

## Study Guide

### *Assembly of States Parties to the Rome Statute of the International Criminal Court*



**elbMUN**

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## Welcome letter

Distinguished Delegates,

A warm welcome to ElbMUN 2022 in the beautiful city of Dresden.

As your Chairpersons, we would like to welcome you all!

We are delighted to chair the ASP committee as a team of three chairs. This is Maria Kristin Trumsi, Malina Witzenrath and Sophie Sendrowski. Sophie and Malina both study international relations at the Technical University of Dresden and Maria recently graduated with a degree in East Asian Studies and International Relations. In our studies, we concern ourselves with the three disciplines of international politics, law and economics to understand the complexity of international relations through an interdisciplinary perspective. Approaching international problems from different angles in an open-minded manner is also the foundation of the committee work. Even though compared to other committees, there is a stronger focus on international law in the ASP, insights, ideas and approaches from non-lawyers are vital in order to reach sound and inclusive solutions.

MUN for us is a place where we as the young generation come together to discuss and debate pressing issues adapting different perspectives from all around the world. While striving to learn together and come up with innovative ideas, MUN is also about having a good and fun time together. We want every delegate and us as chairs to feel comfortable and to benefit from a great experience. Therefore our committee sessions will be built upon tolerance, anti-racism and non-discrimination. Discriminatory, dehumanizing or disrespectful language and behavior will not be accepted.

We would also like to note that we are open to answer all of your questions that might arise when preparing for the conference. Do not hesitate to contact us via Email! (Maria: mariakristinn@gmail.com; Malina: malisowitz@gmail.com; Sophie: sophiesmailadresse@gmail.com)

Best regards,

your Chairs Maria, Malina and Sophie

## About the council

The Assembly of States Parties to the Rome Statute of the International Criminal Court (ASP), sometimes also named as “the Assembly”, manages and oversees the International Criminal Court (ICC). The members of the ASP are sovereign States that have ratified the Rome Statute, a treaty that established the ICC in 1998. These member states are referred to as “States Parties”. Therefore, the ASP is also the legislative body of the ICC. Although the ASP is a political committee, seeing as it holds a legislative function concerning the Rome Statute, its activities are very closely linked to the field of international criminal law.

The ICC is set up to deal with the “most serious crimes of international concern” (Art.1). The Rome Statute defines four so-called core crimes: 1. genocide (Art.6), 2. crimes against humanity (Art.7), 3. war crimes (Art.8) and 4. acts of aggression (Art.8 bis). Under the current Statute of the ICC, these are the crimes over which the ICC has jurisdiction (in law we call this *ratione materiae* meaning the material requirements for jurisdiction on a matter).

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Each member state has one representative in the Assembly. Additionally, each member states holds one vote. States that haven’t signed the Rome Statute are allowed to join the meetings of the ASP (these states are then called “Observers”), yet they are not allowed to vote on final decisions. Some of the decisions the Assembly votes on is the budget, appointing judges, prosecutors as well as deputy prosecutors. States Parties are required to follow the requirements of the ICC as well as support the court by arresting indicted persons as well as provide access to evidence if needed.

The ASP has two subsidiary bodies. First, the Bureau of the Assembly, which consists of a President, two Vice-Presidents and 18 members, who are elected by the Assembly directly. The Bureau helps the Assembly with certain responsibilities. The second body is the Permanent Secretariat of the Assembly. They are tasked with supporting the Assembly as well as other subsidiary bodies with substantive service as well as administrative support.

## On international criminal law

International criminal law is a field of law in public international law. Alongside human rights it is the only area of public international law that has a direct and immediate effect on the individual. International criminal law allows for individuals to be prosecuted for their crimes in international courts and tribunals without the requirement of a prior transposition of international norms into national laws.

The most important international agreement concerning international criminal law is the Rome Statute, which was accepted in 1998. In 13 sections it deals with all issues relating to the International Criminal Court (ICC). Concerning these core crimes defined by the ICC, the preamble of the Rome Statute gives insight on the intended functions of international criminal law. Firstly, it fulfills the function of individual punishment, as the States Parties to the statute affirm “that the most serious crimes of concern to the international community as a whole must not go unpunished”. Secondly, a function of international criminal law is to prevent further crimes from being committed.

