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## **The issue of recognition of ecocide as a crime by environmental courts and tribunals**

The article analyzes the recognition of ecocide as a crime by judicial institutions. Ecocide still has not received a well recognized definition. However, the proposal to acknowledge ecocide as an international crime developed by the Independent Expert Panel for the Legal Definition of Ecocide, as well as the recognition of environmental crimes similar to ecocide as set out in the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law, should be highlighted and analyzed. The purpose of the study is to analyze the impact of new approaches to the crime of ecocide on the practice of environmental courts and tribunals. By the application of general and specialized research methods, the author identifies possible changes in the jurisprudence of already existing judicial institutions, as well as the likelihood of the emergence of international courts and tribunals dedicated to separate cases of ecocide. The article concludes that new approaches to the definition of ecocide may lead to further development of international environmental law and national environmental law of the Republic of Kazakhstan, as well as the possible emergence of effective international mechanisms to protect international environmental security.

*Keywords:* ecocide, environmental law, environmental issues, international criminal law, national legislation, environmental court, environmental tribunal, environmental security, International Criminal Court, Independent Expert Panel for the Legal Definition of Ecocide.

### *Introduction*

In 2021, there were approximately 2115 environmental courts and tribunals operating at the national level, each dedicated to addressing crimes against ecology and safeguarding environmental security [1]. While the focus of this article remains on these national entities, it is necessary to acknowledge the existence of international judicial institutions such as the Court of Justice of the European Union [2]. However, these institutions, despite their significance, are constrained by jurisdictional limitations and are not exclusively committed to the resolve of environmental matters.

Unfortunately, there is still vacant place for the creation of international environmental court or tribunal jurisdiction of which could include at least some regional range. The reasons for that are several and are discussed further in this article.

The necessity to establish a dedicated international environmental court or tribunal with a jurisdiction that spans at least certain regional boundaries remains evident. This situation in the international legal framework is the product of various factors, all of which has relevant explanation. The reasons for that are several and are discussed further in this article.

The national environmental courts mentioned earlier have been established to facilitate a more effective resolution of crimes that pose threats to ecology and the environmental well-being of citizens within their respective countries. However, their jurisdiction is bound by the national environmental laws of those countries, thereby creating limitations on the scope of their influence.

The application of international environmental norms and principles within these national judicial institutions depends on each country's individual approach to the provisions of international law. For example, Kazakhstan has constitutional norms on how country consider international law a part of its legislation [3].

This article analyzes most notable environmental courts and tribunals and what their approach to ecocide would be. As it would be discussed further the theory of ecocide received new definition purposed by the Independent Expert Panel for the Legal Definition of Ecocide (the Panel), but it has been widely acknowledged by legal institutions yet [4].

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The creation of international judicial institution has been considered by many legal scholars [5–7]. The benefits that it could bring to the realm of environmental justice are significant for further analysis of the possibility of creation and scope of jurisdiction of such international environmental courts or tribunals. The possibility of creation ad hoc tribunal is also considered.

#### *Methods and materials*

Several scientific research methods including analysis, synthesis, legal historical comparison, deduction, and induction. These methods were applied throughout the research. Several sources on ecocide were analyzed, including various static data collected by the Independent Expert Panel for the Legal Definition of Ecocide [4]. In addition, there is a great practical guide on existing environmental courts and tribunals prepared by experts of United Nations Environment Programme [1].

#### *Results and Discussion*

The crime of ecocide has not received well recognized definitions. But some actions toward this goal have been done. The abovementioned Panel suggested new definition of ecocide in 2021. The Panel has elucidated the proposed definition of ecocide with a comprehensive explication. The proposed definition defines ecocide as 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 Panel advocates for its incorporation as Article 8 ter. in the Rome Statute [8–10].

This particular definition, which stands out by its precision, is the result of extensive theoretical research conducted over the course of many years and serves as a contemporary definition of ecocide now. It is a relevant and effective theoretical approach to the problem because its applicability extends beyond the Rome Statute, and can be included by any national legislation. This makes it a relevant and effective theoretical approach.

Another approach to ecocide is the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC [11]. On November 16, 2023 the European Union approved this proposal for a directive of 2021 [12].

Recital No. 16 of the Proposal is where the definition of a crime that is comparable to ecocide can be found. It states that when an environmental criminal offence causes substantial and irreversible or long-lasting damage to an entire ecosystem, this should be an aggravating circumstance because of its severity, including in cases comparable to ecocide. This is the first international legal instrument that recognizes environmental destruction as a crime in and of itself, at least within the borders of the European Union. It is huge step for global recognition of crime [13-14].

This aligns well with the planned concept of ecocide as an international crime formulated by the Panel in 2021 [8–10].

