

*Report*

## **DEFINING THE ENVIRONMENTAL CRIME – WHY IS THE GLOBAL LEGAL AND POLITICAL ACTION URGENTLY NEEDED**

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### **Abstract**

Preservation and protection of environment appears as one of the largest challenges of our time. It necessitates urgent but also comprehensive, planetary action. One of the key issues is to define a scope of future international instrument as well as its definition. This requires global political action which will then eventually translate into a coordinated legal action and finally articulate itself in viable international treaty. Institutional collaboration among stakeholders and agencies needs to be improved as much as the currently existing approaches need to be harmonized. Only an improved institutional framework between agencies and stakeholders that protects environment could enhance and accelerate cooperation to the levels equal to an environmental and climate change challenge. The very creation of such framework could also contribute to the harmonization of monitoring and reporting systems. It will also lead to more coordinated, more effective and properly financed policy instruments as well as more efficient legal enforcement on supranational, national and sub-national level.

*Keywords:* Treaty making, environmental challenge, inter-agency coordination, legal definition, political will

### **Introduction**

Environmental crime is a complex subject matter, which coupled with a non-existing internationally enforceable definition is calling for an urgent consideration. The variety of wrongdoings against our environment, committed transnationally and on a daily basis is happening with an accelerating severity and frequency. This makes it even more challenging to combat these types of criminal activities and mitigate the damages caused by it, which impact future generations. Committing crimes against the environment endangers sustainable livelihoods, ecosystems, natural resources, that cannot be reproduced or renewed, as much as it harms general health, social equilibrium and revenue streams of governments. Hence, lack of common definition is coupled with a lack of understanding, financial resources and knowledge on the subject matter. Therefore, it is of utmost urgency to start paving the way to combat these types of crimes by transnationally brokered global instrument.

The complexity of the matter manifests in the wide range of criminal activities that are associated with committing environmental crimes, such as money laundering, waste trafficking and hazardous waste dumping, wildlife species smuggling, weapons, drugs – all of that transcends domestic borders. These types of crimes often take place in organized form and are facilitated by other crimes, or by a lack of comprehensive legal frameworks. One of the major facilitators is corruption, which is favored by high tax burden, excessive market regulations, bureaucracy and high public spending. In addition, there is only a formalistic legal approach in most of the countries to condemn these types of offences.

Another neuralgic point of combating these types of crimes is the under-resourced incentives in contrast with the criminal environment, which is associated with the availability of significant financial resources. Controlling public resources and influencing public administration strengthening the position of organized crime networks.

To leave the often-used common understanding behind and come to an agreement on the internationally accepted definition. That necessitates an extensive work on the instrument, upon which the UN Member States are able to enhance their respective law enforcement cooperation and close the gap in understanding and acting. Without a definition, the fight against these types of crimes will always be impeded by the allocation of financial resources and political prioritization accompanied with lack of enforcement.

The following pages provide an overview of the main characteristics of environmental crime, its interlinkages to organized crime and the currently existing supporting legislation on international and European level with the objective of identifying barriers, remaining gaps and potential solutions that can pave the way forward. In addition, it analyses international legislations, agreements and legally binding documents, which have already touched upon some parts of the potential definition on environmental crime, or created a definition, that can be a base for starting negotiations on.

Building on the identified successful approaches, author's writing is aiming to facilitate efforts toward a commonly agreed, internationally recognized definition on environmental crime. Besides, it assesses and maps existing legislations and supports actors in their compliance efforts towards the future comprehensive universal instrument/s.

### **Main characteristics of environmental crime**

From a start, let us feature the main characteristics of wrongdoings related to the environment. They are:

- transnational – no geographical constrains
- wide array of crimes are associated with it, such as trafficking and overfishing (overhunting) of protected species; illegal logging; dumping of hazardous waste; smuggle wild life, weapons, drugs and people across continents
- interlinked with other criminal offences such as passport fraud, identity theft, corruption, money laundering and murder
- it jeopardizes wildlife, population, ecosystems, sustainable livelihoods, revenue streams to the governments it endangers the preservation of the environment and has major implications on the health and safety of the citizens
- it is aggravated through their additional cost and impact to future generations
- a number of circumstances strengthen the link between corruption and environmental crimes, such as tax burden, excessive regulation of legal markets, bureaucracy and high public spending
- organized crime networks are key actors in environmental crimes, because of their control of public resources and their influence on the public administration (locally, regionally and nationally)
- considerable degree of moral acceptance coupled with a low sense of statehood - vulnerabilities in control of authorization system
- criminal systems are complex and essential condition of a normal functioning democracy

- link between environmental crimes and corruption is facilitated by a legal approach is formalistic = focused on legislation that would punish environmental crimes, regardless of the actual damage caused, on the ground of abstract danger
- lack of common definition - no internationally recognized definition on environmental crime – only an often used common understanding
- international legal mechanisms are need to be established and enforced at national level to implement international environmental law
- illegal activities pose a challenge on law enforcement and implementation (including MEAs)
- lack of understanding and approaches between and among States – a relatively new category to combat transnational crimes - internationally coordinated efforts and a law enforcement cooperation are needed
- lack of funding to fight crime knowledge gap between environmental crimes and corruption
- actors that are combating environmental crimes are usually under-resourced in contrast with the criminal environment (which have the financial means)
- significant availability of money by committing these crimes at the expense of the environment
- best source of criminal intelligence is from INTERPOL

