

**The fight against transnational environmental crime:
a legal framework****مكافحة الجريمة البيئية العابرة للحدود: الإطار القانوني**

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Transnational environmental crime is one of the fastest growing areas of cross border criminal enterprise involving high profits and low risk for those involved in wild life smuggling, the black market of ozone depleting substances, and the illegal trade of hazardous and toxic waste. It is increasingly characterized by commodity specific smuggling networks, the intrusion of criminal groups involved in other forms of illegal trade and in some cases politically motivated organizations for whom this generates income to support other activities. But unlike other forms of transnational crime, there is no international treaty to prevent, suppress, and punish those transnational environmental crimes. The global regulatory and enforcement community has therefore developed innovative collaborative mechanisms to meet both the criminal and the environmental challenges associated to this increasingly serious form of cross border crime. Despite their successes, their efforts remain under- resourced. This research paper examines the challenges of transnational environmental crime and efforts to respond to those challenges in the face of uncertain resources and limited awareness.

Keywords: fight- transnational- environmental crime- eco-mafia- response.

Résumé

La criminalité environnementale transnationale est l'un des secteurs les plus dynamiques de la criminalité transfrontalière, avec des profits élevés et des risques faibles pour ceux qui sont impliqués dans le trafic de la vie sauvage,

le marché noir des substances appauvrissant la couche d'ozone et le commerce illégal des déchets dangereux et toxiques. Il est de plus en plus caractérisé par des réseaux de contrebande spécifiques aux produits, l'intrusion de groupes criminels impliqués dans d'autres formes de commerce illégal et, dans certains cas, des organisations à motivation politique pour lesquelles cela génère des revenus pour soutenir d'autres activités. Mais contrairement à d'autres formes de criminalité transnationale, il n'existe aucun traité international pour prévenir, réprimer et punir ces crimes environnementaux transnationaux. La communauté mondiale de la réglementation et de l'application a donc mis au point des mécanismes de collaboration novateurs pour relever les défis à la fois criminels et environnementaux associés à cette forme de plus en plus grave de criminalité transfrontalière. Malgré leurs succès, leurs efforts restent sous-financés. Ce document de recherche examine les défis posés par la criminalité environnementale transnationale et les efforts déployés pour y répondre, compte tenu des ressources incertaines et du manque de sensibilisation.

Mots-clés : lutte- transnational- criminalité environnementale- éco-mafia- réponse

Introduction

Transnational environmental crime is one of the many reasons why our planet is in peril. Such crimes include the dumping of toxic waste, land, air and water pollution, also, the illegal trade of plants and animals, in ways that cross borders and, in many instances, has a global dimension. Transnational environmental crime also extends to “harm”, these include transgression that are harmful to humans, environments and nonhuman animals, regardless of legality *per se* (harm occurs whether or not the activity is legal or illegal); and environment-related harms that are facilitated by the State, corporations and other powerful actors in ways that allow or condone environmentally harmful practices.

Environmental crime is a rising challenge for developed and developing countries. It is often transnational in nature; this form of criminal activity involves, amongst others, the trafficking in natural resources including forest products and wildlife, illegal fishing, hazardous waste

movement and illegal exploitation of and trafficking in minerals and precious stones.

It can't be denied that environmental crimes destroy natural capital and reduce ecosystem resilience (including the socio-ecological ecosystems of which humans are an integral part), are threats to national security. It is important to note, however, that the more widespread and irreparable crimes, such as the illegal trade in wild- life or the emission of hazardous waste contrary to international conventions, are threats to global environmental security.

There is no other way to view, for example, massive illegal fishing operations that, coupled with habitual legal overfishing, drive fish stocks to near-extinction. Those crimes are often linked to organized crime cartels, which are doubling-up on drug, arms, and human trafficking, money laundering, and other combinations.

If transnational environmental crime is tied inextricably to environmental security, it is also tied to environmental justice at the global level. For example, the shipping of hazardous waste by industrial companies was considered an environmental injustice long before it was treated as an environmental crime, though it is clearly viewed as the latter today.

However, we also need to be careful that, as transnational environmental crime legislation and conventions proliferate in response to several ecological crises, we don't permit this to be used to the detriment to local communities for political gain. This too applies to environmental security in the broader sense, since it can be seen as a justification for greater state control and even military involvement.

