

CRITICAL EVALUATION ON ECOCIDE AS TO WHETHER OR NOT IT SHOULD BE A SERIOUS CRIME UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

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INTRODUCTION

The security threat facing the Pacific Island States is climate change.¹ In combatting climate change, States have ratified the *United Nations Framework Convention on Climate Change*,² the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*,³ the *Doha Amendment to the Kyoto Protocol*,⁴ and the *Paris Agreement*⁵. These international treaties aim to stabilise the ‘greenhouse gas concentrations in the atmosphere’.⁶ Despite the actions, the global emission of greenhouse gas has continued to increase at an alarming rate.⁷ In light of the current trend, the global campaign⁸ to criminalise ecocide under the *Rome Statute of the International Criminal Court*⁹ grew stronger. Polly Higgins, who was a Lawyer and Environmental Activist,

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¹ Pacific Islands Forum, Forum Communiqué, PIFS (18)10 (5 September 2018) <https://www.un.org/humansecurity/wp-content/uploads/2018/09/49th-Pacific-Islands-Forum-Communiqu%C3%A9.pdf> (Accessed on 30 May 2020).

² *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) <https://treaties.un.org/doc/Publication/UNTS/Volume%201771/v1771.pdf> (Accessed 30 May 2020).

³ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 11 December 1997, 2303 UNTS 162 (entered into force 16 February 2005) <https://treaties.un.org/doc/Publication/UNTS/Volume%202303/volume-2303-A-30822.pdf> (Accessed 30 May 2020).

⁴ *Doha Amendment to the Kyoto Protocol*, opened for signature 8 December 2012, C.N.718.2012.TREATIES-XXVII.7.c (not yet in force) <https://treaties.un.org/doc/Publication/CN/2012/CN.718.2012-Eng.pdf> (Accessed 18 July 2020).

⁵ *Paris Agreement*, opened for signature 22 April 2016, (entered into force 4 November 2016) <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/54113/Part/I-54113-0800000280458f37.pdf> (Accessed 30 May 2020)

⁶ Article 2 of the *United Nations Framework Convention on Climate Change*.

⁷ Robert Watson et al, *The truth behind the climate pledges* (2019) 2 https://www.researchgate.net/publication/337033405_The_Truth_Behind_the_Climate_Pledges (Accessed 11 June 2020).

⁸ Anastacia Greene, ‘The campaign to make ecocide an international crime: Quixotic quest or moral imperative?’ (2019) 30(3) *Fordham Environmental Law Review* <https://ir.lawnet.fordham.edu/elr/vol30/iss3/1> (Accessed 7 June 2020).

⁹ *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) <https://treaties.un.org/doc/Publication/UNTS/Volume%202187/v2187.pdf> (Accessed 30 May 2020).

had formulated her proposed law of ecocide.¹⁰ She had also drafted the draft *Ecocide Act* (United Kingdom).¹¹ Higgins had sought the support of Small Islands States to support her proposed laws of ecocide.¹² Recently, Vanuatu¹³ and Maldives¹⁴ with the support of Kiribati¹⁵ have called on the Assembly of States Parties to the Rome Statute to amend the Rome Statute in order to criminalise ecocide. Not surprisingly, the majority of the parties to the Rome Statute do not support the call.

The focus of this paper is on ecocide which is caused by climate change. This paper believes that if ecocide is included in the Rome Statute, it will address climate change. The task of this paper is to critically evaluate Higgins' law of ecocide. Before carrying the task, this paper will firstly introduce the concept of ecocide and Higgins' proposed laws on ecocide. Secondly, it will discuss the position of the Small Island Developing States (SIDS) and the Umbrella Group. Following from there, this paper will critically evaluate the proposed law of ecocide. After that, the paper will give its recommendations which may be relevant to the Pacific Small Island Developing States (PSIDS), and finally draw its conclusion.

There were many attempts to criminalise ecocide. All of those attempts were unsuccessful. The latest call by Vanuatu¹⁶ and Maldives¹⁷ with the support of Kiribati¹⁸ is another attempt to criminalise ecocide as the fifth serious crime within the jurisdiction of the International Criminal Court.

¹⁰ Polly Higgins, Damien Short and Nigel South, 'Protecting the planet: a proposal for a law on ecocide' (2013) 59 (1) *Crime, Law and Social Change* https://www.researchgate.net/publication/257552825_Protecting_the_planet_A_proposal_for_a_law_of_ecocide (Accessed on 4 June 2020).

¹¹ Draft *Ecocide Law* (United Kingdom) <https://ecocidelaw.com/wp-content/uploads/2012/06/Earth-is-Our-Business-Appendix-II.pdf> (Accessed 6 June 2020).

¹² Anastacia Greene, above no 8.

¹³ Republic of Vanuatu, 'Individual Communication under the *Rome Statute of the International Criminal Court* – Original Communication'. Communication to the 18th Session of the Assembly of the States Parties to the International Criminal Court, 3 December 2019 https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/GD.VAN.2.12.pdf (Accessed 31 May 2020).

¹⁴ Republic of Maldives, 'Individual Communication under the *Rome Statute of the International Criminal Court* – Original Communication'. Communication to the 18th Session of the Assembly of the States Parties to the International Criminal Court, 3 December 2019 https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/GD.MDV.3.12.pdf (Accessed 21 May 2020).

¹⁵ Maud Sarlieve, 3 June 2020, 'ICL and Environmental Protection Symposium: Which Future for the Crime of Ecocide?' <https://opiniojuris.org/2020/06/03/icl-and-environmental-protection-symposium-which-future-for-the-crime-of-ecocide/> (Accessed 12 June 2020).

¹⁶ Republic of Vanuatu, above no 13.

¹⁷ Republic of Maldives, above no 14.

¹⁸ Maud Sarlieve, above no 15.

