed a Bill (n° 2353/2019)⁴³ to recognize the crime of ecocide. The intention was to include, after Chapter III of Book IV of the French Penal Code, a new Chapter (III Bis – Ecocide), punishing natural and legal persons. Aware of international discussions on the subject, French parliamentarians deliberately maintained a restrictive definition of the crime, focusing on deliberate destructive acts, with massive consequences for the environment. The Bill, however, was rejected by the National Assembly on December 12, 2019. Among the main reasons for filing, there was the lack of definition about several concepts necessary to characterize ecocide, such as 'ecosystem', 'generalized damage' and 'irreversible', with no international validation until then.

This project was proposed at the direct behest of civil society. In the same year, the *Convention Citoyenne pour le Climat*⁴⁴ began, with the objective of drawing up and submitting to Parliament for consideration measures to reduce at least 40% of GHG emissions by 2030, within a logic of social justice⁴⁵. In the end, a report was generated with 149 proposals⁴⁶, among them the protection of ecosystems through legislation on ecocide, considering the planetary limits. The proposal included a crime, punishable for willful conduct (Art. 522.1, in the Penal Code) and culpable conduct (committed with negligence, Art. 522.2, in the Penal Code). In response to the Convention Report, Bill No. 3875 of February 2021 was proposed in the National Assembly, with the aim of following through on the French demand for participatory democracy and justice in the ecological transition⁴⁷. Among the various measures was to strengthen the criminal denunciation of attacks on the environment; when irreversible, such attacks would be labelled as ecocide.

⁴³ Link: <https://www.assemblee-nationale.fr/dyn/opendata/PIONANR5L15B2353.html>. Access on Jun. 6th, 2022.

⁴⁴ The *Convention Citoyenne pour le Climat* was composed of French citizens, with 150 people, drawn to represent French society, operating between October 2019 and June 2020 (Link: <https://www.conventioncitoyennepourleclimat.fr/>).

⁴⁵ Fronza, E. (2021). Sancire senza sanzionare? Problemi e prospettive del nuovo crimine internazionale di ecicidio (Sanctioning without Sanctioning? Problems and Prospects of the New International Crime of Ecocide). *Problemi e prospettive del nuovo crimine internazionale di ecicidio (Sanctioning without Sanctioning)*, 1-15.

⁴⁶ Link: <https://www.lecese.fr/sites/default/files/pdf/Convention/ccc-rapport-final.pdf>, access on May 6th, 2022.

⁴⁷ Link: https://www.assemblee-nationale.fr/dyn/15/textes/l15b3875_projet-loi. Access on Jun. 6th, 2022.

The Bill was approved (Law n° 2021-1104, then called 'Climate and Resilience Law'⁴⁸) with amendments, on August 22, 2021. Ecocide was included in the Environmental Code, Articles L231-1, L231.2 and L231-3, as an aggravating offense (misdemeanor) of the definitions provided for in articles L231-1 and L231-2 of the Environmental Code, when committed with intent, causing serious and lasting harm (at least 7 years). The non-existence of a specific crime of ecocide – with its downgrading to a misdemeanor – is decried by civil society and experts, given the disregard by the National Assembly of the decision in the Citizen's Convention for Climate, which expressed the desire for the criminalization of the conduct.

The Climate Law has multiple dimensions, including reinforcement of the criminal denunciation of environmental wrongdoing⁴⁹, stiffening penalties and creating crimes and misdemeanors. However, the retreat of the French government⁵⁰ in the construction of the law reveals the difficulty in defining and instituting crime, whether for technical or political reasons⁵¹.

At the same time, other countries in the world have embraced the task of seriously discussing the inclusion of crime in domestic legislation through bills, with different approaches, but all of them more detailed, in tune – to some extent – with the doctrine and calls of civil society.

Ecocide bills

⁴⁸ Link: <https://www.vie-publique.fr/loi/278460-loi-22-aout-2021-climat-et-resilience-convention-citoyenne-climat>, access on May 6th, 2022.

⁴⁹ Dufourq, Pauline (2021). Loi « Climat et résilience » : aspect de droit penal. *Dalloz Actualité*. 9 Sep. 2021. Link: <https://www.dalloz-actualite.fr/flash/loi-climat-et-resilience-aspect-de-droit-penal#.Yp-hZKjMLDc>. Access on Jun. 15th, 2022.

⁵⁰ For the Government, the recognition of ecocide as a crime could only be done on a global scale, to then gain national contours (Lenormand, Anne (2022). Loi Climat et Résilience : ce qu'il faut retenir des mesures sur la protection judiciaire de l'environnement et l'évaluation climatique. Banque des Territoires, 11 Jan. 2022. Link: <https://www.banquedesterritoires.fr/loi-climat-et-resilience-ce-quit-faut-retenir-des-mesures-sur-la-protection-judiciaire-de>. Access on Jun. 15th, 2022).

⁵¹ The treatment reserved for ecocide in climate law makes it possible to doubt French intentions: 'en réduisant l'écocide à un délit obscur et inadapté, elle crée un précédent qui pourrait niveler par le bas les futures discussions au sein de l'Union européenne et à l'international' (Baudouin, Clothilde (2021). Ecocide : l'occasion manquée. Paris : *Notre Affaire à Tous*, 23 Sep. 2021. Link: https://notreaffaireatous.org/wp-content/uploads/2021/09/Ecocide-_-loccasion-manquee.pdf. Access on Jun. 6th, 2022, p. 16).