While the proposed ecocide definitions present opportunity for advancing environmental legal mechanisms, it is necessary, given the aforementioned challenges, to undertake more detailed research of ecocide and its issues at the international and national levels. The research is essential prior to formulating amendments to the national legislation. This necessitates thorough analysis to ensure that any legislative changes align seamlessly with existing definitions of ecocide on national level. Specifically, the crime of ecocide, as delineated in Article 169 of the Criminal Code of the Republic of Kazakhstan, has been explained in a commentary by Borchashvili I.Sh [15-16].

There is the complexity surrounding the issue of ecocide in the context of national environmental courts and tribunals. In some cases, it is impossible to make comparison between countries. Kazakhstan criminalized ecocide in 1997, but has zero practice in ecocide cases [17]. There are no environmental courts in Kazakhstan, however their creation is topic of academic discussion about the establishment of environmental courts [18]. In some nations, ecocide is not considered a criminal offence, but these nations do have courts and tribunals that are specifically created for the protection of the environment.

In order to effectively address environmental issues, specialized judicial institutions known as national environmental courts have emerged through the process of judicial reforms. These courts have expertise and legal authority to address environmental issues. As a result, these courts contribute to the development of legal principles that address specific challenges that are posed by environmental cases [18].

The development of the definition of ecocide and its acceptance by domestic environmental courts and tribunals signifies advancement in the legal protection of national environment. If a country adopts new definition of ecocide suggested by the Panel, these specialized courts may efficiently prevent such significant

threat to the environment. Such courts will not only discourage and hold perpetrators accountable, but also support the larger objectives of rehabilitating and preserving the environment, part of Sustainable Development Goals, ensuring the right to live in safe environment of citizens. Therefore, it is necessary to further develop the legal framework for ecocide in national environmental judicial institutions, whether courts or tribunals [19–21].

France and Belgium, among other countries, have enacted laws to make ecocide a criminal offence inside their own nations. These activities indicate an increasing recognition of the need for effective legal norm that present such threat to the environmental security [22–23].

The lack of international legal mechanisms dedicated to solve environmental crimes in a comprehensive manner is a key factor behind the need for specialized ecocide courts or tribunals. International environmental law offers a basis for dealing with some elements of ecocide, but it often lacks the precision and enforcement required to hold people and businesses responsible for extensive ecological damage. Establishing environmental specialized courts might effectively fill these gaps.

Furthermore, the need to tackle environmental offences, namely those that contribute to climate change and the loss of biodiversity, has become increasingly prominent on the international platform. The crimes of ecocide or crimes similar to ecocide may have consequences that ignore national borders, therefore making it environmental threat of global or regional level.

It is also possible to consider the opportunity to create ad hoc tribunals on ecocide. Ad hoc tribunals are not permanent institutions but are formed to deal with specific situations. They can be created at the national or international level. The establishment of such a tribunal would involve complex legal, political, and diplomatic processes. Because at the international level, ad hoc tribunals are often established by agreements between multiple countries or by international organizations [24].

In addition, civil society groups and organizations that promote environmental justice, such as the Stop Ecocide campaign, have played a crucial role in increasing public knowledge and rallying support for the establishment of specialized tribunals to address ecocide. Such actions of global community increase the probability of the establishment of specialized courts [25].

Regarding the lack of international environmental judicial institutions, whether in the form of permanent court or tribunal, it is essential to acknowledge the following issues that prevent nations from establishing such international mechanism.

The main obstacle to establishing an international environmental court is national interests and legal systems. Nations have different environmental policies, agendas, and policy to tackling global environmental issues. One of the methods to solve it is to harmonize legislation concerning environmental law at least in regions. Creation of dedicated Environmental Codes, as in Kazakhstan, and harmonizing them with neighboring countries could help with mutual understanding of environmental issues [26].

Countries often display reluctance in ceding control over issues that directly affect their internal policies, resulting in hesitation to acknowledge international legal mechanism that might be seen as threat their interests. The task of any potential international environmental court is to manage equilibrium between upholding national sovereignty and promoting global environmental accountability.

Due to the lack of a specialized global environmental court, there is certain possibility that many environmental offences have avoided justice. It becomes particularly evident when addressing matters that beyond national boundaries, such as cross-border pollution, illicit wildlife commerce, and regional ecological harm caused by actions in one country.

It is possible that efforts to educate and raise awareness could be helpful in bridging the gap between countries that have different environmental priority agendas. In order to increase the likelihood that governments will be willing to give up some of their authority for the global environmental security, it is important to highlight the transboundary nature of environmental issues and the potential positive influence that a unified legal framework could have.

It is possible that nation's concerns could be alleviated by defining in statute explicit jurisdiction of an international environmental court. Statute would ensure that the court would harmonize with national legal systems rather than overruling them. Statute should define certain areas of law where of authority of states are undisputed, and specify the circumstances in which international law has priority.