ECOCIDE

Ecocide is not a new concept. The concept was coined around 1970s at the Conference on War and National Responsibility in Washington.¹⁹ It came about following the Vietnam War where herbicides were used in the war.²⁰

A number of proposals were made to criminalise ecocide under the International Law. The first proposal was made by Richard Falk, an Expert in International Law.²¹ One of the works of Falk was the draft *International Convention on Ecocide 1973* which was submitted to the United Nations.²² After Falk, other Legal Scholars like Lynn Berat, Ludwik Teclaff, Mark Allen Gray, Steven Freeland, and Miahkat Al Moumin have also formulated their definition of ecocide.²³

Higgins' laws of ecocide

This paper introduces Higgins' proposed laws of ecocide which is comprised of her proposal to the International Law Commission and her draft *Ecocide Act*.

Proposal to the International Law Commission

Higgins defined ecocide as 'the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.'²⁴

The definition of ecocide is made up of three elements. The first element relates to the causes of ecocide which originated from human agency or other causes. The second element is that the damage, destruction or loss of ecosystem of a given territory is extensive. The final element is that the peaceful enjoyment of the inhabitants is severely diminished. Higgins' definition imposes a 'legal duty of care on States and companies to prevent the crime of ecocide.'²⁵ If ecocide is criminalised under the Rome Statute, governments, corporations, and those who have superior responsibility will be subjected to prosecution before the International Criminal Court.²⁶

¹⁹ Céline van den Berg, *Options for addressing instances of ecological harm under the Rome Statute, the added value of an autonomous international crime of ecocide, and its hurdles* (LLM thesis, Tilburg University) <http://arno.uvt.nl/show.cgi?fid=145800> (Accessed 8 June 2020).

²⁰ David Zierler, *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment* (2011) 27 <https://ebookcentral-proquest-com.ezproxy.usp.ac.fj/lib/uspj-ebooks/detail.action?docID=3038963> (Accessed 5 June 2020).

²¹ Céline van den Berg, above no 19.

²² Anja Gauger et al, *Ecocide is the missing 5th Crime Against Peace* (2012) 8 https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf (Accessed 5 June 2020).

²³ Céline van den Berg, above no 19.

²⁴ Polly Higgins, Damien Short and Nigel South, above no 10.

²⁵ Anastacia Greene, above no 8.

²⁶ Polly Higgins, Damien Short and Nigel South, above no 10.

Vanuatu has expressed its support for Higgins' proposal.²⁷ In supporting the proposal, Vanuatu and Belize with the support of Kiribati have taken the proposal to the Eighteen Session of the Assembly of States Parties to the Rome Statute.

Draft Ecocide Act

Higgins' draft *Ecocide Act* will be the domestic ecocide legislation of the United Kingdom if it is passed by Parliament of the United Kingdom. The draft *Ecocide Act* is a comprehensive one. It has a preamble and is divided into three parts with thirty seven sections altogether. The preamble stresses the importance of ecocide.²⁸ It further provides for the objective and principles governing ecocide,²⁹ and the aim of establishing ecocide.³⁰ The principles under Higgins' draft *Ecocide Act* include the principles of the duty of care to prevent ecocide³¹ and the principle of superior responsibility.³² As to the Part 1 of the draft *Ecocide Act*, it covers the definition of ecocide³³ which applies to the United Kingdom.³⁴ It then provides for various rights,³⁵ liability,³⁶ and the test for determining ecocide.³⁷ In respect to the Part 2 of the draft *Ecocide Act*, it provides for strict liability,³⁸ superior responsibility³⁹ and their application on officials of governments or corporations. As to Part 3 of the draft *Ecocide Act*, it provides for mechanism on restoration of damage, destruction or loss of ecosystem which include restorative justice.⁴⁰

The draft *Ecocide Act* protects the planet against ecocide. In protecting the planet, the draft *Ecocide Act* imposes a legal duty of care on governments, corporations, and all persons who are in the position of superior responsibility to prevent ecological and environmental damage.⁴¹ In addition, the draft *Ecocide Act* protects indigenous peoples and their livelihood.⁴²

Higgins, unlike other scholars, has tested her draft *Ecocide Act* in a mock trial before the Supreme Court of England and Wales.⁴³ In the mock trial, the Defendants, as Chief Executive

²⁷ Anastacia Greene, above no 8.

²⁸ The second sentence of the preamble of the draft *Ecocide Act* (United Kingdom).

²⁹ The second sentence of the preamble of the draft *Ecocide Act* (United Kingdom).

³⁰ Paragraph 3 of the preamble of the draft *Ecocide Act* (United Kingdom).

³¹ Paragraph 4 of the preamble of the draft *Ecocide Act* (United Kingdom).

³² Paragraph 5 of the preamble of the draft *Ecocide Act* (United Kingdom).

³³ Section 1 of the draft *Ecocide Act* (United Kingdom).

³⁴ Section 36 of the draft *Ecocide Act* (United Kingdom).

³⁵ Section 3 to section 6 of the draft *Ecocide Act* (United Kingdom).

³⁶ Section 9 of the draft *Ecocide Act* (United Kingdom).

³⁷ Section 10 of the draft *Ecocide Act* (United Kingdom).

³⁸ Section 12 of the draft *Ecocide Act* (United Kingdom).

³⁹ Section 13 of the draft *Ecocide Act* (United Kingdom).

⁴⁰ Section 19 of the draft *Ecocide Act* (United Kingdom).

⁴¹ Deniz Tekayak, 'Protecting Earth Rights of Indigenous Peoples: Towards an International Crime of Ecocide' (2016) 14(2) 5 *Fourth World Journal* <https://www.cwis.org/wp-content/uploads/documents/premium/FWJ14.2.1.Protecting.Earth.Rights.and.the.Rights.of.Indigenous.Peoples.pdf> (Accessed 10 June 2020).

⁴² Deniz Tekayak, above no 41.

⁴³ Ecocide Law, *Mock Trial* <https://ecocidelaw.com/the-law/mock-trial/> (Accessed 8 June 2020).