Section 3 of the Rome Statute lays out the general principles of criminal law. These may be of relevance concerning the implementation of a new core crime. The first general principle is called “*nullum crimen sine lege*” (Art.22) which literally means “no crime without law”. According to this principle a person can only be made responsible for a crime which was already defined as a crime under law at the time it was committed. Next, the principle of “*nulla poena sine lege*” (Art.23) exists (literal translation: no punishment without law). Accordingly, a guilty person may only be punished in accordance with the provisions of the statute. Article 24 deals with the non-retroactivity *ratione personae* of international criminal law. Nobody may be tried in front of the ICC for a crime committed before the entry into force of the Statute (17.7.1998).

In Article 25, the individual criminal responsibility is defined. Most importantly, the ICC holds jurisdiction over natural persons, therefore individuals (Art.25 (1)). Individuals may be held accountable for committing a crime defined in the Statute alone, with others or through a third person (Art.25 (3) lit.a). The instigation, order or solicitation to commit such crimes are also punishable (Art. 25 (3) lit.b). Furthermore, Art.25 (3) lit.c) cites the facilitation or the aid to commit such crimes as punishable including the provision of means for the commitment. Under specific circumstances, even the contribution to committing such a crime may be punishable (Art.25 (3) lit.d). Further situations which call for individual criminal responsibility under international criminal law concerning certain core crimes are listed in Art.25 (3) lit.e-f.)

Under the Rome Statute, official capacity is irrelevant (Art.27). Consequently, individuals are tried in front of the Court without regard to their State function.

As is the case generally in criminal law, international criminal law requires intent and knowledge concerning the crimes committed (Art.30). Intent means that the person means to engage in a certain conduct and to cause a certain consequence. Knowledge means the awareness of circumstances and consequences of actions or omissions.

## On ecocide

In light of accelerating climate change causing extreme weather events in all parts of the world, which have destructive effects on livelihoods, communities, cultural artifacts and ecosystems, Antonio Guterres, the Secretary General of the United Nations, has been calling upon the international community and the large and powerful states to take action on all levels. To reach targets set at the Paris Climate Conference as well as the UN Sustainable Development Goals, legal parameters regarding environmental destruction must be set. Civil society groups and non-governmental organizations have been demanding the creation of such legal parameters for decades. Groups such as the NGO “Stop Ecocide”, advocate for legal action by proposing to amend the Rome Statute of the International Criminal Court (ICC) to include a fifth crime of ‘ecocide’.

## What is ecocide?

The term ecocide became publicly known in the 1970s in the context of the Vietnam War. It was used to denounce the environmental atrocities committed by the United States as weapons of war (Agent Orange as the prominent example). In the following years and decades environmental and law experts as well as the United Nations institutions continuously advocated for the criminalization of severe long-term or widespread damage and destruction of the ecosystem (Doran et al., 2021). In the early 1990s the International Law Commission (ILC) proposed the inclusion of an environmental crime in the Rome Statute. However, the crime of ecocide as such was dropped and widespread, long-term and severe damage to the non-human environment was only included in the context of international armed conflict. Consequently, any actions by companies, states or individuals in peacetime are excluded from its scope of application. Moreover, in order to persecute harmful actions, intention or knowledge of its certain occurrence by the perpetrator must be proven. Thus, the stakes for prosecution in this context are high, which also explains why the ICC has yet to pursue any prosecutions on

environmental crimes that occurred during war.

Similarly, the other existing core crimes are only partially suitable for the subsumption of environmental crimes under them as they are all framed in an anthropocentric way. Even though there are attempts to subsume environmental destruction as a crime against humanity such as the prominent request for an investigation to determine whether the environmental policies of Brazilian president Bolsonaro could be considered a crime against humanity, these attempts only reveal the difficulties activists face in their mission.

The proposal of recognizing ecocide as a crime aims at addressing the shortcomings of the existing core crimes in order to enhance accountability and fight impunity of environmental crimes at the global level to protect all life on our planet, as well as peace and human rights. Therefore, the proposal by the Stop Ecocide foundation extends the material scope of damage per se to ecosystems and nature, not just to people.