Environmental crime typically refers to any breach of a national or international environmental law or convention that exists to ensure the conservation and sustainability of the world's environment, so **what is the context of transnational environmental crime and what are the mechanisms to fight it?**

This research paper will deal with the conceptual framework of transnational environmental crime, by addressing its definition and its aspects, also the mechanisms of fighting it at all the levels, and the ways to prevent it as follow:

Section one: a conceptual framework of transnational environmental crime

Sub-section 1: definition of transnational environmental crime

Sub-section 2: aspects of transnational environmental crime

Section two: the mechanisms to fight transnational environmental crime

Sub-section 1: responding to transnational environmental crime

Sub-section 2: Preventing environmental crime

Conclusion

Section one: a conceptual framework of transnational environmental crime

Transnational environmental crime is both a challenging reality and a legal concept in the making. From an international law point of view, this concept is currently being defined by soft law instruments that are transmitting normative expectations about the way States may address it rather than prescribing legal provisions. These instruments are paving the way for the future development of international agreements and play an important part in the foundations of institutional and inter-state cooperation. We are going first to address the definition of transnational environmental crime then its characteristics as follow:

Sub-section 1: definition of transnational environmental crime

There is no fixed definition of environmental crime, and the behaviors encompassed are varied including illegal waste discharges, fly tipping and illegal logging. Environmental law includes offences relating to neighbor noise, graffiti, littering, dog mess, wildlife and countryside, planning and

rights of way, but many commentators concentrate on environmental offences concerning pollution and waste. In legal terms, then, the concept of the environment is much narrower than that considered by eco-criminologists, and offences involving nonhuman animals are rarely considered (perhaps with the exception of the illicit trade in endangered species, or the presence of nonhuman animals that may cause harm to the environment or public health)¹.

Environmental crime covers the gamut of activities that breach environmental legislation and cause significant harm or risk to the environment, human health, or both.

Waste trafficking demonstrates the extent of the problem. The use of legal business structures by criminal actors are an inherent feature of this crime area. In many cases, criminal actors and legal businesses are indistinguishable. As part of this development, criminals involved in waste trafficking have moved towards the more complex business model of illicit waste management rather than simply illegally dumping waste².

Environmental criminality in general is a relatively new form of crime, both in the national legislation and at the international level. This special form of crime towards the environment tends to be on the periphery of criminal legal discourse. Crimes with a direct human connection (e.g. homicide) or with a financial aspect (e.g. fraud) receive more attention. In short, “environmental crime” occurs when individuals, corporate entities or states deliberately neglect environmental laws and regulations for profit³.

Environmental crime lacks a universally agreed definition but has been referred to by the United Nations Environment Program (UNEP) as ‘illegal activities harming the environment and aimed at benefiting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources, including, but not limited to serious crimes and transnational organized crime’⁴.

The UN Convention against Transnational Organized Crime defines an “organized criminal group as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing

one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”⁵.

The five most prevalent types of activity currently encompassed by environmental crime include illegal mining and trade in minerals such as oil, gold, diamonds, cobalt, zinc, Colton and lithium; illegal logging/deforestation and trade in timber; unreported and unregulated fishing; wildlife crime; and pollution crimes (the illegal dumping and trade of chemicals and waste, and the illegal production and trade of ozone-depleting substances)⁶.

Transnational environmental crime, on the other hand, has been the subject of numerous scholarly efforts to arrive at a common definition, and forms of it are already integrated into hundreds of national legislative efforts, though, as *Mégret* suggests, “laws addressing environmental crimes are traditionally seen as an extension of public and administrative laws protecting the environment, rather than as a fully developed branch of criminal law”⁷

Sub- section 2: aspects of transnational environmental crime⁸

The term “environmental crime” covers a broad range of specific offences where criminal acts or misdemeanors involve trade in environmental commodities or damage to the natural environment itself, such as pollution of air, water or earth. The actions conducted often cause harm that has an impact not only to wildlife and natural habitat but also pose a direct or indirect threat to human health, wellbeing, and security, or result in material loss to an individual or group.

We are going to address the aspects of environmental crime as follow:

1. Forest Crimes and Illegal Logging

Forests are destroyed to supply a global furniture industry and to clear land for development or infrastructure and agricultural use such as the growing of rubber, soya or oil-palm, used in hundreds of everyday products. Alongside the legitimate trade in timber comes an insatiable illegal trade resulting in deforestation on a mass scale and timber traded in vast quantities, laundered through countries, re- labelled and sold into industry across the

globe⁹. Illegal logging is estimated to account for between 50-90% of all forest activities in key producer countries and 15-30% of all wood traded globally¹⁰.

Forest crimes are also linked to destruction of habitats and killing of endangered species, and contribute to changes in climate, removing natural carbon dioxide sinks and warming the planet as a result of high levels of carbon dioxide released when trees are destroyed.