Officers, were charged and convicted of the crime of ecocide.⁴⁴ One of the positive outcomes of the mock trial is that it shed light on the possibility of prosecuting the crime of ecocide before the International Criminal Court.

POSITION OF SIDS AND THE UMBRELLA GROUPS

SIDS and the Umbrella Group are two of the negotiation coalitions within the United Nations climate change negotiation process. In discussing the position of SIDS, this paper focuses on the position of Belize, Vanuatu, and Kiribati. In addition, this paper also discusses the steps taken by PSIDS to criminalise ecocide. In relation to the Umbrella Group, this paper focuses on the position of Australia.

Position of SIDS

SIDS is made up of small island states and low lying states. Belize, Vanuatu, and Kiribati are members of SIDS which supported Higgins' proposed law of ecocide. Their position is to criminalise ecocide as the fifth crime within the jurisdiction of the International Criminal Court. The four small island developing states have taken a courageous step when they called on the Eighteen Assembly of States Parties to the Rome Statute to amend the Rome Statute to include ecocide as a serious crime within the jurisdiction of the International Criminal Court. The position of Belize, Vanuatu, and Kiribati is based on climate change and human rights. They relied on the reports of the Inter-governmental Panel on Climate Change and the *Office of the Prosecutor Policy Paper on Case Selection and Prioritisation 2016*⁴⁵ (Policy Paper).

Climate change is 'attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.'⁴⁶ Thus, reducing greenhouse gas emission is vital for SIDS.

Paris Agreement & Human Rights

The *Paris Agreement* is a legally binding agreement. It recognises the special circumstances and vulnerabilities of SIDS. It aims to hold 'the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing the efforts to limit the temperature increase to 1.5°C.'⁴⁷ All Parties are to undertake nationally determined contributions⁴⁸ which will show how

⁴⁴ Subsections 1(1) and (2) of the draft *Ecocide Act* (United Kingdom).

⁴⁵ Office of the Prosecutor, *Policy Paper on Case Selection and Prioritisation* (2016), https://www.icc.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf (Accessed 18 August 2020).

⁴⁶ Article 1(2) of the United Nations Framework Convention on Climate Change.

⁴⁷ Article 2 of the Paris Agreement.

⁴⁸ Article 3 of the Paris Agreement.

they will mitigate climate change.⁴⁹ The Paris Agreement requires the Developed country Parties to take the lead in reducing greenhouse gas emission.⁵⁰ Equally, the Paris Agreement imposes obligation on the Developed country Parties ‘to provide financial resources to ... developing country Parties.’⁵¹ In this way, the developing country Parties can fulfil their commitments under the Paris Agreement.

The *Paris Agreement* reinforces the fundamental principles of human rights where it provides that parties ‘should ... respect ... human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.’⁵² In the same vein, the *Universal Declaration of Human Rights*⁵³ has enshrined the fundamental rights of all people. It includes ‘the right to life, liberty and security of person.’⁵⁴ All persons have ‘the right to ... health, food, [and] housing.’⁵⁵ In respect to environment, the *African Charter on Human and Peoples’ Rights*⁵⁶ provides that ‘all peoples have the right to a general satisfactory environment favourable to their development.’⁵⁷

The Parties to the Paris Agreement have submitted their pledges to reduce their greenhouse gas emission. An analysis of the pledges has shown that greenhouse gas emission has not yet reduced.⁵⁸ For example, the two largest emitters of greenhouse gas, China and the United States, have not taken any robust actions to fulfil their commitments under the Paris Agreement to reduce their greenhouse gas emission.⁵⁹ China’s greenhouse gas emission has continued to increase over the years.⁶⁰ On the other hand, the United States who is the second biggest contributor of the greenhouse gas has withdrawn from the Paris Agreement because of its self-interest and internal politics.⁶¹ The Chair of SIDS has described the actions of the major greenhouse gas emitters as ‘tantamount to sanction ecocide.’⁶²

⁴⁹ Achala Abeysinghe, Caroline Prolo and Janna Tenzings, *Climate negotiations terminology: the pocket guide* (2015) <https://pubs.iied.org/pdfs/10148IIED.pdf> (Accessed 11 June 2020).

⁵⁰ Article 4(4) of the Paris Agreement.

⁵¹ Article 9(1) of the Paris Agreement.

⁵² Paragraph 11 of the preamble of the Paris Agreement.

⁵³ *Universal Declaration of Human Rights*, GA Res 217A III, UN GAOR, UN Docs A/810 (10 December 1948) [https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217\(III\)](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III)) (Accessed 13 June 2020).

⁵⁴ Article 3 of the Universal Declaration of Human Rights.

⁵⁵ Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (2017) 227.

⁵⁶ *African Charter on Human and Peoples’ Rights*, opened for signature 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986) <https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf> (Accessed 13 June 2020).

⁵⁷ Article 24 of the African Charter on Human and Peoples’ Rights.

⁵⁸ Robert Watson et al, above no 7.

⁵⁹ Robert Watson et al, above no 7, i.

⁶⁰ Robert Watson et al, above no 7, i.

⁶¹ Hai-Bin Zhang et al, ‘U.S. withdrawal from the Paris Agreement: Reasons, impacts, and China’s Response’ (2017) 8(4) 220 <https://www.sciencedirect.com/science/article/pii/S1674927817301028> (Accessed 10 June 2020)

⁶² Belize, ‘*Individual Communication under the United Nations Framework Convention of Climate Change*’ – Original Communication’. Communication on behalf of the Alliance of Small Island States at the Opening Plenary Meeting of the Conference of the Parties, Conference of the Parties Serving as the Meeting of Parties to the Kyoto Protocol, Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, Subsidiary Body

Reports of the Intergovernmental Panel on Climate Change

The various reports of the Intergovernmental Panel on Climate Change have produced overwhelming scientific evidences of the negative impacts of climate change on SIDS.⁶³ One of the significant impacts of climate change is sea level rise which continues to threaten the livelihood of SIDS.⁶⁴ For example, in Kiribati and Tuvalu, agricultural crops are affected⁶⁵ and communities were relocated⁶⁶ because of sea level rise. In Solomon Islands, small islands are disappearing due to sea level rise.⁶⁷ The Intergovernmental Panel on Climate Change has projected that '[s]ea level rise will continue beyond 2100 even if global warming is limited to 1.5°C in the 21st century.'⁶⁸ In addition, SIDS have other special circumstances such as 'small populations and economies; weak institutional capacity in public and private sector; [and] remoteness from markets.'⁶⁹ The livelihood of SIDS will only be safe if the Developed country Parties robustly fulfil their commitments under the Paris Agreement.

