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## **Ecocide in international law: draft definition for the Rome Statute**

**Abstract.** *This article examines the novel approach to defining ecocide. The legal theory concerning ecocide is still in the development stage without an internationally recognized definition of ecocide. However, a recent proposal to recognize ecocide as one of the international crimes and a component of the Rome Statute may be a significant step in the development of ecocide theory. The investigation's purpose is to analyze a new approach to ecocide and issues of the establishment of practical definition for subsequent amendments in Kazakhstan legislation. The author compares the definition of ecocide in the Criminal Code of the Republic of Kazakhstan to the new draft definition of ecocide in the Rome Statute using both general and specialized research methodologies. The article concludes that international recognition of ecocide creates an opportunity to develop an effective legal system that can preserve and protect our planet. Furthermore, the author argues that such practical international legal instrument as the Rome Statute needs recognition and ratification in Kazakhstan.*

**Keywords:** *ecocide, Independent Expert Panel for the Legal Definition of Ecocide, international criminal law, national legislation, the Rome Statute.*

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### **Introduction**

Kazakhstan's current environmental problems can be resolved with more effective environmental legislation. The implementation of relevant international legal norms is a possible approach for accomplishing this goal. At this time, Kazakhstan requires amendments to its norms regarding the environment, one of which is ecocide. More than two decades have passed since ecocide was implemented in the Criminal Code of Kazakhstan.

To be more specific, the norm of ecocide did not get its initial definition until July 16, 1997. This offense is recognized by the Criminal Code as the act of mass destruction of flora or fauna, poisoning of the atmosphere, land or water resources, as well as a commission of other actions that have caused or are capable of causing an ecological catastrophe [1].

Today, Criminal Code has slightly different definition – mass destruction of flora

or fauna, poisoning of the atmosphere, land or water resources, as well as a commission of other actions that have caused or may cause an environmental disaster or environmental emergency [2].

During this significant time period, definition has seen some minor changes, but it has not progressed at all. The main polluters in Kazakhstan are able to find legal loopholes quicker than lawmakers are able to respond, which has the consequence of making Kazakhstan's environmental legal requirements less effective overall. When judicial practice on ecocide is almost nonexistent despite the facts of a widespread destruction of flora or wildlife, the legal standard has to be amended. It is possible to further create legal norms on ecocide by conducting an analysis of worldwide experience as well as the recently suggested definition of ecocide by international legal scholars.

The group of legal researchers known as the Independent Expert Panel for the Legal Definition of Ecocide (hereinafter the Panel) proposed a new definition for ecocide in June 2021. According to them, ecocide should be defined as: «acts that are either unlawful or wanton that are committed with the knowledge that there is a substantial likelihood that those acts will cause severe and either widespread or long-term damage to the environment [3].»

The Rome Statute acknowledges four different types of violations of international law at this time. They include heinous acts such as genocide, crimes against humanity, war crimes, and aggression crimes [4]. The actions that cause major harm to important environmental components such as flora or fauna, pollution of air, degradation of water resources, or any other action that may trigger an environmental disaster need to be put on the list of international crimes stated in the previous paragraph [5]. At the very least, this is the belief that many environmental activists from across the world have.

The fact that legal systems all over the globe, in general, are unable to assign legal responsibility to actual individuals who are inflicting harm to the local and global environment was the primary motivation for the Panel's decision to begin work on ecocide evolution. It has been claimed that the International Criminal Court may serve as an efficient international system that could hold accountable those responsible for ecocide, prevent more instances of ecocide, and generally encourage respect for the environment. It will be mandatory for all nations that have ratified this agreement to incorporate a provision against ecocide in the laws that govern their respective nations. Countries will have access to effective means to make multinational businesses accountable if they harmonize their laws and joint the efforts on combating climate change and related ecocide.

The environmental legislation of the Republic of Kazakhstan has the same challenges as those described above. As a result, it is essential to examine the similarities and differences between the concept of ecocide used in the Republic of Kazakhstan and the one that is being considered now for its inclusion in the Rome Statute.

## Research methods

A number of methods of research in the field of science, including analysis, synthesis, comparative legal and historical research, deduction, and induction were applied. The looked at information from a variety of different sources, including information that was compiled by an independent expert panel working on a legal definition of ecocide. In addition, there is an explanatory commentary on Article 169 of the Criminal Code of Kazakhstan.

