

# The New Legal Order of Environmental Accountability

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In this article, **Dr. Sarah Demicoli** examines how global legal systems are shifting from viewing environmental harm as a policy issue to a matter of strict legal responsibility. Driven by the accelerating climate crisis, this 'new legal order' is emerging through an increased focus on human rights, where the European Court of Human Rights is holding states accountable for environmental failures, and a turning point in criminal law through new EU rules that introduce prison sentences for serious environmental damage. Simultaneously, international efforts are growing to recognise ecocide as a core crime, while new EU corporate directives are turning voluntary green reporting into mandatory legal duties for companies. Using Malta as a case study, the piece highlights the gap between passing ambitious laws and the practical challenges of enforcing them. It concludes that while the legal framework is strengthening, its success depends on whether institutions can keep pace with rapid ecological collapse.

**TAGS:** Environmental Law, Sustainability, Environmental Social Governance, Climate Change, Accountability, Ecocide

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## **Note**

**T**his article provides a preliminary overview and thematic extension of the full-length article, 'The New Legal Order of Environmental Accountability', forthcoming in the XXXVIth edition of *Id-Dritt*.

While the principal study focuses on environmental human rights and criminal accountability, this piece introduces complementary corporate and ESG developments.

Both the forthcoming primary publication and this supplemental article were finalised in August 2025. A subsequent follow-up piece is intended for publication after May 2026 to evaluate further developments occurring in international jurisprudence, EU regulatory frameworks, and national environmental policy.

## **Introduction**

Environmental degradation is no longer a hypothetical risk. It is a measurable and accelerating crisis, one that is actively reshaping legal systems. In July 2025, sea surface temperatures in the western Mediterranean reached 31°C, up to 8°C above the seasonal norm, marking the most extreme marine heatwave on record in the region. Climatologists described the event as a 'once-in-a-billion' anomaly, linked to a persistent heat dome and attributed to anthropogenic climate change.

This event, though striking, is not an outlier. It forms part of a broader and intensifying trend of ecological destabilisation, prompting not just scientific concern but a legal reckoning. A new legal order appears to be emerging, one that reframes environmental harm as a matter of enforceable legal responsibility rather than merely a policy or regulatory concern.

## **A Crisis Quantified: Legal Systems under Pressure**

The Global Risks Report 2025 published by the World Economic Forum identifies environmental risks, particularly extreme weather, biodiversity loss, and ecosystem collapse, as the most severe long-term threats to global stability. Notably, extreme weather tops the risk hierarchy for the second consecutive year.

By contrast, technological risks, including those associated with artificial intelligence, while heavily prioritised in institutional and media narratives, rank lower in terms of projected impact. This contrast is telling: the law is adapting swiftly to emerging digital threats yet its response to escalating environmental collapse often remains fragmented, reactive, or under-

enforced. This gap between regulatory attention and ecological urgency raises important questions about institutional priorities and legal readiness.

## **Environmental Harm as a Human Rights Issue**

Within Europe, the European Court of Human Rights (ECtHR) has begun to interpret the European Convention on Human Rights as a living instrument capable of addressing environmental harm. Article 2 dealing with the right to life and Article 8 addressing the right to respect for private and family life, have been used to hold states accountable for their failures to prevent or mitigate environmental risks, particularly in the context of environmental pollution and climate change.

At the same time, calls for codification persist. Despite significant jurisprudential developments, the Convention does not yet contain an explicit right to a clean, healthy and sustainable environment. This legal lacuna has prompted renewed discussions about the potential of a new Protocol to enshrine environmental rights more clearly within the Convention's framework.

During the ECtHR's 75th anniversary conference in Strasbourg in May 2025, Court officials reflected on the evolving challenges facing European human rights law. While artificial intelligence and digital surveillance took centre stage in the judicial seminar, environmental protection, though equally systemic and urgent, remained marginal in the formal agenda. The discrepancy between institutional focus and ecological necessity highlights a broader tension: the law is evolving, but not always in step with the most urgent global risks.