Office of the Prosecutor Policy Paper on Case Selection and Prioritisation 2016

The Office of the Prosecutor is established under the Rome Statute.⁷⁰ In 2016, the Office of the Prosecutor issued its Policy Paper which, amongst other things, outlines the matters which the Office of the Prosecutor will consider when exercising its discretion to prosecute the serious crimes within the jurisdiction of the International Criminal Court.⁷¹ On the other hand, the Policy Paper also outlines the support which the Office of the Prosecutor will provide to states in relation to

for Scientific and Technological Advice, Subsidiary Body for Implementation, 2 December 2019
[https://www4.unfccc.int/sites/SubmissionsStaging/Documents/201912021341---AOSIS%20Opening%20Statement%20\(2%20December%202019\).pdf](https://www4.unfccc.int/sites/SubmissionsStaging/Documents/201912021341---AOSIS%20Opening%20Statement%20(2%20December%202019).pdf) (Accessed 10 December 2020).

⁶³ Michael Oppenheimer et al, 'Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities' in Hans-Otto Pörtner et al (eds) *Intergovernmental Panel on Climate Change Special Report on the Ocean and Cryosphere in a Changing Climate* (2019) 321 <https://www.ipcc.ch/srocc/chapter/chapter-4-sea-level-rise-and-implications-for-low-lying-islands-coasts-and-communities/> (Accessed 9 June 2020).

⁶⁴ Michael Oppenheimer et al, above no 63.

⁶⁵ Ove Hoegh-Guldberg et al, 'Impacts of 1.5°C of Global Warming on Natural and Human Systems' in Valérie Masson-Delmotte et al, *Global warming of 1.5°C An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (2019) 175 https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf (11 June 2020).

⁶⁶ Espen Ronneberg, 'Small Islands and the big issue: Climate change and the role of the Alliance of Small Island States' in Kevin R. Gray, Richard Tarasofsky, and Cinnamon Carlarne (eds) *The Oxford Handbook of International Climate Change Law* (2016) 765.

⁶⁷ 60 Minutes Australia, *Climate change causes islands to disappear* (2019) (video) https://www.youtube.com/watch?v=N1cdCUZNh04&feature=share&fbclid=IwAR3mKleav4ZE_1-Zsp0MM7woT1K2C6ZytA49G3-282HvgfVbVPCsroLpIQk (Accessed 21 July 2020).

⁶⁸ Ove Hoegh-Guldberg et al, above no 65, 221.

⁶⁹ Ian Fry, 'Small Island Developing States: Becalmed in a Sea of Soft Law' (2005) 14(2) *Review of European, Comparative & International Environmental Law* <https://heinonline.org/HOL/P?h=hein.journals/reel14&i=93> (Accessed 9 June 2020).

⁷⁰ Article 42 of the Rome Statute.

⁷¹ Office of the Prosecutor, above no 45, 3-5.

prosecuting serious crimes such as environmental crimes committed under national law.⁷² Vanuatu is one of the states that expressed its support for the Policy Paper particularly in relation to environmental crimes.⁷³ Vanuatu's view is that the Office of the Prosecutor has taken a right direction to support states to prosecute environmental crimes.⁷⁴ The support of the Office of the Prosecutor falls in line with the complementary system of the International Criminal Court to national criminal jurisdiction.⁷⁵

Actions taken by PSIDS to criminalise ecocide

PSIDS have taken steps to criminalise ecocide. The first action was taken in May 2019 in Port Vila, Vanuatu at the Meeting on the Pacific Islands Roundtable on the Ratification and Implementation of the Rome Statute of the International Criminal Court. The Meeting agreed on the Port Vila Plan of Action.⁷⁶ The preamble of the Port Vila Plan of Action recognises the International Criminal Court as an avenue to address environmental issues.⁷⁷ The Port Vila Plan of Action encourages member states to build a coalition of PSIDS⁷⁸ and to work with other coalitions such as the Least Developed Countries to address environmental issues and other issues facing the PSIDS. The second action was taken in June 2019 in Noumea, New Caledonia at the Biodiversity in Oceania Intergovernmental Science-Policy Platform on Biodiversity and Ecosystems Services Workshop (Workshop). The Workshop made a number of recommendations. One of the recommendations is to make ecocide an environmental crime.⁷⁹ The recommendation of the Workshop was endorsed by the Twenty-ninth Meeting of the Officials and Environmental Ministers of the Member States of the Secretariat of the Pacific Regional Environmental Programme (SPREP).⁸⁰

⁷² Office of the Prosecutor, above no 45, 5.

⁷³ Republic of Vanuatu, 'Individual Communication under the *Rome Statute of the International Criminal Court* – Original Communication'. Communication to the 15th Session of the Assembly of the States Parties to the International Criminal Court, 17 November 2016 https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15-GenDeba-Vanuatu-ENG.pdf (Accessed 31 May 2020).

⁷⁴ Republic of Vanuatu, above no 73.

⁷⁵ Article 1 of the Rome Statute.

⁷⁶ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability <https://www.pgaction.org/pdf/2019-05-31-Port-Vila-Plan-of-Action.pdf> (Accessed 11 June 2020).