Proponents further point out to the potential positive deterring effects of enshrining ecocide in international law. They hope that the behavior of some businesses, governments, insurance companies and financiers will be redirected away from harmful practices due to fear of being put on trial for their actions. Moreover, an amendment to the Rome Statute would enable persons affected by environmental damage, e.g. through health hazards, forced removal or replacement, etc., to seek compensation. The idea of the ICC is to prosecute crimes that shook the consciousness of mankind and thus are of concern to all states (*erga omnes*). The environmental emergencies of the last decades with accelerating climate change, immense loss of biodiversity and the destruction of vast regions by actions such as deforestation, mining, slash-and-burn, etc., increasingly threaten human livelihood. Furthermore, it poses a real danger to peace, to future generations, and thus to humanity as a whole. Already today there are regional and international conflicts fought over scarce natural resources.

Introducing ecocide as the fifth core crime to international law can thus serve as a strong signal that mass environmental destruction is one of the most morally reprehensible crimes in the world.

## Current Situation

Currently, the need to recognize ecocide is supported by island countries such as Vanuatu and the Maldives, as well as the European Parliament and even Pope Francis. A handful of countries have recognized ecocide as a crime and have adjusted their laws in accordance to this. The following countries have made ecocide punishable by law: Vietnam, Russia, Kazakhstan, Kirghizstan, Tajikistan, Georgia, Belarus, Ukraine, Moldova and Armenia. Additionally, processes to adopt such laws have started in Brazil, Argentina and multiple Mexican states. Although proposals to criminalize ecocide have been rejected in France twice, president Macron has multiple times spoken up about the dangers of ecocide. Finally in 2021, the country has joined Brazil, Argentina and Mexico in drafting a bill to tackle ecocide.

One of the most prominent activists working for the ecocide cause is Polly Higgins, who in 2010 started advocating for ecocide to be recognized as a crime by the ICC. Despite her activism, her goal hasn't still been achieved. Nevertheless, she started a movement that has been picking up momentum ever since. In 2012 the European Citizens' Alliance to end Ecocide was founded. The goal of the movement was to criminalize ecocide on the European Union level. In order to achieve this, the alliance would have to collect a million signatures from citizens from at least a quarter of EU member states, which would then require the European Commission to submit a proposal for new legislation regarding ecocide. Sadly, the threshold of a million signatures was not reached. However, the topic of ecocide became an important topic of discussion since then.

In 2019, Vanuatu and the Maldives call for consideration of adding the crime of 'ecocide' to the Rome Statute at the 18th Meeting of the ICC Assembly of States Parties. The following year, Belgium joined this call at the 19th Meeting of the ICC Assembly of States Parties.

In June 2021, the ICC concluded the legal definition for ecocide, which is: "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". A new article containing this definition has been proposed to be added to the statutes of the ICC. The proposal focuses on "crimes of endangerment" of the environment and will hopefully have a preventive effect.

Despite the momentum of the movement, recognizing ecocide as a crime faces multiple challenges. The limited jurisdiction of the ICC poses constraints on the effectiveness of a new

crime of ecocide. As mentioned before, the ICC's jurisdictional powers are currently constrained to individuals and do not extend to corporations or other legal persons. However, most often it is difficult to hold an individual that is operating in the name of a company accountable due to the complex structures of multinational corporations. Even if a company representative would be tried, this does not ensure that the company will not continue its harmful practices in the name of profit. This raises the question if businesses will be held responsible for their crimes in case ecocide is recognized as a crime by the ICC.

The jurisdiction is further constrained in that the ICC can only persecute nationals of State parties for actions committed on their State-party territory. This excludes perpetrators from e.g. the USA, China, India, Russia –some of the largest economies and biggest environmental polluters with harmful industries - due to the fact that they haven't signed the Rome Statute. Consequently, criminalizing ecocide for State-parties only could set incentives to export and concentrate destructive/polluting or otherwise harmful practices to regions outside ICC's jurisdiction.