As of 2019, there are at least 4 bills under discussion⁵² in legislative parliaments on ecocide around the world: Brazil, Bolivia, Mexico and Chile.

Brazilian parliamentarians proposed, in May 2019, the Bill 2,787/2019⁵³, to include in the Environmental Crimes Law (Law 9.605/1998) two new crimes: causing a dam to burst (Art. 60-A) and ecocide (Art. 54-A). The draft differs from other projects (and existing crimes) in that the proposed wording does not reflect international influence. The legislator was concerned with criminalizing massive environmental destruction, responding to the uproar over the Mariana (2015) and Brumadinho (2019) disasters, but did not engage with international references on ecocide. The vague and generic terms used in the proposal had already been questioned in the ILC, and have proven fatal to the application of the crime in national legislation, little distinguishing it from the crime of pollution, already existing in the Brazilian Environmental Crimes Law.

In Bolivia, Bill 137/2020⁵⁴ was submitted to the Chamber of Deputies. The Bill creates mechanisms to protect Mother Earth, and, among them, defines the crime of ecocide, amending the Bolivian Penal Code. In the explanatory justification, the legislators assert that the massive damage and destruction of Mother Earth's ecosystems are putting her life at risk, and it is necessary to recognize limits to human activities, which must develop without threatening the continuity of the life cycles, structure and functioning of the nature⁵⁵.

⁵² Noteworthy are the ecocide bills considered in the UK, proposed by Baroness Bennett of Manor Castle, withdrawn from the table in the same year (Link: <https://bills.parliament.uk/bills/2593/stages/15298/amendments/87844>).

⁵³ Link: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2201529>.

⁵⁴ Bill Against Ecocide and Protection of Mother Earth, PL 137-20. Link: <https://diputados.gob.bo/wp-content/uploads/2022/05/PL-101-2021-2022.pdf>, access on Jun. 6th, 2022.

⁵⁵ Link: <https://diputados.gob.bo/wp-content/uploads/2022/05/PL-101-2021-2022.pdf>.

There are three bills in progress in Mexico in the federal parliament to include ecocide in the law; one from 2020⁵⁶ and two from 2021⁵⁷. However, the initiatives define ecocide in a generic way, without detailing the conduct and limits for the legal application of the norm.

Finally, the Chilean Bill on Environmental Crimes and Environmental Damage (Bulletin n° 12.398-12, message 339-366)⁵⁸ does not textually mention ecocide, but includes a provision against massive environmental damage. The Project includes an explanatory rule to define criminally the meaning of the term 'significant damage'. In addition, it proposes, albeit indirectly, the protection of nature itself, considering the damage to a certain population as just one of the hypotheses (Art. 4, 4) for the aggravation of the crime. As it stands, the Chilean initiative is one of the most relevant on the subject, seeking to make the provision operationally viable, and a milestone in the Latin American penal system.

Partial conclusion

The recent return of international criminal law attention to the environment has led to an increase in the legal technique in the definitions of crimes created in recent years, as in Colombia, in addition to the bills presented in national assemblies and before the ICC. The approaches, however, are sometimes different⁵⁹, which reinforces the need for a top-down or harmonizing approach, at least regarding the conceptualization of ecocide (which would be

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Link:

http://sil.gobernacion.gob.mx/Archivos/Documentos/2018/01/asun_3659459_20180124_1516809481pdf.

⁵⁷

Link:

http://sil.gobernacion.gob.mx/Archivos/Documentos/2020/03/asun_4025989_20200324_1584567385.pdf and
http://sil.gobernacion.gob.mx/Archivos/Documentos/2021/09/asun_4219660_20210923_1632404003.pdf.

⁵⁸

Link:

<https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=12927&prmBOLETIN=12398-12>.

⁵⁹ The fragmentation within the scope of environmental law may be more interesting from the point of view of global environmental governance: 'a disaggregated perspective could create opportunities to see global environmental governance as a regulatory intervention that does not occur at any one specific level, but rather as one that involves many tasks, activities, objectives, elements and actors' (Kotzé, L. J. (2014). Fragmentation revisited in the context of global environmental law and governance. *South African Law Journal*, 131(3), 548-582, p. 552).

done under a treaty, such as the Rome Statute). The standardization of the most serious environmental crime, whose consequences are often transnational, would offer a better legal response and, consequently, protection of the environment.⁶⁰

What seems clear is that there is a movement or an interest in improving the current legislative framework (in quality and quantity), in order to improve environmental protection, and ideally to do so in a coordinated way. A side effect of this movement has been to reveal the lack of normative clarity concerning 'environmental organized crime'. Several countries today, recognizing this gap, discuss the inclusion of ecocide in national legislation, if not officially through law projects, then through specialized doctrine and influence among public policy promoters.

The recent development of studies on crime, including more complete analyzes of its definitions, at the international level is undeniable. Even so, the technical obstacles, such as the need for the agent's intention to characterize ecocide, the construction of the causal nexus and liability for damages, carry difficulties of practical application, in addition to legal incompatibilities (better saying, misalignment) between the various legal systems, which, *per se*, are problematic in international criminal law. There is, therefore, no uniformity in the definition of ecocide; however, there are better definitions and approaches to crime today than 20 years ago.

⁶⁰ It is true that, in general, a bottom-up approach carries numerous advantages, especially when it comes to the environment, with peculiarities inherent to each State, in addition to being able to achieve better local legal protection, considering the lack of an international multilateral consensus to the elaboration of a certain rule.