⁷⁷ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, paragraph 8.

⁷⁸ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, paragraph 9.

⁷⁹ Secretariat of the Pacific Regional Environmental Programme and Government of New Caledonia, 'Biodiversity in Oceania IPBES workshop outcomes and recommendations' (Background Paper, Paper presented by the Government of New Caledonia in collaboration with SPREP to the 29th SPREP Meeting, Apia, Samoa, 3 – 6 September 2019) https://www.sprep.org/sites/default/files/29-SPREP-Meeting/New/Eng/WP%2014%201-%20IPBES_Final%20Version.pdf (Accessed 9 June 2020).

⁸⁰ Secretariat of the Pacific Regional Environmental Programme, 'Report of the Twenty-ninth SPREP Meeting of Officials and Environment Ministers' High-Level Talanoa 3 – 6 September,' 2019 Apia, Samoa https://www.sprep.org/sites/default/files/documents/circulars/Cir19-86_29SM_Report.pdf (Accessed 12 June 2020).

The two meetings have set the basis for pursuing the amendment to the Rome Statute to accommodate ecocide within the jurisdiction of the International Criminal Court.

Position of the Umbrella Group with focus on Australia's position

Australia is a member of the Umbrella Group. This group is consisted of some of the countries in the European Union and Non-European Countries.⁸¹ The members of the Umbrella Group have large population, strong and stable economy, stable government, and strong military. Australia does not support Higgins' proposed law of ecocide. Australia's position is to stop any amendment to the Rome Statute. Its' position is based on economic development and its climate change policies.

Australia relies heavily on its economic development to sustain its growing population of 25,464,116 people.⁸² Its strong economic growth is driven by a number of economic activities including mining. Due to emission of greenhouse gases from economic activities such as mining, Australia is committed to reduce its emission. The Government of Australia contended that all States should reduce their greenhouse gas emissions including SIDS.⁸³ While Australia has taken steps to reduce its emission, it is also concerned with the negative impacts of emission reduction on its economy.⁸⁴ Given the dilemma, Australia has taken a balance approach which is to meet its obligations under the Paris Agreement as well as to build a healthy economy.⁸⁵

Given its climate change policies,⁸⁶ Australia has objected to any proposed amendment to the Rome Statute and strongly stated at the Eighteen Session of the Assembly of States Parties to the Rome Statute that; '[w]e must support the [International Criminal] Court to consolidate around its core mandate ... We urge the Assembly [of States Parties to the Rome Statute] to refrain from pursuing any further amendment to the crimes within the jurisdiction of the [International Criminal] Court for the time being.'⁸⁷ The core mandate of the International Criminal Court is to deal with the four serious crimes within its jurisdiction. Australia wanted the Assembly of States

⁸¹ Secretariat of the Pacific Regional Environmental Programme, *Multilateral Environmental Agreement Negotiator's Handbook Pacific Region* (2013) 67

https://www.sprep.org/attachments/Publications/EMG/MEA_Handbook_2013.pdf (Accessed 13 June 2020).

⁸² Australia Bureau of Statistics, 19 March 2020 Australian Demographic Statistics, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0> (Accessed 13 June 2020).

⁸³ The Committee for Economic Development of Australia, *The economics of climate change* (2014) 18 <https://www.ceda.com.au/CEDA/media/ResearchCatalogueDocuments/PDFs/22090-Economics-of-Climate-Change.pdf> (Accessed 13 June 2020).

⁸⁴ The Committee for Economic Development of Australia, above no 83, 18.

⁸⁵ The Commonwealth of Australia, *2017 Review of Climate Change Policies* (2017) <https://publications.industry.gov.au/publications/climate-change/system/files/resources/186/2017-review-of-climate-change-policies.pdf> (Accessed 18 July 2020).

⁸⁶ The Commonwealth of Australia, above no 85.

⁸⁷ Australia, 'Individual Communication under the *Rome Statute of the International Criminal Court* –Original Communication'. Communication to the 18th Session of the Assembly of the States Parties to the International Criminal Court, 3 December 2019 https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/GD.AUS.3.12.pdf (Accessed 31 May 2020).

Parties to the Rome Statute to only support the existing four serious crimes within the jurisdiction of the International Criminal Court.

CRITICAL EVALUATION OF HIGGINS' PROPOSED LAWS OF ECOCIDE

This paper has identified three main doctrinal issues concerning Higgins' proposed laws of ecocide. They are; the application of the principle of *nullum crimen sine lege* to climate change; the standard of proof; and liability.

The application of the principle of *nullum crimen sine lege* to climate change

The principle of *nullum crimen sine lege* is also known as the principle of legality. The principle is consisted of two aspects which are 'non-retroactivity and clarity of the law.'⁸⁸ It provides that 'prosecution is possible only if, at the time of the events, the substantive activity for which the defendant is being prosecuted was defined as a crime.'⁸⁹

The principle was relied upon by the defendants in the case of *Prosecutor v Brima*.⁹⁰ The defendants contended that the charge of forced marriage for which they were charged for the first time infringed the principle of *nullum crimen sine lege*. The Prosecutor submitted that '[t]he principle of *nullum crimen sine lege* should not be rigidly applied to an act universally regarded as abhorrent. The question is whether it was foreseeable and accessible to a possible perpetrator that the conduct was punishable.'⁹¹ The Special Court for Sierra Leone agreed with the Prosecutor's submission and ruled that the elements of forced marriage are illegal⁹² and that the defendants knew it was illegal.⁹³

The application of the principle of *nullum crimen sine lege* to climate change is problematic. If a defendant relies on the principle, the Prosecutor would be placed in an awkward position to prove that the defendant's activity is illegal because 'past climate policy did not violate established principles of human rights or humanitarian law...'⁹⁴. This would justify ignoring the fact that they were legal at the time. Not only that, but, the principle of *non-retroactivity ratione*

⁸⁸ Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (2019) (4th edition) <https://doi-org.ezproxy.usp.ac.fj/10.1017/9781108680455.001> (Accessed 14 June 2020).

