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## Draft Council of Europe Convention on the Protection of the Environment through Criminal Law

### Report<sup>1</sup>

Committee on Social Affairs, Health and Sustainable Development

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### Contents

### Page

A. Draft opinion .....	2
B. Explanatory memorandum by Ms Yuliia Ovchynnykova, rapporteur .....	5
1. Introduction and background .....	5
2. The negotiations on and the main features of the draft Convention .....	5
3. Areas for improvement of the draft Convention .....	8
4. Conclusions .....	10

1. Reference to committee: Bureau decision, Reference 4868 of 7 April 2025.



## A. Draft opinion<sup>2</sup>

1. Protecting the environment against harm from human activity has become one of the international community's major concerns, triggered by the understanding that the health of the planet and the well-being of humans are closely tied together. European nations have joined the global action by supporting the United Nations Sustainable Development Agenda, the Paris Agreement on Climate Change and the European Green Deal. Through the 2023 Reykjavik Declaration, the Council of Europe member States recognised the urgency of action on the triple planetary crisis by committing to work "on the human rights aspects of the environment ... in line with United Nations General Assembly Resolution 76/300 'The human right to a clean, healthy and sustainable environment'".
2. Together with the draft Council of Europe Strategy on the Environment and a related action plan, the new draft Council of Europe Convention on the Protection of the Environment through Criminal Law ("the draft Convention") will be part of the environmental package submitted for adoption by the Committee of Ministers on 14 May 2025.
3. The Parliamentary Assembly welcomes the conclusion of work by the European Committee on Crime Problems on this new draft Convention which is set to replace and supersede the 1998 convention on the same matter (ETS No. 172). The new Convention, when adopted and implemented, will be the first international legally binding instrument to address environmental crime, covering a wide range of offences, including a particularly serious offence which encompasses conduct that many term "ecocide". The draft Convention builds on international treaties and legal standards relating to environmental protection, human rights and transnational crime, including a series of Council of Europe legal instruments.
4. The Assembly recalls that its Recommendation 2213 (2021) "Addressing issues of criminal and civil liability in the context of climate change" asked the Committee of Ministers to "conduct a study on the notion of 'ecocide', its introduction into domestic legislation and its possible universal recognition" and to draft a new legal instrument to replace the Convention No. 172 which remains unimplemented. The Assembly reiterated this call through its Recommendation 2246 (2023) "Environmental impact of armed conflicts" by requesting that the new Convention would also apply in the context of armed conflicts, wars or occupation, and that it would cover ecocide. Moreover, Recommendation 2272 (2024) "Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process" insisted on the need to establish an effective monitoring mechanism for the new Convention.
5. The Assembly notes that the draft Convention aims to effectively prevent and combat environmental crime, promote national and international co-operation and set minimum legal standards for States as regards environmental crime. It welcomes the draft Convention's emphasis on prevention through a broad range of punishable offences, awareness-raising measures among the general public and co-operation with civil society and non-governmental organisations.
6. The Assembly welcomes the inclusion of provisions in the draft Convention that specify that it "shall apply in times of peace and in situations of armed conflict, wartime or occupation" and that provide definitions of the terms "unlawful", "water", "ecosystem" and "waste", drawing lessons from member States' experience and practical difficulties with the enforcement of criminal law regarding environmental issues. A definition of ecocide, such as the one proposed by the Independent Expert Panel for the Legal Definition of Ecocide, could be added to the Explanatory Report to the Convention in order to guide member States towards aligning the understanding of this legal concept and to facilitate its inclusion in national law. In the same spirit, a tentative definition of the terms "irreversible", "widespread", "substantial" and "long-lasting" used in Article 31 of the draft Convention should be added to the Explanatory Report, as was originally proposed during the negotiation process. The Assembly notes that in the French version of Article 31 of the draft Convention, the French equivalent of the part of the sentence that reads "or causes long-lasting, widespread and substantial damage" is missing and should be added.
7. In this context, the Assembly recalls that many stakeholders worldwide are working towards a recognition of ecocide or widespread, long-term and severe damage to the environment as a fifth international crime so that it could be prosecuted by the International Criminal Court. The European Union's new Directive 2024/1203 of 11 April 2024 on the protection of the environment through criminal law lists environmental offences, including those that can constitute a "qualified offence" when they are committed intentionally and cause destruction or widespread and substantial damage that is long-lasting to the environment, which is similar to a "particularly serious offence" as defined under the draft Convention.