### *Conclusions*

The development of the theory of ecocide and its possible acceptance by global community signifies a significant advancement in safeguarding environmental security. By broader and more comprehensive inter-

pretation of ecocide, our nations can effectively resolve risks to the environment not only of Kazakhstan, but overall safety of planet biosphere.

National environmental courts not only discourage and hold individuals responsible, but also support the larger objectives of restoring and preserving the environment, ensuring that future generations may have safe environment to live in.

Therefore, for the purpose of establishing a future that is both sustainable and resilient, it is of the utmost importance to continuously improve the legal framework of ecocide in national legal systems, or to establish environmental court or tribunal.

The lack of a specialized international environmental court or tribunal is a significant weakness in the global legal framework, even if there are several state environmental courts and larger international judicial institutions. The issues include aspects of national sovereignty, legal systems, and interaction between local and international interests.

The creation of such international environmental mechanism increases chances to protect the Earth and its inhabitants more effectively than in case of national environmental judicial institutions, especially in the case of dangerous environmental crimes as ecocide.

Even the incorporation of ecocide into the Rome Statute could prove to be beneficial. At the very least, the International Criminal Court has the potential to discourage environmental crimes across the territory of member states.

The future international environmental mechanism should uphold a careful balance between the independence of states and promotion dedication to global environmental security. Although different countries may have different priorities, the Earth's current and future environmental safety is the issue that affects us all.

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С.Т. Тулибаев

## Экологиялық соттар және трибуналдарының экоцидті қылмыс деп тану мәселесі

Мақалада сот органдарының экоцидті қылмыс деп тануы талданған. Экоцидтің әлі де жалпы қабылданған анықтамасы жоқ. Алайда экоцидті құқықтық анықтау жөніндегі Тәуелсіз сарапшылар тобы әзірлеген экоцидті халықаралық қылмыс деп тану туралы ұсынысты, сондай-ақ Еуропалық Парламент пен Кеңестің қылмыстық құқық арқылы қоршаған ортаны қорғау жөніндегі директивасында көрсетілген экоцидке ұқсас экологиялық қылмыс деп танылғанын да атап өткен жөн. Зерттеудің мақсаты — экоцид қылмысына қатысты жаңа көзқарастардың экологиялық соттар мен трибуналдардың тәжірибесіне әсерін талдау. Зерттеудің мақсаты — экоцид қылмысына жаңа тәсілдердің экологиялық соттар мен трибуналдар тәжірибесіне әсерін талдау. Зерттеудің жалпы және арнайы әдістерін қолдана отырып, автор қолданыстағы сот органдарының сот практикасындағы ықтимал өзгерістерді, сондай-ақ экоцидтің жекелеген жағдайларына арналған халықаралық соттар мен трибуналдардың пайда болу ықтималдығын анықтайды. Жұмыста экоцидті айқындаудың жаңа тәсілдері Қазақстанның халықаралық экологиялық құқығы мен ұлттық экологиялық құқығының одан әрі дамуына, сондай-ақ халықаралық экологиялық қауіпсіздікті қорғау үшін тиімді халықаралық механизмдерінің пайда болуы мүмкін деген қорытындыға жасалған.

*Кілт сөздер:* экоцид, экологиялық құқық, экологиялық мәселелер, халықаралық қылмыстық құқық, ұлттық заңнама, экологиялық сот, экологиялық трибунал, экологиялық қауіпсіздік, халықаралық қылмыстық сот, экоцидтің заңды анықтамасы бойынша тәуелсіз сараптама тобы.

С.Т. Тулибаев

## Проблема признания экоцида преступлением экологическими судами и трибуналами

В статье проанализировано признание экоцида как преступления судебными органами. Экоцид все еще не получил широко признанного определения. Однако следует отметить предложение признать экоцид международным преступлением, разработанное Независимой экспертной группой по юридическому определению экоцида, а также признание экологических преступлений, схожих с экоцидом, указанных в Предложении по директиве Европейского парламента и Совета о защите окружающей среды посредством уголовного права. Цель исследования — анализ влияния новых подходов к преступлению экоцида на практику экологических судов и трибуналов. Используя общие и специальные методы исследования, автор выявляет возможные изменения судебной практики уже существующих судебных органов, а также вероятность появления международных судов и трибуналов, посвященных отдельным случаям совершения экоцида. В работе сделан вывод о том, что новые подходы к определению экоцида могут привести к дальнейшему развитию международного экологического права и национального экологического права Казахстана, а также к возможному появлению эффективных международных механизмов для защиты международной экологической безопасности.

*Ключевые слова:* экоцид, экологическое право, экологические проблемы, международное уголовное право, национальное законодательство, экологический суд, экологический трибунал, экологическая безопасность, Международный уголовный суд, Независимая экспертная группа по юридическому определению экоцида.

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