As stated above, states are hesitant to give up their sovereignty, so an expansion of the Court's competencies and jurisdiction will likely be met with resistance and can even lead to threats of withdrawals which would further limit the scope of application and jurisdiction. In an instance where ecocide is recognized, it is not required by member states to ratify the ruling. Additionally, it is argued that the ICC doesn't have enough capabilities to take on more work in the form of prosecutions for ecocide.

## How other UN institutions and agencies have addressed this topic

Although the topic of climate change has been at the center of political debates for years now, ecocide however is a rather unknown topic. Nevertheless, the United Nations' Sustainable Development Goals, out of which many goals encompass protecting the environment and natural resources as well, are sadly not enough to tackle climate issues. Therefore, adopting legislation regarding ecocide is essential to reach the goals.

In 2012, the United Nations Interregional Crime and Justice Research Institute (UNICRI) and United Nations Environment Programme (UNEP) organized an International Conference on Environmental Crime to discuss the threat of ecocide.

In 2021 the Executive Director of UNEP Inger Andersen has also called member states to recognize the right to a healthy environment. Many countries have recognized this right to some degree, this right has not been recognized at the global level. According to her, recognizing the right to a healthy environment by the United Nations will positively impact the implementation of environmental laws, including laws regarding ecocide.

In 2021, access to a clean environment was declared a human right by the Human Rights Council, citing the need to acknowledge damage caused by climate change, especially on groups most vulnerable who are most impacted by climate change.

In 2016, the ICC's chief prosecutor announced that she will start paying particular attention to crimes which result in the destruction of the environment, such as illegal exploitation of natural resources and land grabbing or the destruction of the environment. This is the first instance when the ICC directly connected crimes against humanity and crimes against the environment. However, the chief prosecutor is essentially powerless without the cooperation of member states, making this statement more of a symbolic gesture.

Lastly, the World Economic Forum has named ecocide as one of the most worrying long-term risks.

## Questions the resolutions should answer

These questions serve as a guide for writing your resolutions.

1. Should ecocide be included as a core crime in the Rome Statute of the International Criminal Court? How is ecocide to be defined in international law?
2. How high is the threshold to punishability concerning the quantity, density, or size of regions, population or ecosystems affected?
3. Should the jurisdiction expand to legal persons? Currently, the Statute is only applicable to natural persons. Should it be applicable to legal entities such as corporations? This would constitute a critical transition in international law.
4. What are the requirements for liability? Does there have to be a direct link between the action and the harm done in order to hold a person liable for the crime of ecocide? If so, to what extent must such a direct link be given?
5. Does a potential crime of ecocide require mens rea (mental element) of dolus directus (intention) or indirectus (knowledge)? Or will a dolus eventualis where the perpetrator foresees the harm as a possibility or a likely consequence of their action, and acts anyway, be sufficient, meaning reckless actions could be persecuted?
6. How do we overcome political resistance and make sure not to lose State Parties along the way? How should we deal with possible political consequences to an amendment of the Rome Statute (e.g. reactions for States who are not parties to the Statute)? Could

‘greening’ the current framework, using the existing core crimes to incorporate greater awareness of environmental destruction and related human rights violations be a more pragmatic way to ensure accountability and redress in the short to medium term as Killean, 2021 suggests?

7. To which degree should the principle of complementarity (Art. 17) be respected as a balancing act between possible loopholes caused by national courts and an overburdening of the ICC?

## Conclusion

Recognizing ecocide as a crime within the scope of the ICC has been the goal of activists for decades now. So far the ICC recognizes four crime groups: genocide, crimes against humanity, war crimes and acts of aggression. Destruction of the environment can be tried, when such destruction happened during wartime. However, such categorization is not enough to protect the environment. Currently, the ICC is only able to prosecute individuals. Therefore, even if ecocide is a recognized crime by the ICC, it will be difficult to prosecute businesses - some of the biggest polluters next to countries like the USA and Russia, who haven't signed the Rome Statute yet. Due to this, prosecuting individuals from such countries is not possible. Despite multiple hurdles, the topic of criminalizing ecocide by the ICC remains an important talking point between states and organizations.

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