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2. Draft opinion adopted unanimously by the committee on 7 April 2025.

8. The Assembly considers that there are good reasons to further raise the level of ambition for this Council of Europe legal instrument. The current draft of the Convention omits illegal logging and unlawful fishing among the offences covered. Bearing in mind the 2001 FAO (Food and Agriculture Organization of the United Nations) International Plan of Action to fight illegal, unreported and unregulated fishing, and with due regard to European Union Regulation 1005/2008 establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, an article of the draft Convention concerning unlawful fishing under Section 5 on natural resources should be thus reinstated.

9. The Assembly notes that Chapter VIII of the draft Convention establishes a monitoring mechanism whose scope was reduced during the negotiations, despite the support of the Assembly's representatives for a stronger mechanism. After considering two options modelled on the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, "Istanbul Convention") (stronger option) and on the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention") (weaker option), the weaker option was retained. The currently proposed monitoring mechanism establishes the Committee of Parties with modalities of functioning to be determined by its own rules of procedure.

10. The Assembly notes with concern that, regarding the application of the Convention, the drafters have accepted a provision under Article 51.2 (on "Effects of this Convention") allowing European Union member States to apply between themselves European Union rules falling within the scope of this Convention "without prejudice to the full application of this Convention in their relations with other Parties". While this provision might facilitate the ratification of the Convention by European Union countries and the European Union itself, the wording of this clause sends a signal to other Parties about the exceptionalism of the group of European Union countries. Moreover, Article 56 dealing with reservations contains provisions for the European Union and its member States to limit the scope of the term "unlawful" in Article 3.a of the Convention, as well as the scope of the terms "domestic law" (which should be placed in the singular here in the French version), "domestic provisions", "protected" and "requirement" used for the purpose of defining offences under Articles 13, 14, 19 to 22 and 26 to 30 of this Convention.

11. In order to strengthen the balance of provisions, render the draft Convention more comprehensive and enable a more effective prosecution of environmental crimes, the Assembly proposes the following amendments to the draft Convention:

11.1. in the sentence of the Preamble that refers to Assembly resolutions and recommendations, after the words "that call for the recognition" add the words "and legal codification";

11.2. in the English version of the draft Convention, in the sentence of the Preamble that refers to the resolutions by the General Assembly of the United Nations, after the words "A/RES/76/185 of" replace the words "11 January 2022" with the words "16 December 2021";

11.3. in Articles 12, 16, 17, 18, 20, 21 and 23, after the words "when committed unlawfully and intentionally" add the words "or with negligence";

11.4. in Article 16, replace the word "or" before the word "export" with a comma and after the word "export" add the words "or release", given the particular toxicity and cumulative effects of even small quantities of mercury or mercury-containing products;

11.5. in Article 25, before the words "the placing on the market of unlawfully harvested timber" add the words "unlawful harvesting of timber and" and reword the title of this article to read "Offences related to unlawful harvesting of timber and related trade";

11.6. after Article 24, add the following new article:

*"Unlawful (illegal, unreported and unregulated) fishing"*

*1. Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws, administrative regulations or decisions taken by competent authorities, including the catching, placing on the market, processing, importing, or exporting of the products of such activities, except for cases where the conduct concerns a negligible quantity.*

*2. Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, which*

*have not been reported to that State or have been misreported to the relevant national authority, in contravention of national laws, administrative regulations or decisions taken by competent authorities of that State, except for cases where the conduct concerns a negligible quantity.*