⁸⁹ Shirley V. Scott, Patrick J. Keenan and Charlotte Ku, 'The creation of a climate change court or tribunal' in Shirley V. Scott and Charlotte Ku (eds), *Climate Change and the UN Security Council* (2018) 69 <https://www.e-elgar.com/shop/gbp/climate-change-and-the-un-security-council-9781785364631.html> (Accessed 15 June 2020).

⁹⁰ *Prosecutor v Brima (Appeals Chamber)* (Special Court for Sierra Leone, Appeals Chamber, SCSL-2004-16-A, 22 February 2008) (Justice George Gelaga King) <http://www.rscsl.org/Documents/Decisions/AFRC/Appeal/675/SCSL-04-16-A-675.pdf> Accessed on 6 June 2020).

⁹¹ *Prosecutor v Brima*, above no 90, para.2

⁹² Patrick J. Keenan, 'International Criminal Law and Climate Change' (2019) 37(1) 115 *Boston University International Law Journal* <https://heinonline.org/HOL/P?h=hein.journals/builj37&i=95> (Accessed 14 June 2020).

⁹³ Patrick J. Keenan, above no 92, 113.

⁹⁴ Shirley V. Scott, Patrick J. Keenan and Charlotte Ku, above no 89, 70

personae prohibits the prosecution of conducts which occurred prior to the commencement of the Rome Statute.⁹⁵

The principle of *nullum crimen sine lege* requires the law to be clearly defined. The purpose of Higgins' proposed law of ecocide is to protect the 'planet ..., humanity and species.'⁹⁶ Given its broad purpose, the issue is what types of human activities that caused climate change amount to ecocide. The purpose and definition of the proposed law of ecocide is silent on this issue. Conversely, the objective of climate crime is 'to change the attitudes and behaviour of individuals and corporations.'⁹⁷ A solution is to enact laws 'that criminalise[s] attitudes and behaviours that harm the environment.'⁹⁸

The standard of proof

Higgins' proposed law of ecocide set the standard of proof for ecocide on the standard of strict liability. This standard of proof does not require the Public Prosecutor to establish the mental element of intention. The rationale for this approach is to overcome the defence of unintentional damage, destruction or loss of ecosystem.⁹⁹ Even though Higgins's argument may be valid, strict liability does not fit well with the Rome Statute. This is because the Rome Statute requires the element of intention and knowledge¹⁰⁰ to be established for all serious crimes within the jurisdiction of the Court.

In addition, Higgins argued that the standard of proof of strict liability should also apply to governments and corporations. This is to avoid governments and corporations from relying on the defence that they do not intend to cause ecocide.¹⁰¹ Higgins' argument seem to be inconsistent with the Rome Statute because the International Criminal Court does not have jurisdiction over governments and corporations¹⁰² but only over natural persons. Not only that, but, governments and corporations are not capable of possessing the mental element of intent and knowledge.

Given that governments and corporations do not possess the mental element of intent and knowledge, Higgins intended to create a legal duty of care on those who possess superior responsibility in governments and corporations.¹⁰³ The principle of superior responsibility was explained in the case of *Prosecutor v Halilović*¹⁰⁴ where the International Criminal Tribunal for

⁹⁵ Article 24 of the Rome Statute.

⁹⁶ Polly Higgins, Damien Short and Nigel South, above no 10.

⁹⁷ Patrick J. Keenan, above no 92, 116.

⁹⁸ Patrick J. Keenan, above no 92, 116.

⁹⁹ Polly Higgins, Damien Short and Nigel South, above no 10.

¹⁰⁰ Article 30 of the Rome Statute.

¹⁰¹ Polly Higgins, Damien Short and Nigel South, above 10.

¹⁰² Article 25(1) of the Rome Statute.

¹⁰³ Polly Higgins, Damien Short and Nigel South, above 10.

¹⁰⁴ *Prosecutor v Halilović (Trial Judgment)* (International Criminal Tribunal for Former Yugoslavia, Trial Chamber I, Case No.IT-01-48-, 16 November 2005) [23] (Judge Liu Daqun); <https://www.icty.org/x/cases/halilovic/tjug/en/tcj051116e.pdf> (Accessed on 6 June 2020).

Former Yugoslavia explained that ‘the command responsibility is responsibility for an omission. The commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates.’¹⁰⁵ Higgins’ proposal does not seem to fit well with the principle of command responsibility within the Rome Statute.¹⁰⁶ This is because the principle of command responsibility under the Rome Statute is not only applicable to military commanders but also to the four serious crimes within the jurisdiction of the International Criminal Court.

Liability

The final doctrinal issue concerns the doctrine of liability. In Criminal Law, liability arises in criminal offences where the elements of *actus reus* and *mens rea*¹⁰⁷ are proved beyond reasonable doubt. Besides that, liability also arises in offences where the only element to be proved is *actus reus*. As mentioned earlier, this is known as strict liability.¹⁰⁸

The Rome Statute provides three types of scenarios where liability arises.¹⁰⁹ The first one is where the serious crime is committed by an individual.¹¹⁰ This type of liability is called ‘direct perpetration.’¹¹¹ The second scenario is where the perpetrator has committed the serious crime ‘through another person.’¹¹² This type of liability is called ‘indirect perpetration.’¹¹³ The third scenario is where the perpetrator has committed a serious crime ‘jointly with another person.’¹¹⁴ This is called ‘co-perpetration.’¹¹⁵

The application of the doctrine of liability is difficult to apply to climate change. Due to ‘the diffuse nature of the actions that have caused climate change, it would likely prove very difficult for prosecutors to show that there had been a common plan to cause climate change or any of its harms.’¹¹⁶ Consequently, it is not feasible to criminalise ecocide that was caused by climate change within the jurisdiction of the International Criminal Court.