## Discussion

The comparative analysis of definitions of ecocide is based on the scrupulous commentaries of constituent elements of the relevant legal norms. The suggested concept of ecocide was discussed at length by the Panel [3], which presented its findings in great detail. I.Sh. Borchashvili has written a commentary in which he explains the crime of ecocide as it is defined under Article 169 of the Criminal Code of the Republic of Kazakhstan [2; 6].

As previously stated before, the proposed definition is as described below: «unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either damage to the environment being caused by those acts» [3; 7; 8]. Accordingly, the Panel has suggested that it be included into the treaty as Article 8 ter.

The concept is quite detailed and is the product of many years of analysis and research. It represents the most advanced contemporary definition of ecocide and could be applicable not only by the Rome Statute but also by national legislations. Several countries already considering this definition for implementation of it their criminal or environmental laws [9; 10; 11].

The terms «unlawful... acts» and «long-term» make up another component of the definition, and the implications of these phrases are obvious. Those acts that have the potential to be classified as ecocide should be regarded as illegal under either international or state law. Unfortunately, it is a typical occurrence for governments to not categorize numerous activities as crimes in order to get economic profit that they would not be able to achieve if ecological was protected as it should

be. In the case that a country ratifies the Rome Statute or any future convention that contains an ecocide provision and adheres to the legal principle that international legal norms take precedence over its own laws, then there is a possibility of applying its legal framework to coerce the government into acknowledging ecocide as a crime.

An act that is classified as having «long-term» consequences is the action that has effects that influence the environment and has an adverse effect on health for some significant amount of time. Because it is unreasonable to anticipate that environmental crisis situations everywhere in the world would adhere to any predetermined time frame, a precise duration has not been specified. Some acts taken within the same period of time will have a varied impact on the local flora and fauna depending on the circumstances of the surrounding environment.

The «wanton acts» suggested by the Panel description in paragraph 2 of Article 8 ter: «reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated». As a result, the Panel recommended finding at a solution that achieves a balance between the needs of society and the destruction of the environment. While social requirements should take precedence, it is not acceptable to cause more harm than profit.

It is intriguing that the Panel divides environmental damage into two categories: severe and pervasive damage and severe and long-term damage. Moreover, «severe», which can be defined as environmental damage, also encompasses the Panel's definition of «grave impacts on human life or natural, cultural, or economic resources». According to the Panel's commentary, «cultural» highlights the «value of elements of the environment, particularly to indigenous peoples» [3].

The definition implies a significant amount of harm to have been done to the environment. Even if harm to the environment, no matter how slight, is nevertheless damage, it does not amount to the level of crime that constitutes a danger to «the earth, its biosphere, cryosphere, lithosphere, hydrosphere, and atmosphere, as well as outer space» [3].

In addition to that, the meaning of the term «widespread» has to be explained. «Damage

that extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings», the Panel defined the phrase as. It seems that «is suffered» does not necessarily relate to extinction or death; it seems that any sort of injury that impacts an entire species may be called widespread.

Concerning the idea of: «damage that extends beyond a limited geographic area», the experts concludes that such a definition can be applied to situations in which a catastrophe affected the entire climatic system without a specific center and place.

The Panel believes that the term «environment» encompasses not just the biosphere but also the cryosphere, lithosphere, hydrosphere, atmosphere, and outer space. The addition of the cryosphere and space is both fresh and fascinating to consider. We can all accept without much debate that the melting of polar ice caps contributes to rising sea levels, and that human activity may have an effect on the elements of space, at least in earth orbit.

The phrase «knowledge that there is a substantial likelihood» is part of the mens rea for ecocide's consequences; a perpetrator of ecocide must be aware of a substantial likelihood of severe, pervasive, or long-term harm.

While a number of articles are critical of the proposed definition, the majority of legal scholars view it as a useful instrument [12].

The Rome Statute will most likely be amended to include provisions pertaining to ecocide. Already, member states of the International Criminal Court, the Pope, and EU authorities have backed the initiative to criminalize ecocide [13].

Regarding Kazakhstan's definition of ecocide: «mass destruction of flora or fauna, poisoning of the atmosphere, land or water resources, as well as a commission of other actions that have caused or may cause an environmental disaster or environmental emergency», it can be said that it is a simplification of the general definition of ecocide [2].

Nevertheless, the difficulties of this concept are brought to light in the commentary that was published by I.Sh. Borchashvili [6].