*3. Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, fishing through the use of fishing techniques or other instruments that are destructive or non-selective with regard to wildlife, or that cause or are likely to cause the mass destruction of marine animals, plants and their environment."*

11.7. in Articles 27 and 28, replace the words "protected wild fauna or flora" with the words "protected wild fauna, flora or fungi", including in the title of these articles, given that fungi are neither plants nor animals but a category apart;

11.8. in the French version of Article 31, after the words "*des dommages irréversibles, étendus et substantiels*," add the translation of the words "or causes long-lasting, widespread and substantial damage", which is missing in French and should be as follows: "*ou cause des dommages de longue durée, étendus et substantiels*";

11.9. in Article 39 on the right to participate in proceedings, after the words "in accordance with this Convention," add the words "as well as the right to request the initiation of a judicial review of any decision not to prosecute,";

11.10. delete 56.3.b, thus narrowing the scope of reservations;

11.11. if the proposal above is not retained, in Article 56.3.b of the French version, replace the words "*droits internes*" with the words "*droit interne*", as in the rest of the draft Convention.

12. Finally, the Assembly asks the Committee of Ministers that appropriate resources be allocated to promote the signature and ratification of this Convention once it is launched with a view to ensuring its entry into force as soon as possible.

## B. Explanatory memorandum by Ms Yuliia Ovchynnykova, rapporteur

### 1. Introduction and background

1. Over the last decade we have seen a growing collective awareness by the international community of the need for stronger action to protect the environment. Thus, the United Nations Sustainable Development Agenda and the Paris Agreement on Climate Change were adopted in 2015, the European Green Deal was launched in 2019, and Council of Europe member States recognised the urgency of action on the triple planetary crisis by committing – through the 2023 Reykjavik Declaration – to work “on the human rights aspects of the environment based on the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 ‘The human right to a clean, healthy and sustainable environment’, and by pursuing the implementation of Committee of Ministers Recommendation CM/Rec(2022)20 on human rights and the protection of the environment”.

2. The Parliamentary Assembly has followed these international and European processes by pleading for stronger legal instruments that would engage European nations into concrete action to better protect our living environment. I wish to single out Assembly Recommendation 2213 (2021) “Addressing issues of criminal and civil liability in the context of climate change”, which has asked the Committee of Ministers to “conduct a study on the notion of “ecocide”, its introduction into domestic legislation and its possible universal recognition” and to “draft without delay a new legal instrument to replace the Convention on the Protection of the Environment through Criminal Law (ETS No. 172), which remains unimplemented due to the lack of ratifications”.

3. The Assembly reiterated this call through its Recommendation 2246 (2023) “Environmental impact of armed conflicts” by asking the Committee of Ministers to “ensure that the revised version of the Convention on the Protection of the Environment through Criminal Law (ETS No. 172) being prepared by the Council of Europe applies also in the context of armed conflicts, wars or occupation, and that it covers ecocide”. Moreover, Recommendation 2272 (2024) “Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process” insisted on the need for the new draft Convention to incorporate the notion of ecocide as a criminal offence and to establish an effective monitoring mechanism. I greatly appreciate the decision of the Committee of Ministers to set up a drafting group (PC-ENV) tasked with the preparation of the new criminal law convention on the protection of the environment. I have represented our Assembly, together with colleagues from the Assembly’s Committee on Legal Affairs and Human Rights, in the work of this drafting group.

4. The PC-ENV completed its work on the new draft Convention and the related draft Explanatory Report in October 2024. Following the validation of these two draft texts by the European Committee on Crime Problems, the Committee of Ministers decided to transmit them on 26 February 2025 to the Assembly for a statutory opinion. The Assembly seized the Committee on Social Affairs, Health and Sustainable Development for a report on this matter and I was appointed rapporteur.