2. Hazardous Waste

The disposal of electronic, hazardous and other polluting waste is a global issue and one that is increasing with the population and ever-increasing demand for consumable goods. Whilst many countries may have introduced effective and appropriate measures for disposal of waste, the export of waste and transportation over long distances raises challenges to monitor that disposal¹¹.

Criminals exploit these challenges by dumping waste in countries where monitoring and/or enforcement is ineffective. The consequences include pollution to land as chemicals leach into soil and waterways, harm to people who come into contact with waste either deliberately or inadvertently, and damage to the atmosphere as a result of release of chemicals as waste degrades or is burnt¹².

This practice takes place from developed to developing countries since the former have the means and wealth to collect and export waste, while poorer countries may inadvertently allow dumping of waste and where poor legislation, investigatory powers and enforcement facilitate such exploitation¹³.

3. Ozone-depleting Substances

Ozone-depleting substances (ODS) are man-made chemicals used mainly as refrigerants but also for other purposes. They include chloro-flouro carbons, or CFCs, which gained notoriety in the 1970s when it was discovered that they contribute to the thinning of the ozone layer. Other ODS include halons, methyl bromide and hydro chlorofluorocarbons (HCFCs)¹⁴.

A layer of gasses surrounding the planet, the ozone layer protects life from the sun's harmful rays, which in humans can cause cancers and cataracts, and is detrimental to crop-growth. The release of ODS damages the ozone layer allowing harmful radiation through to the earth's surface¹⁵.

The scale of illegal ODS production and distribution¹⁶, along with the technology involved, are indicators of corporate criminality. There is a need for robust industry regulation and enforcement to introduce greater oversight of practices, ensuring they are ethical and legal. If States are to sign up to international agreements, compliance measures should be present to ensure that signature and ratification ensures response¹⁷.

3. Extractive Industries

The extractive industries sector involves raw commodities, which are taken from the earth such as oil and gas, minerals and precious metals, through processes including mining, dredging and quarrying¹⁸.

Carried out by private companies on an industrial scale, the practices require the concession of land by governments. Demand for commodities is soaring and invariably the richest sources of commodities are found in some of the world's poorest countries. If not managed carefully, extractive industries damage vital ecosystems, resulting in biodiversity loss, pollution of soil and water systems and damage to local livelihoods¹⁹.

Revenue from extraction should result in development of better social services for the country's people and a bridging of the gap between rich and poor. But what little does reach governments is often misappropriated and fuels the development of corrupt regimes and conflict²⁰.

The gap between the wealthy and poor in resource- rich countries is growing. Lack of transparency of earnings of extraction companies only serves to make enforcement more difficult if it is to take place at all in corrupt establishments.

Section two: The mechanisms to fight transnational environmental crime

Environmental crime has long been battering our planet, although the initiatives to fight against this threat have appeared recently. Global warming constitutes one of the greatest hazards faced by humanity; the highest policy-making institutions consider nowadays environment protection as one of their priorities. Several actors are included in this struggle, due to the fact that environmental issues necessarily have to be faced from a wide perspective, in this context, beyond each approach we analyze, crime is present somehow or other.

We are going to address first the responding to transnational environmental crime; then preventing environmental crimes as follow:

Sub-section 1: responding to transnational environmental crime

Environmental Security Unit brings together member countries, international organizations, civil society organizations and the private sector. There are many global enforcement teams which help dismantle the criminal networks behind environmental crime by providing law enforcement agencies with the tools and expertise they need to protect the environment from being exploited by criminals.

A- Implementing Policy Responses

States play arguably the most significant role in combating environmental crime. Determining and implementing national policy must be a key step to effective actions that see such policy impact upon and consequently prevent environmental crime at all levels.

While international policy is also relevant, it is a challenge to see that agreements made at a national level are implemented locally. Knowledge within international organizations and national agencies is often limited to a few individuals, particularly where an agency or department responsible for environment is suddenly faced with having to address organized crime²¹.

B- Improving Legal Frameworks

Whilst environmental crime is a global problem, some countries lack specific legislation tailor- made to tackle it, although many are evolving such legislation. Penalties vary from country to country, for example smuggling of ozone-depleting substances in the US can attract a prison sentence while in Afghanistan it is treated as an administrative issue. The lack of specific legislation and penalties however does not prevent agencies and prosecutors from utilizing alternative legislation, such as that which applies to money-laundering, revenue evasion, health or quarantine offences²².

C- International Conventions:

In order to address issues where production, trade in or use of environmentally sensitive commodities may have an adverse effect on humans and/or the environment, a number of international agreements have been developed. Known as multi-lateral environmental agreements or MEAs, they serve to join parties together in common agreement over measures to control or prevent trade and ensure compliance and enforcement. The mandate, scope and strength of agreements vary significantly, as does their effectiveness²³.