Not only does this crime affect plant and animal life, but it also affects the atmosphere, land, and water supplies. The felony includes the widespread extinction of either flora or fauna, as well as the pollution of the air, land, or water resources. Additionally, the offender is responsible for the crime. Involvement in actions that have already caused or have the potential to create a catastrophe or emergency that is related to the environment.

The carrying out of this crime involves its own unique set of structural features, all of which are critical to comprehending and resolving the case in court. And they should be considered as single mechanism.

The term «destruction» may be used to refer to any action that has a role in decrease and, in certain situations, the extinction of an animal or plant species. The level of harm should be evaluated by experts who are familiar with the circumstances surrounding the incident. The findings of the study carried out by community activists may be used to identify developing ecological situations in order to prevent ecocide from occurring.

When we talk about «mass devastation,» we're referring to damage that goes beyond typical environmental violations and has an impact on entire populations or vast areas. In addition, it is an evaluative indicator that must be established based on the whole set of facts surrounding the instance in question.

The saturation of the earth, water, and air with substances of chemical or biological origin that are harmful to human health, animal or plant life, as well as radioactive substances that cause or may cause the death of living organisms, particularly humans, is what defines the phenomenon known as poisoning of the atmosphere, soil, or water resources. Poisoning of the atmosphere, soil, or water resources can also be referred to as environmental degradation.

Other actions should include any intentional production, research, or other human activity that has caused or might create an environmental disaster. These should be included under the category of «other acts.»

After the environmental disaster that was caused as a direct consequence of the crime, it should be considered that the crime has been committed.

The terms «ecological disaster» and «environmental emergency» are both defined under Article 404 of the Environmental Code of the Republic of Kazakhstan [14].

An ecological disaster is an ecological situation that has arisen in a part of the territory where, as a result of human activity or natural processes, serious and permanent changes in the environment have occurred. These changes have caused a significant decline in human health, as well as the destruction of natural ecosystems and the deterioration of flora and fauna.

An environmental emergency is an ecological situation that has developed in a region or water area where, as a result of human activity or natural processes, persistent unfavorable changes in the environment threaten human life and health, natural ecological systems, and the genetic stock of plants and animals. An environmental emergency can be defined as an ecological situation that has emerged in a region or water area.

The phrase «anthropogenic impact on the environment» refers to the effect that human activity has, either directly or indirectly, on the surrounding natural environment. This impact manifests itself in the form of the entry of contaminants into the atmosphere, water, land, and subsurface that are created by manmade objects.

According to Article 10 of the Environmental Code of the Republic of Kazakhstan [14], any form of anthropogenic impact on the environment that is capable of causing harm to human life and/or health, property, and/or that causes or can cause environmental pollution, environmental damage, and/or other negative changes is considered to be harmful. Including, but not limited to, the following manifestations:

- 1) the exhaustion or deterioration of several components of the natural environment;
- 2) the eradication or interruption of the normally occurring and sustainable functioning of natural and natural-anthropogenic objects and their complexes, including partial and complete;
- 3) the decrease or disappearance of species diversity that can affect biodiversity of planet at whole;

4) the presence of barriers that prevent people from using the natural environment, its resources, and its assets for recreational or other authorized reasons, including short- and long-term barriers;

5) a lessening of the natural environment's value in terms of its aesthetic appeal from social point of view.

These provisions on anthropogenic effects take into account not only the economic but also the social needs of society. It is debatable whether paragraph 5 represents the sole social requirement of society. If it is possible to link aesthetic appeal to the tourism sector of a country's economy, aesthetic appeal can be viewed as an economic necessity. Paragraph 3 takes into account not only the social and economic needs of individuals, but also global environmental security.

Intent may be either direct or indirect, and either can constitute the *mens rea*. The person is aware of the widespread annihilation of plant and animal life as well as the pollution of the atmosphere and water supplies. Additionally, the person is aware of the imminence or potential of an ecological disaster, seeks or willfully facilitates its happening, or is indifferent to the likelihood of such a catastrophe occurring.

### **Results**

According to the analysis of ecocide definitions, certain aspects of a definition that was provided by the Panel are more efficient and in line with modern standards than the definition of ecocide that is now included in the Criminal Code of the Republic of Kazakhstan.

To begin, the term «wanton acts» refers to any behavior that is not motivated by a clear balance between economic and social requirements and worries about the environment. In contrast, the concept of ecocide that may be found in the Criminal Code of the Republic of Kazakhstan does not take into account such a balance when evaluating whether or not a specific devastation was essential.