5. This report will first present a brief overview of the negotiation process that led to the conclusion of the draft texts as they stand (see Appendices 1 and 2 in [Doc. 16120](#)) at present. I will then give my observations and assessment on these draft texts and will propose some amendments for the consideration and endorsement of the Assembly. I wish to thank my colleagues Thórhildur Sunna Ævarsdóttir (Iceland, SOC) and Constantinos Efstathiou (Cyprus, SOC), members of the Assembly’s Committee on Legal Affairs and Human Rights, for their support and contribution to the process of drawing up the draft Convention, as well as the secretariat for fruitful co-operation in the preparation of this report.

### 2. The negotiations on and the main features of the draft Convention

6. The PC-ENV was entrusted with the preparation of a new Council of Europe Convention on the Protection of the Environment through Criminal Law, replacing and superseding the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No.172), which has never entered into force. There are different opinions on why the original convention failed to attract the requisite number of ratifications. Some have alleged that certain features of the old convention did not meet the endorsement of many member States; others believe that the old text did not pass the scrutiny of time as many new legal developments occurred after the launch of that legal instrument for signature; and finally, too little attention was paid to the promotion of this text while member States of the European Union (EU) adopted Directive 2008/99 on the protection of the environment through criminal law (“the 2008 Directive”).

7. It is important to note that an evaluation of the 2008 Directive revealed serious problems with the enforcement of criminal law regarding environmental issues in EU member States.<sup>3</sup> Critics also pointed out problems with the definition of unlawfulness, appropriate remedies for environmental harm and lack of capacity at the European level to monitor compliance of the implementation of domestic environmental law. The EU adopted a new environmental crime directive on 11 April 2024 right before the PC-ENV finalised the text of the new draft Convention of the Council of Europe. The EU negotiators were very significantly involved in the process in Strasbourg. In fact, they dominated in the negotiations on the Council of Europe Convention.

8. The PC-ENV held five meetings between April 2023 and October 2024. Its work was based on contributions from experts on environmental crime, notably representatives designated by member States, observer States and certain entities of the Council of Europe, such as the Assembly, the Office of the Commissioner on Human Rights and the European Court of Human Rights. Selected international and European organisations were very actively involved (the EU represented by the European Commission, the UN, INTERPOL and non-governmental organisations such as the Global Initiative to End Wildlife Crime, Wild Legal and the Wildlife Justice Commission).

9. The draft Council of Europe Convention builds on a number of international treaties and legal standards relating to environmental protection, human rights and transnational crime, including a series of Council of Europe legal instruments, as listed in the Preamble to the Convention.<sup>4</sup> The Assembly's call for the recognition and codification of ecocide is partly included in the Preamble which also refers to the fact that ecocide "is already covered by the law of certain member States of the Council of Europe and is being discussed at the international level". However, this formulation does not encourage our member States to consider joining the ranks of countries that have codified ecocide through national criminal law.

10. The stated purpose of the new draft Convention is to prevent and combat environmental crime, promote national and international co-operation and establish minimum legal standards for States as regards environmental crime, so as to enhance the protection of the environment. The 58 articles in the Convention, grouped into chapters and sections, cover the main areas (purposes, scope, definitions; integrated policies and data collection; prevention; substantive criminal law; investigation, prosecution and procedural law; international co-operation; measures for the protection of victims, witnesses and persons who report offences or co-operate with justice authorities; monitoring mechanism; relationship with other sources of international law; amendments to the Convention; final clauses).

11. I welcome the drafters' emphasis on prevention through awareness-raising among the general public and co-operation with civil society and non-governmental organisations. I also appreciate that in terms of scope the new draft Convention "shall apply in times of peace and in situations of armed conflict, wartime or occupation", a provision that was included following the Assembly's proposal. The original convention (ETS No. 172) did not include such a provision.