## **The Criminal Turn: Environmental Harm as a Crime**

Beyond human rights law, criminal law is also transforming. The European Union's Directive (EU) 2024/1203 on environmental crime significantly expands Member States' obligations to criminalise and penalise serious environmental harm. The Directive introduces 'qualified offences' for conduct causing irreversible or long-lasting damage to ecosystems, mandates criminal liability for both natural and legal persons, and raises penalties to include prison terms of up to ten years and fines based on corporate turnover.

While the Directive does not explicitly refer to 'ecocide', Recital 21 acknowledges its relevance by noting that some Member States already treat such conduct under that rubric. The influence of ecocide as a normative framework is therefore evident, even if not formally adopted.

Globally, the idea of ecocide, defined in 2021 by an Independent Expert Panel as 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage

to the environment' is gaining traction. In late 2024, several Pacific Island states proposed an amendment to the Rome Statute to include ecocide as a fifth core international crime. The International Criminal Court Prosecutor responded with a policy paper outlining current avenues for addressing environmental harm within the existing Statute, while leaving open the possibility of future codification.

The legal, political, and practical challenges of such an inclusion remain significant. However, the momentum reflects a broader shift: environmental destruction is increasingly viewed as a matter of justice, and potentially, international criminal responsibility.

## **Corporate Accountability and ESG: A Parallel Shift**

A key dimension of this legal evolution involves corporate actors. Although the forthcoming publication in *Id-Dritt* will not address this aspect, it is worth noting here that the convergence of environmental law and corporate accountability is reshaping legal obligations in both public and private sectors.

The European Union has been at the forefront of this shift. The Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) establish legally binding duties for companies to assess, disclose, and mitigate environmental and human rights risks across their operations and supply chains. These obligations move Environmental, Social and Governance (ESG) considerations from simply voluntary reporting into the realm of enforceable compliance.

The consequences are increasingly tangible. Companies that fail to comply may face civil liability, regulatory sanctions, and reputational harm. There is also growing discussion as to whether ESG-related obligations might intersect with emerging concepts in environmental criminal law, particularly where gross negligence or systemic disregard for environmental harm is involved.

While these corporate law developments fall outside the scope of the forthcoming publication in *Id-Dritt*, they represent a crucial part of the broader legal picture: environmental accountability is no longer confined to state actors alone.

## **Malta as a Case Study in Legal Transition**

Malta provides a microcosm of the broader challenges facing smaller jurisdictions. Although the 2018 constitutional amendment introduced a state obligation to protect the environment for present and future

generations, this provision remains part of the non-justiciable Declaration of Principles. Criminal environmental law remains relatively underdeveloped, and the full transposition of Directive 2024/1203 is still pending.

Although Malta has established institutions such as the Environment and Resources Authority (ERA) and the Malta Climate Action Authority (MCAA), enforcement and inter-agency coordination remain limited. Structural reform is underway, *inter alia*, a proposed overhaul of the Environment and Planning Review Tribunal (EPRT), but a comprehensive national strategy for transposing the EU Directive has yet to materialise.

Civil society has responded with increasing legal mobilisation. NGOs such as Repubblika are invoking the EU Charter of Fundamental Rights and international environmental law to challenge policy changes they perceive as weakening environmental protections. Academic and legal discourse is also intensifying, with growing interest in topics such as ecocide, climate litigation, and constitutional reform.

Malta's experience highlights the implementation gap that persists even in jurisdictions formally aligned with EU law. It underscores the reality that legal frameworks are only as effective as the institutions that enforce them.

## **Conclusion: Between Momentum and Uncertainty**

A new legal order of environmental accountability is taking shape. Courts, legislatures, and civil society actors are moving toward a model that treats environmental degradation not just as a regulatory infraction, but as a matter of rights, criminal responsibility, and cross-sectoral legal duty.

Yet much remains unsettled. The scope of judicial review, the balance between state sovereignty and supranational enforcement, the role of corporations in environmental harm, and the practicalities of transposing ambitious legal standards into domestic law are all unresolved questions.

What is clear is that environmental law can no longer afford to remain static. Legal systems are being tested by ecological realities that defy traditional boundaries: jurisdictional, doctrinal, and disciplinary. Whether these systems adapt quickly and coherently enough remains an open question.



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