D- Inter-agency Cooperation and Prioritization:

Cooperation between enforcement agencies is a problem in many countries due to differing mandates, historical rivalry and competition, and perceived effectiveness, and issues of trust. In many jurisdictions to combat environmental crimes effectively, cooperation is essential since detections will often be made by Customs agencies at borders or environmental or forest agencies inland, which lack follow-up capacity²⁴. Responsibility for, and power to conduct, investigations falls more appropriately under a body with wider investigative powers such as the police. Cases are often not handed over from one agency to another, or where they are handed over they fall to the bottom of existing workloads of the receiving agency.

Sub-section 2: Preventing environmental crimes

Environmental crimes refer to any illegal activity that harms the environment, such as illegal dumping of hazardous waste, poaching, and illegal logging. These crimes have serious consequences for the environment, human health, and the economy. Therefore, it is crucial to prevent them from happening in the first place, so that much more efforts should be taken to prevent this kind of serious crimes.

Monitoring and investigation can be done in the following areas:

1- Environmental criminal investigations focus on the most serious infractions of environmental regulations that endanger public health and the environment. Criminal investigations are conducted using various techniques, including interviews, document or person searches, object or document examinations, use of force in self-defense when needed, and subject-specific expertise, including environmental crime. Special agents and detectives with the necessary training are needed for this ²⁵.

2- Investigations into environmental crimes necessitate in-depth research using scientific techniques and technological know-how. A crucial and specialized field is the sampling and testing substances such as chemicals or colored liquids to gather evidence against environmental offenders. It takes scientists and highly qualified technology professionals to gather this proof²⁶.

3- Carry out environmental crime risk assessments: most countries require firms to carry out an AML/CFT business risk assessment which should remain up-to-date and relevant to the nature and size of the firm. Firms should ensure that their risk assessments include an understanding of how their business operations, employees, clients, industries they service, products, countries of operation, and delivery channels increase the firms' exposure to the different types of environmental crimes referenced above²⁷. The risk assessment should lead firms to update policies, processes, and systems with a list of higher risk industries, jurisdictions and client types identified as exposing the firm to heightened environmental risk as well as

transactions that could increase the risk to firms of laundering the proceeds of environmental crime²⁸.

4- Environmental crime generates enormous income for transnational criminal organizations. Money launderers' main objectives include hiding the sources of earnings from environmental crimes, saving money, and making more money accessible. Financial intelligence units or FIUs receive reports of money laundering cases, which prompts the enlarging of investigations and prosecutions when an environmental crime is shown to be related²⁹.

5- Financial institution compliance staff must prioritize using financial intelligence to combat environmental crime. Suspicious transactions involving suspected environmental crime should be identified and reported to the appropriate authorities to lessen the danger of damage to the environment, natural resources, and human health³⁰.

6 - Investigate suspicious activity and transactions and submit suspicious activity report given the nature of their business, financial services firms may be unwittingly financing environmental crime via providing loans, credit, trade, project or infrastructure financing. It is essential that when firms identify suspicious activity, they gather and provide as much financial intelligence and information to their local financial intelligence units (FIUs). Where firms choose not to file a SAR when investigating a suspicion of environmental crime, they must document why they do not believe that the activity is linked to a crime. Firms must keep records of these submissions in line with the local required time limits³¹.

There currently needs to be more information about environmental crimes and associated problems available to the public, making it difficult for administrations or other public institutes to create effective policies to prevent environmental crimes. Because certain illegal actions are hidden and have a low detection rate, it might be difficult to assess many crimes accurately. Environmental crimes are sometimes carried out publicly, as in the case of fisheries, forestry, or minerals, but they can also be perpetrated through legal or illegal marketplaces³².

Employing anti-money laundering to punish environmental offenders may be a better strategy than pursuing them exclusively through environmental restrictions. Money laundering is a serious crime with substantial repercussions in many nations³³.

Conclusion

Transnational organized environmental crime is a global threat for sustainability. The aim of this paper was to reflect on the feasibility of the harmonization of legal frameworks as a strategy to fight globally against this type of crime.

The environmental crime literature currently covers a spectrum of environmental laws, offenses and offenders types using a variety of theoretical perspectives are rooted in traditional theories of crime and enforcement, while others draw on critical perspectives to explain broader notions of harm. Scholars have also sought to develop new approaches to categorizing, understanding and dressing the range of environmental crimes, harms or risks. The literature further explores the impact of environmental crimes/harms on the global community and raises questions regarding a healthy environment as a human right.