12. Article 3 of the new draft Convention provides definitions of the terms "unlawful", "water", "ecosystem" and "waste". As mentioned in paragraph 7 above, the term "unlawful" was one of the problematic aspects of the EU's 2008 Directive, which was subsequently fixed through the new directive in 2024, and the new draft Convention of the Council of Europe also takes this development into account. The definition of "ecosystem" helpfully provides comprehensive coverage of "a dynamic complex of plant, fungi, animal and micro-organism communities" and their environment which interact closely and include various habitats. The Convention seeks to protect the environment in a wide sense, encompassing all natural resources (such as air, soil, and water, ecosystems and the services and functions they provide, wild fauna and flora, and habitats). However, biodiversity-related offences listed under Articles 27 to 29 do not mention fungi, which are neither plants nor animals but rather a separate kingdom of life.

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3. Evaluation of the Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Environmental Crime Directive), SWD(2020) 259 final, 28 October 2020.

4. Notably, the European Convention on Human Rights (ETS No. 5), the Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), the Council of Europe Landscape Convention (ETS No. 176) and the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30); the UN Framework Convention on Climate Change (1992) and the Paris Agreement, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998), the UN Convention against Transnational Organized Crime (2000), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973) and the UN Convention on Biological Diversity (1992).

13. The new draft Convention, being the first international legally binding instrument to address environmental crime, covers a broad range of criminal acts (“offences”) that aggravate the triple planetary crisis of climate change, pollution and biodiversity loss. It will guide States in the prevention, prosecution and sanctioning of the most serious criminal offences such as unlawful pollution, unlawful management of hazardous waste, unlawful operation or closure of installations concerning dangerous activities or substances, unlawful recycling of ships and ship-source discharges of polluting substances, unlawful mining and trade in unlawfully harvested timber, unlawful trading in wild fauna or flora and the unlawful deterioration of protected habitats.

14. The drafters of the Convention have recognised that the criminal offences relating to intentional unlawful conduct as specified in the text can lead to particularly severe – irreversible or long-lasting, widespread and substantial – harm to the environment or destruction caused by intentional acts. Accordingly, the Convention includes a provision entitled “particularly serious offence”, encompassing conduct comparable to “ecocide”, which is already covered by the law of certain member States of the Council of Europe and which is being discussed in international forums. While welcoming the inclusion of this provision, I regret that the Council of Europe missed the opportunity to play a pioneering role in offering a possible definition of ecocide (for example, based on the work of the Independent Expert Panel for the Legal Definition of Ecocide<sup>5</sup>) in this context in order to guide our member States towards aligning an understanding of this legal concept, which would merit being explicitly codified in national law.

15. The new draft Convention contains specific provisions concerning jurisdictional reach (covering both national and extraterritorial offences), corporate responsibility and the sanctions and aggravating circumstances for sentencing (such as when the offence led to “severe and widespread, or severe and long-term, or severe and irreversible damage” to an ecosystem; involvement in organised crime; offences committed by public officials; or offences generating substantial financial gains for the perpetrator). With regard to jurisdictional reach and liability of legal persons (Articles 33 and 34), I note that Parties to the Convention will be required to establish jurisdiction over any offences specified in the text when they are committed, *inter alia*, by their nationals not only on the territory of the Party but also that of another State;<sup>6</sup> criminal liability of legal persons can only be invoked by the Party on its own territory.

16. Article 35 of the draft Convention outlines sanctions and measures to ensure that the offences set out in the draft Convention are effectively punishable while taking into account the gravity of the offence committed. This article also includes some positive measures such as an obligation for Parties to “establish due diligence schemes for enhancing compliance with environmental standards”. Moreover, the provisions on the freezing, seizure and confiscation of proceeds of crime (or property of equivalent value) that derive from offences covered by the Convention have a dissuasive effect – provided that information is disseminated widely and the prosecution is effective.

17. We should note and welcome provisions aimed at developing a transversal approach to the protection of the environment by acknowledging the need to strengthen national strategies, resources, training of professionals and protection of victims, witnesses, whistle-blowers and persons co-operating with the authorities, as well as to promote international co-operation, which are all crucial to effectively prosecuting environmental crimes across borders.