Second, the word «environment» as defined by the Panel includes not only the biosphere but also the cryosphere, the

lithosphere, the hydrosphere, the atmosphere, and outer space. In contrast, the concept of ecocide under the Criminal Code of the Republic of Kazakhstan only includes flora and fauna, the atmosphere, land, and water resources as potential casualties of the crime.

Thirdly, the suggested definition by the Panel may be found in its whole inside only a single article. In contrast, the rule of ecocide is referenced in the Criminal Code of the Republic of Kazakhstan, which references norms from Article 404 of the Environmental Code of the Republic of Kazakhstan. However, Article 404 of the Environmental Code of the Republic of Kazakhstan is subject to change in the future, which might render the standard of ecocide ineffective.

It would seem that the proposed concept of ecocide would clear the path for the expansion of legal protections for the environment. Before writing revisions to Kazakhstan's law, it is vital, in light of the previously identified roadblocks and suggested reforms, to perform a comprehensive study on ecocide and related issues. This should be done before any amendments being drafted.

### **Conclusion**

Independent Expert Panel on the Legal Definition of Ecocide has proposed a new definition of ecocide and hopes for the Rome Statute to incorporate it. Because of the way the law is set up right now, it is very difficult to determine who is accountable for or contributes to the deterioration of the environment. The International Criminal Court has the potential to play a significant part in ensuring accountability, deterring criminal behavior, and sending a message against the impunity of environmental offenders.

When the concept of ecocide has been successfully incorporated into the Rome Statute, the International Criminal Court will become an effective mechanism for holding persons responsible for causing serious harm to the environment. In the event that the Rome Statute is ratified by Kazakhstan, the efficiency of this legal process will increase, which would result in improved national environmental protection.

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### **Халықаралық құқықтағы экоцид: Рим статуты үшін термин анықтамасының жобасы**

**Аңдатпа.** Мақалада экоцид терминін және оның белгілерін анықтаудың жаңа тәсілдері көрсетілген. Экоцидтің құқықтық теориясы әлі де кеңінен танылған анықтамасыз дамуда. Алайда, жақында экоцидті халықаралық қылмыс деп тану туралы ұсыныс және Рим Статутының бір бөлігі экоцид теориясының дамуындағы маңызды кезең болуы мүмкін. Зерттеудің мақсаты – қазақстандық

заңнамаға кейінгі өзгерістер үшін экоцидтің жаңа анықтамасының ерекшеліктерін талдау. Зерттеудің жалпы және арнайы әдістерінің қолдауымен автор Қазақстан Республикасының Қылмыстық кодексіндегі экоцид анықтамасын халықаралық қоғам үшін ұсынылған экоцид анықтамасымен салыстырады. Мақалада экоцидтің жаңа ұсынылған анықтамасы біздің планетамызды сақтауға және қорғауға қабілетті тиімді құқықтық жүйені дамытуға мүмкіндік береді деген қорытындыға келеді. Автор Халықаралық қылмыстық соттың Рим статутын Қазақстанда тану және ратификациялау қажет деп мәлімдейді.

**Түйін сөздер:** экоцид, Халықаралық қылмыстық құқық, ұлттық заңнама, Рим статуты, Халықаралық қылмыстық сот, экоцидтің заңды анықтамасы бойынша тәуелсіз сараптама тобы.

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### **Экоцид в международном праве: проект определения термина для Римского статута**

**Аннотация.** В статье показаны новые подходы к определению термина экоцид и его признаков. Правовая теория экоцида все еще находится в стадии разработки без широко признанного определения. Однако недавнее предложение признать экоцид международным преступлением и частью Римского статута может стать важной вехой в развитии теории экоцида. Цель исследования – анализ особенностей нового определения экоцида для последующих изменений в казахстанское законодательство. Используя общие и специальные методы исследования, автор сравнивает определение экоцида в Уголовном кодексе Республики Казахстан с предложенным определением экоцида для международного общества. В статье делается вывод о том, что новое предложенное определение экоцида создает возможность для разработки эффективной правовой системы, способной сохранить и защитить нашу планету. Автор утверждает, что Римский статут Международного уголовного суда нуждается в признании и ратификации в Казахстане.

**Ключевые слова:** экоцид, международное уголовное право, национальное законодательство, Римский статут, Международный уголовный суд, Независимая экспертная группа по юридическому определению экоцида.

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