As the world faces increased threats to the global environment, it is our hope that scholars will continue to advance knowledge regarding environmental crime using a number of different lenses and create a feedback loop between research and practice. In our view the causes of and solutions to environmental crime will likely vary by crime type, offender and context. As such, the diversity of perspectives and connections to policy crucial to inform and refine potential solutions to address the complex forms of environmental crime.

References

¹ Ashok Swain, Joakim Öjendal, Transnational environmental crime, published on 17 April 2018, p 31, on the link: <https://www.routledgehandbooks.com/doi/10.4324/9781315473772-3>

² Idem.

³ Duncaton Brack, 'Combatting International Environmental Crime, Global Environmental Change, 2020, p 143.

- ⁴ Marina Caparini, Organized environmental crime: Why it matters for peace operations, on the link: <https://www.sipri.org/commentary/topical-backgrounder/2022/organized-environmental-crime-why-it-matters-peace-operations>
- ⁵ Anis H Bajrektarevic, Report: defining the environmental crime why is the global legal and political action urgently needed, in: International Journal of Asia-Europe Relations, Vol. 6, Issue 1, January 2020, p 72, on the link: <https://doi.org/10.37353/aei-insights.vol6.issue1.5>
- ⁶ Idem.
- ⁷ Ashok Swain, Op.cit, p 30.
- ⁸ The Global Response to Transnational Organized Environmental Crime, on the link: <https://globalinitiative.net/wp-content/uploads/2019/04/TGIATOC-The-Global-Response-to-Transnational-Organized-Environmental-Crime-web.pdf>
- ⁹ Idem
- ¹⁰ The rise of environmental crime, a growing threat to natural resources, peace development and security, p 51, on the link: https://gridarendal-website-live.s3.amazonaws.com/production/documents/s_document/327/original/RRAcrimrise_finaldraft_screen.pdf?1490613379 (responding TEC also يوجد فيه المبحث الثاني كذلك)
- ¹¹ The Global Response to Transnational Organized Environmental Crime, Op.cit.
- ¹² Lorraine Elliott, Transnational environmental crime in the Asia Pacific: an 'un(der)secritized' security problem?, in: The Pacific Review, Vol. 20 No. 4 December 2007, p 505, on the link: <http://dx.doi.org/10.1080/09512740701671995>
- ¹³ The rise of environmental crime, op.cit, p 62.
- ¹⁴ Maira Martini, Environmental crime and corruption, Transparency International 23 April 2012 Number: 326, on the link: <https://www.u4.no/publications/environmental-crime-and-corruption>.
- ¹⁵ The global response to Transnational Organized Environmental Crime, Op.cit.
- ¹⁶ For more read : Ozone-Depleting Substances, on the link : <https://www.epa.gov/ozone-layer-protection/ozone-depleting-substances>
- ¹⁷ Maira Martini, Op.cit.
- ¹⁸ The rise of environmental crime, op.cit.
- ¹⁹ Extractive Industries and Conflict, The United Nations Interagency Framework Team for Preventive Action, on the link: https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Extractive.pdf
- ²⁰ Idem.
- ²¹ The global response to Transnational Organized Environmental Crime, Op.cit.
- ²² Rob White and Grant Pink, Responding to organized environmental crimes, Collaborative approaches and capacity building, on the link: <http://dx.doi.org/10.17159/2413-3108/2017/i60a1725>.
- ²³ Transnational organized crime: A threat to global public goods, on the link: <https://www.sipri.org/commentary/topical-backgrounder/2022/transnational-organized-crime-threat-global-public-goods>
- ²⁴ Carole Gibbs and Rachel Boratto, Environmental Crime, on the link: <https://doi.org/10.1093/acrefore/9780190264079.013.269>
- ²⁵ Ways to Prevent Environmental Crimes: Different Monitoring Approaches, Use of Innovative Technologies, and Compliance Programs, on the link: <https://financialcrimeacademy.org/ways-to-prevent-environmental-crimes/>
- ²⁶ Idem.
- ²⁷ The rise of environmental crime, op.cit.
- ²⁸ Detecting and preventing environmental crime, on the link : <https://complyadvantage.com/insights/detecting-and-preventing-environmental-crime/>
- ²⁹ Ways to Prevent Environmental Crimes, Op.cit.
- ³⁰ Rob White, Environmental crime and the harm prevention criminalist, on the link: <https://www.frontiersin.org/articles/10.3389/fcsc.2022.1049160/full>
- ³¹ Detecting and preventing environmental crime, Op.cit.
- ³² Ways to Prevent Environmental Crimes, Op.cit.
- ³³ Idem.