18. Chapter VIII of the draft Convention establishes a light monitoring mechanism whose ambition was significantly reduced during the negotiations despite the support of Assembly representatives for a stronger mechanism. After considering two options modelled on the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, “Istanbul Convention”) (stronger option) and on the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, “Lanzarote Convention”) (weaker option), the weaker option was retained. The currently proposed monitoring mechanism foresees to establish a Committee of Parties with the modalities of functioning to be determined by its own rules of procedure. The Assembly, the Commissioner for Human Rights, the European Committee on Crime Problems and other relevant Council of Europe intergovernmental committees will be asked to appoint a representative to the Committee of the Parties while civil society and NGO representatives may be admitted as observers. Only States Parties to the Convention will have the right to vote in the future Committee of the Parties.

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5. See <https://ecocidelaw.com/definition/>.

6. Although it should also be noted that Article 56.2 on reservations allows Parties to reserve the right not to apply this jurisdiction or only to do so in specific cases or conditions.

19. Importantly, as with all recent legal instruments of the Council of Europe, this Convention will be open for signature by non-member States and the European Union (Articles 53 and 54). In line with established practice, the text specifies that accession is open to “the non-member States which have participated in its elaboration”; other non-member States may be invited to accede to the Convention – after its entry into force – upon invitation by the Committee of Ministers and by unanimous vote of the Parties entitled to sit on the Committee of Ministers. The Convention shall enter into force after ten ratifications, including by at least eight member States of the Council of Europe.

20. With regard to the application of the draft Convention, the drafters have accepted a provision under Article 51.2. allowing EU member States to apply between themselves EU regulations falling within the scope of this draft Convention. This should facilitate the accession of EU countries and the EU itself to the Convention. At the same time, the wording of this clause sends a signal to other Parties about the exceptionalism of the group of EU countries. Similarly, Article 56 dealing with reservations contains complex opt-outs for the European Union and EU countries concerning the scope of interpretation of the terms “unlawful”, “domestic law”, “domestic provisions”, “protected” and “requirement” used for the purpose of defining offences under Articles 13, 14, 19 to 22 and 26 to 30 of this Convention.

### 3. Areas for improvement of the draft Convention

21. While welcoming the conclusion of work of the drafting group on the new draft Convention, I believe that there are good reasons to raise the level of ambition for this Council of Europe legal instrument, which should reflect even more strongly the values we stand for. I am aware that corporate lobbies have been working hard in different European capitals to influence the negotiating positions and dilute the draft text. Parliamentarians should be aware that some offences were taken out from the draft text at the request of the EU delegates. Thus, the offence related to unlawful fishing was removed from the draft Convention.

22. In the same spirit, the Assembly should insist not only on the recognition of ecocide as softly mentioned in the Preamble, which refers to relevant Assembly resolutions and recommendations, but also on its codification within the domestic and international legal order. This would be a more complete reference to the Assembly’s position expressed on several occasions (notably through Recommendation 2246 (2023) and Recommendation 2272 (2024)). I therefore wish to propose that the words “and legal codification” be added before the words “of ecocide” in the Preamble.

23. This would help recognise the efforts of the Council of Europe member States that already have legal provisions on ecocide in their domestic law (such as for example my own country Ukraine, as well as Armenia, Belgium, France, Georgia, the Republic of Moldova) and would encourage those that do not to consider doing this at the earliest opportunity. Having provisions on ecocide has its importance for the prevention of particularly serious harm to the environment at national level through the dissuasive power.

24. We should recall that the issue of ecocide has been increasingly discussed on the international stage, providing an opportunity for various initiatives to attract greater support and recognition. Since the Russian Federation’s full-scale war of aggression against Ukraine, damage to the environment is scarring Ukraine. Notable examples include the destruction of the Kakhovka hydropower plant and the systematic devastation of ecosystems in eastern Ukraine; they constitute what can be described as ecocide or a particularly serious crime under the draft Convention because of the deliberate, long-term, widespread and substantial environmental destruction caused. Gaps in the international legal framework can lead to irresponsible behaviour and impunity. For instance, Russian drone attacks on the shelter of Reactor 4 at the Chornobyl Nuclear Power Plant could lead to a massive release of radiation and environmental contamination affecting not only Ukraine but also a number of European countries.