¹⁰⁵ *Prosecutor v Halilović*, above no 104.

¹⁰⁶ Article 28 of the Rome Statute.

¹⁰⁷ Michael J Allen, *Textbook on Criminal Law* (1997) (4th edition), Blackstone Press Limited, London, 17 – 88.

¹⁰⁸ Michael J Allen, above no 107, 92 - 106.

¹⁰⁹ Article 25 of the Rome Statute.

¹¹⁰ Article 25(3)(a) of the Rome Statute.

¹¹¹ Jessie Chella, ‘Topic 9 lecture notes’ *LW395C International Criminal Law and LW495C Advanced International Criminal Law, Semester I 2020* <https://elearn.usp.ac.fj/mod/resource/view.php?id=465839> (Accessed 15 June 2020).

¹¹² Article 25(3)(a) of the Rome Statute.

¹¹³ Jessie Chella, above no 111.

¹¹⁴ Article 25(3)(a) of the Rome Statute.

¹¹⁵ Jessie Chella, above no 111.

¹¹⁶ Shirley V. Scott, Patrick J. Keenan and Charlotte Ku, above no 89, 72.

RECOMMENDATIONS

This paper set out four main recommendations that may be relevant to PSIDS.

Build a robust coalition

PSIDS is an emerging coalition of the Pacific Island States in the United Nations climate change negotiation.¹¹⁷ The reason for creating PSIDS is not only to ensure that the voice of PSIDS is heard at the United Nations climate change negotiation¹¹⁸ but to ensure that the needs of PSIDS are addressed at the international forum. Currently, there are only seven members of PSIDS who are parties to the Rome Statute. They are; Fiji, Cook Islands, Kiribati, Marshall Islands, Nauru, Samoa, and Vanuatu. Despite that, only Vanuatu and Kiribati are supporting Higgins' proposed law of ecocide and have called on the Assembly of States Parties to the Rome Statute to amend the Rome Statute to criminalise ecocide. The other five members of PSIDS are silent on ecocide at the Eighteen Session of the Assembly of States Parties to the Rome Statute. In addition, not all members of PSIDS have ratified the Rome Statute.

In light of the setbacks, there is a need to build a robust PSIDS coalition within the Assembly of States Parties to the Rome Statute. The decision of the Twenty-ninth Meeting of the Officials and Environmental Ministers of the Member States of the SPREP¹¹⁹ should form the basis for PSIDS to formulate a common position on their needs at the Assembly of States Parties to the Rome Statute. Furthermore, it is also crucial that the other members of PSIDS which have not yet ratify the Rome Statute take steps to ratify this instrument. Not only that, but, PSIDS should also build a robust coalition with other coalitions such as the SIDS and the Least Developed Countries.

In building a robust PSIDS coalition within the Assembly of States Parties to the Rome Statute, PSIDS with the support of other coalitions will effectively address their needs at the Assembly of States Parties to the Rome Statute.

Policy

This recommendation focuses on two main aspects. The first one is to promote sustainable development. The second one is to either review existing policies to cover ecocide or to create a new policy on ecocide.

National Sustainable Development Goals

¹¹⁷ George Carter, 'Establishing a Pacific Voice in the Climate Change Negotiations' in Greg Fry and Sandra Tarte (eds), *The New Pacific Diplomacy* (2015) <http://press-files.anu.edu.au/downloads/press/p328371/html/ch17.xhtml?referer=&page=29#> (Accessed 12 August 2020).

¹¹⁸ George Carter, above no 117.

¹¹⁹ Secretariat of the Pacific Regional Environmental Programme, above no 80.

Sustainable development is defined as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’¹²⁰ The United Nations has issued the Sustainable Development Goals (SDG)¹²¹ with the aim to ‘end poverty, protect the planet and improve the lives and prospects of everyone, everywhere.’¹²²

PSIDS members have formulated their national sustainable development goals in line with the United Nations SDG but tailored to their local circumstances. For instance, Vanuatu’s national sustainable development goals¹²³ comprise three main pillars. They are; society pillar, environment pillar, and economic pillar. The environment pillar covers food and nutrition security, blue-green economic growth, climate and disaster resilience, natural resource management, ecosystems and biodiversity. The Vanuatu’s national sustainable development goals aim to protect the environment and to ensure a stable economy for betterment of everyone.

Given that criminalising ecocide under the Rome Statute is impossible due to the legal doctrines of Criminal Law that are entrenched in the Rome Statute, PSIDS should focus on encouraging and promoting sustainable development. In this way, they will protect their environment and ecosystems for their present and future generations.

Policy relating to ecocide

The Twenty-ninth Meeting of the Officials and Environmental Ministers of the Members of SPREP has endorsed the recommendation to make ecocide an environmental offence.¹²⁴ This is a crucial step towards criminalising ecocide under national laws. However, the environment policy of PSIDS such as Vanuatu does not reflect the decision of the Twenty-ninth Meeting of the Officials and Environmental Ministers of the Members of SPREP. The *Vanuatu National Environmental Policy and Implementation Plan 2016 – 2030*¹²⁵ does not make provisions for the Government of Vanuatu to take steps towards criminalising ecocide. In absence of such provisions, perpetrators of ecocide will remain unpunished for causing damage, destruction or loss of ecosystems. Hence, it is vital that the PSIDS member states address ecocide in their respective policy on environment.

On the other hand, the relevant policy on environment should also make provisions to explore alternate forums to address ecocide. There are four possible alternate forums. The first one

¹²⁰ United Nations, *Sustainable Development Goals*, <https://www.un.org/sustainabledevelopment/development-agenda/#1b1981a30bdd8fde2> (Accessed 19 August 2020).

¹²¹ United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed 19 August 2020).

¹²² United Nations, above no 121.

¹²³ Government of Vanuatu, *National Sustainable Development Plan 2016 to 2030*, <https://ogcio.gov.vu/images/nsdp/Vanuatu2030-EN.pdf> (Accessed 19 August 2020).