25. In this context, we should recall that many stakeholders worldwide are working towards making ecocide recognised as a fifth international crime so that it could be prosecuted by the International Criminal Court (ICC). The EU’s new directive on the protection of the environment through criminal law of 11 April 2024<sup>7</sup> sets out minimum standards and increased penalties for a list of environmental offences including those that can constitute a “qualified offence” when they are committed intentionally and cause destruction or widespread and substantial damage that is long-lasting to the environment.

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7. Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law, replacing Directives 2008/99/EC and 2009/123/EC.



26. To better guide Parties, the Explanatory Report to the draft Council of Europe Convention could also make reference to the definition of ecocide as proposed by the Independent Expert Panel for the Legal Definition of Ecocide<sup>8</sup> and could include a tentative definition of the terms “irreversible”, “widespread”, “substantial” and “long-lasting” used in Article 31 of the draft Convention as was originally proposed during the negotiation process. This document should also lay the groundwork for the regulatory framework governing the concept of ecocide and comparable environmental crime by developing relevant criteria and a system for assessing compliance with these criteria, as well as determining the legal responsibility of States in this respect.

27. A number of articles relating to various offences, evoke acts committed unlawfully and intentionally. However, proving intention might be very difficult; adding the words “or with negligence” would facilitate the prosecution of reckless behaviour when such negligence can cause particularly extensive harm to the environment and/or death or serious injury of persons. I propose that these words be added in Articles 12, 16, 17, 18, 20, 21 and 23. Such negligent behaviour is also mentioned in the new EU Directive 2024/1203 on the protection of the environment through criminal law.<sup>9</sup>

28. Under Article 16 concerning offences related to mercury, the provisions tackle the unlawful and intentional “manufacture, use, storage, import or export of mercury, mercury compounds and mixtures of mercury and mercury-added products” when such conduct can cause death or serious harm to persons or the environment. However, any deliberate release of mercury or mercury-containing substances into the environment is not mentioned. I propose adding words “and release” after the word “export” so as to avoid any ambiguity.

29. Referring to comments under paragraph 21 above, bearing in mind the 2001 FAO (Food and Agriculture Organization of the United Nations) International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing<sup>10</sup> and with due regard to the EU Regulation to prevent, deter and eliminate illegal, unreported and unregulated fishing which entered into force on 1 January 2010,<sup>11</sup> I wish to propose to reinstate an article of the draft Convention concerning unlawful fishing under Section 5 on natural resources, as follows:

*“Unlawful (illegal, unreported and unregulated) fishing*

*1. Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws, administrative regulations or decisions taken by competent authorities, including the catching, placing on the market, processing, importing, or exporting of the products of such activities, except for cases where the conduct concerns a negligible quantity.*

*2. Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, fishing activities conducted by national or foreign fishing vessels in maritime waters under the jurisdiction of a State, which have not been reported to that State or have been misreported to the relevant national authority, in contravention of national laws, administrative regulations or decisions taken by competent authorities of that State, except for cases where the conduct concerns a negligible quantity.*

*3. Parties shall take the necessary legislative measures to establish as a criminal offence under their domestic law, when committed unlawfully and intentionally, fishing through the use of fishing techniques or other instruments that are destructive or non-selective with regard to wildlife, or that cause or are likely to cause the mass destruction of marine animals, plants and their environment.”*

30. Article 25 of the draft Convention is devoted to “Offences related to trade in unlawfully harvested timber”. However, it does not mention illegal logging and centres only on the trade-related aspects of unlawfully harvested timber. Yet, illegal logging can occur both in Europe and beyond; it can be carried out for purposes other than trade. While the EU legal framework covers illegal logging and associated trade

8. The proposed definition reads as follows: “‘ecocide’ means 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”.

9. See <https://eur-lex.europa.eu/eli/dir/2024/1203/oj/eng>, page 17.

10. See [www.fao.org/iuu-fishing/international-framework/ipoa-iuu/en/](http://www.fao.org/iuu-fishing/international-framework/ipoa-iuu/en/).

11. Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004 and repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1408984470270&uri=CELEX:02008R1005-20110309>.

(Regulation (EU) 995/2010 and Regulation (EC) 2173/2005), as well as deforestation-free products (Regulation (EU) 2023/1115), aiming to address all deforestation and forest degradation to produce commodities, it only applies to EU countries.<sup>12</sup> As the Council of Europe Convention covers a much broader geographical area, it is necessary to make this article more comprehensive by adding the words “unlawful harvesting of timber and” before the words “the placing on the market of unlawfully harvested timber”.

31. Articles 27 to 29 of the draft Convention deal with offences related to unlawful acts concerning protected wild fauna, flora and habitats. However, they do not cover fungi (such as mushrooms), which are neither plants nor animals but a category apart. To make the draft Convention more comprehensive and inclusive, fungi could be explicitly listed together with protected wild fauna and flora under Articles 27 and 28.

32. Under Article 39 (Right to participate in proceedings), the Assembly should restate its support to the addition of words concerning judicial review by adding the words “as well as the right to request the initiation of a judicial review of any decision not to prosecute” after the words “in accordance with this Convention”. I believe this addition would strengthen the balance of the provision and render it more comprehensive.

#### 4. Conclusions

33. We should warmly welcome the conclusion of work on the draft Council of Europe Convention on the Protection of the Environment through Criminal Law. When the Committee of Ministers finalises, adopts and opens it for signature, as is hoped for on 14 May 2025 as part of the “environmental package” (also containing the draft Council of Europe Strategy on the Environment and an Action Plan), the new Convention would replace and supersede the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No.172).

34. This new Convention will be the first international legally binding instrument to address environmental crime, covering a wide range of offences, including a particularly serious offence that is comparable to ecocide. However, the list of offences omits unlawful fishing and illegal logging, much to our regret, which reflects the complexity of legal and commercial arguments to the detriment of environmental protection rationale. The new Convention will apply at all times, including times of peace and in situations of armed conflict, wartime or occupation; the original convention (ETS No. 172) did not include such a provision.

35. Ratification of the new Convention will be open to member States of the Council of Europe, non-member States that have participated in its creation and the European Union. Other non-member States of the Council of Europe can be invited to accede to the Convention only after its entry into force with ten ratifications, acceptance or approval (including by at least eight member States of the Council of Europe) and the unanimous agreement of the Parties that are member States of the Council of Europe. It is to be hoped that the Multidisciplinary Group for the Environment and its successor will promote the new legal instrument and will facilitate swift accession by States.

36. We should note the significant, in fact dominant, involvement of the EU in the drafting of the Convention. While this contribution was most valuable on certain aspects of the new Convention, it also served to lower the level of ambition for the Council of Europe legal instrument, especially with regard to the weaker option for the monitoring mechanism chosen, an opt-out provision for EU countries in terms of reservations and the exclusion of the offence of unlawful fishing. Although this approach might facilitate the accession of the European Union and its member States to the new Convention, the weakening of provisions creates an uneven playing field and reduces the added value of the Convention. I do hope that the draft Convention can still be strengthened by including the proposals for additions by the Assembly.

37. I therefore propose for the Assembly’s statutory opinion to include several amendments concerning the call to the member States of the Council of Europe to codify the notion of ecocide within the domestic and international legal order, as well as additional words concerning offences related to mercury, unlawful fishing and unlawful logging, negligent behaviour and with regard to judicial review of criminal proceedings to ensure more comprehensive coverage of criminal behaviour. Finally, the Assembly should in due course join the collective effort to promote the signature of the new Convention by the member States of the Council of Europe and States whose Parliament enjoys observer or partner for democracy status.

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12. See [https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products\\_en](https://environment.ec.europa.eu/topics/forests/deforestation/regulation-deforestation-free-products_en).