¹²⁴ Secretariat of the Pacific Regional Environmental Programme, above no 80.

¹²⁵ Government of Vanuatu, *Vanuatu National Environment Policy and Implementation Plan 2016 – 2030*, <https://www.nab.vu/sites/default/files/documents/VANUATU%20NEPIP-Final.pdf> (Accessed 20 August 2020).

is to create a ‘climate crime court.’¹²⁶ This option could be done through the Security Council; however, the hurdle is to obtain a resolution of the Security Council.¹²⁷ The second option is to get an advisory opinion of the International Court of Justice (ICJ)¹²⁸ established under the *Statute of the International Court of Justice*.¹²⁹ However, the ICJ has jurisdiction only over States¹³⁰ and not individual persons. Despite that, this should not prevent a member state of PSIDS from initiating proceeding at the ICJ against a state that causes major emission of greenhouse gases. The third alternate forum is to create human rights tribunals. However, human rights tribunal focuses only on the violation of human rights.¹³¹ The fourth option is through the domestic courts.¹³² This option will require amending existing domestic laws to cater for ecocide or to create a new ecocide law.

Law Reform

Law reform is important to address gaps in existing domestic laws. This is to ensure that appropriate amendments are made or new laws are created to deal with the gaps in the existing domestic laws. Not only that, but, to ensure harmonisation of laws and avoid inconsistencies between different laws which can cause confusion and abuse. Currently, the criminal law of PSIDS does not make provisions for criminalising ecocide. For example, the *Penal Code*¹³³ of Vanuatu does not criminalise ecocide. However, there are administrative offences under the respective environmental laws of PSIDS. For instance, it is an offence under the *Environmental Protection and Conservation Act*¹³⁴ of Vanuatu to hinder or obstruct an officer from performing his or her functions.

Ten countries have criminalised ecocide in their domestic laws. They are; Georgia, Armenia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, and Vietnam.¹³⁵ PSIDS should explore the domestic laws of these countries when carrying out their law reform to meet their national circumstances.

Implementation and enforcement

PSIDS often encounter challenges when implementing international treaties. This is due to their limited resources and technical capacity. The seven members of PSIDS that have ratified the Rome

¹²⁶ Shirley V. Scott, Patrick J. Keenan and Charlotte Ku, above no 89, 73.

¹²⁷ Shirley V. Scott, Patrick J. Keenan and Charlotte Ku, above no 89, 74.

¹²⁸ Anastacia Greene, above no 8, 45.

¹²⁹ *Statute of the International Court of Justice*, opened for signature [date], 33 UNTS 993 (entered into force 24 October 1945) <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (Accessed 15 June 2020).

¹³⁰ Article 36.1 of the Statute of the International Court of Justice.

¹³¹ Anastacia Green, above no 8, 46.

¹³² Anastacia Green, above no 8, 46.

¹³³ *Penal Code* [CAP 135] of Vanuatu.

¹³⁴ *Environmental Protection and Conservation Act* [CAP 283] of Vanuatu.

¹³⁵ Ecocide Law, *Existing Ecocide Laws*, <https://ecocidelaw.com/the-law/existing-ecocide-laws/> (Accessed 22 August 2020).

Statute have not fully implemented the provisions of the Rome Statute. In addition, some PSIDS like Solomon Islands have signed the Rome Statute but have not yet ratified it.¹³⁶ On the other hand, PSIDS like Tonga have shown an interest to sign and ratify the Rome Statute.¹³⁷

At the Meeting on the Pacific Islands Roundtable on the Ratification and Implementation of the Rome Statute of the International Criminal Court held in Port Vila on May 2019, the PSIDS members that attended the Meeting have agreed on the plan of actions towards implementing the Rome Statute.¹³⁸ For example, Fiji has agreed to fully implement the Rome Statute.¹³⁹ On the other hand, Samoa has agreed to work with other PSIDS to promote the ratification and accession of the Rome Statute.¹⁴⁰ Likewise, Vanuatu has agreed, amongst other things, to work on a legislation to implement the principles of international law enshrined in the Rome Statute.¹⁴¹

Since the provisions of the Rome Statute are not fully implemented in an implementing legislation, it is difficult to enforce the provisions of the Rome Statute. Hence, it is vital that PSIDS take steps to fully implement the provisions of the Rome Statute. In this way, perpetrators of ecocide can be punished.

CONCLUSION

It appears that the only security threat to the Pacific Island States is climate change.¹⁴² Even though, the *Paris Agreement* imposes obligations on Parties to reduce their greenhouse emissions, the current pledges of the Parties are insufficient to reduce the emission of greenhouse gases into the atmosphere.¹⁴³

The position of SIDS focuses on their survival and their environment while Australia as a member of the Umbrella is still trying to find the best solution to address climate change. At the same time, Australia has objected to any amendments to the Rome Statute.

The belief that by criminalising ecocide under the Rome Statute will address climate change seems to be unachievable. This is because the Rome Statute is governed by the principles of Criminal Law. Hence, this seems to render the proposed law of ecocide untenable to be the fifth serious crime within the jurisdiction of the International Criminal Court. Due to the doctrinal

¹³⁶ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, 2.

¹³⁷ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, 3.

¹³⁸ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, 3.

¹³⁹ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, 3.

¹⁴⁰ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, 3.

¹⁴¹ Port Vila Plan of Action on the Universality and Effectiveness Rome Statute in the Fight against Impunity and toward Accountability, above no 76, 3.

¹⁴² Pacific Islands Forum, Forum Communiqué, above no 1.

¹⁴³ Robert Watson et al, above no 7.

issues, this paper has argued that ecocide cannot be a serious crime within the jurisdiction of the Court.

This paper has set out four main recommendations which may be relevant to PSIDS to address ecocide. In order to carry out the recommendations, political will is needed. Hence, a lot of work needs to be done in this area to protect the environment for the advancement of the current and future generations.