### Organized crime

- environmental crimes are also linked to other types of organized crimes

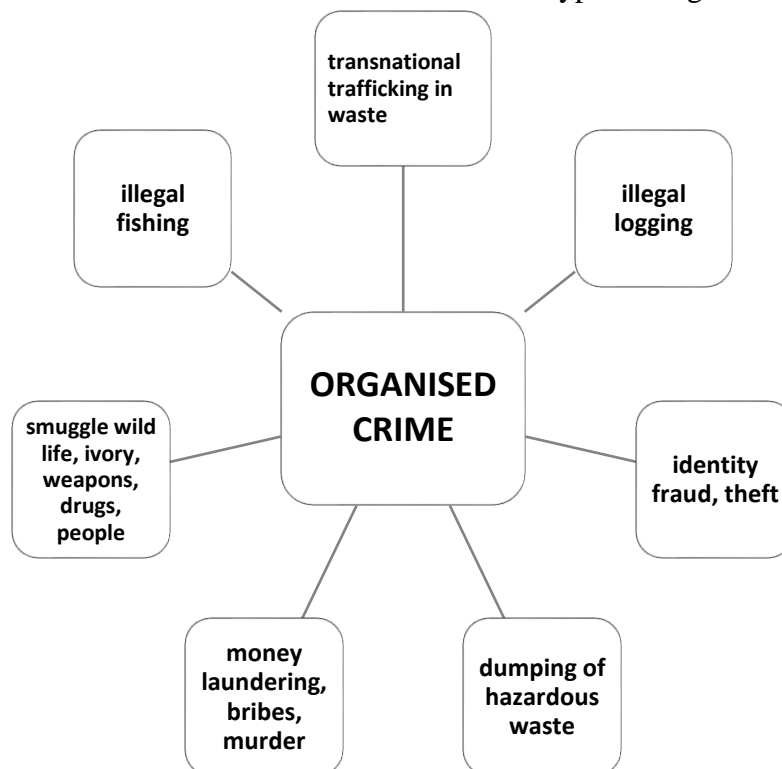


Figure 1: Interlinkages of environmental crimes with organized crimes

- raising level of awareness of the linkages between environmental crime and organized crime - wildlife trafficking, transnational trafficking in waste and illegal logging most of all
- remaining ambivalence in the definition of concepts
  - organized crime
  - environmental crime
  - organized environmental crime
- lack of clear definitions makes it difficult to accurately identify organized environmental crime within the overall crime statistics, which has an affect on the awareness of organized environmental crime amongst policy makers and enforcement institutions. This subsequently impacts the allocation of financial resources and prioritization in the political agenda
- neither the United Nations Convention against Transnational Organized Crime nor the Council Framework Decision 2008/841/JHA (on the fight against organized crime) does not address environmental crime explicitly
- the European Union has obligations for companies and their management and supervisory bodies taking into account the Corporate Social Responsibility (CSR): “accountable, transparent and responsible business behavior and sustainable growth”<sup>1</sup>
- the promotion of these measures can indirectly improve transparency and action to fight environmental crime
- Directive 2014/95/EU creates a binding disclosure requirement among others related to the environment for companies with at least 500 employees, such as
  - “environmental protection
  - social responsibility and treatment of employees
  - respect for human rights
  - anti-corruption and bribery
  - diversity on company boards (in terms of age, gender, educational and professional background)”<sup>23</sup>

### Definition of organized crime

- 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”<sup>4</sup>
- U.S. Federal Bureau of Investigation (FBI) defines an organized criminal group as “any group having some manner of a formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of actual or threatened violence, corrupt public officials, graft, or extortion, and

<sup>1</sup> European Parliament: Draft European Parliament Legislative Resolution on the proposal for a directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups; [http://www.europarl.europa.eu/doceo/document/A-7-2014-0006\\_EN.html](http://www.europarl.europa.eu/doceo/document/A-7-2014-0006_EN.html); (accessed on 08. 10. 2019)

<sup>2</sup> European Commission: EFFACE (2016): The EU’s strengths and weaknesses in tackling environmental crime [https://efface.eu/sites/default/files/publications/EFFACE\\_policy\\_brief\\_16.pdf](https://efface.eu/sites/default/files/publications/EFFACE_policy_brief_16.pdf); (accessed on 17. 10. 2019)

<sup>3</sup> European Commission: Non-financial reporting; [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en); (accessed on 16.09.2019)

<sup>4</sup> United Nations Convention Against Transnational Organized Crime And The Protocols Thereto (2014): United Nations Convention Against Transnational Organized Crime Page 5; [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THE\\_RETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THE_RETO.pdf) (accessed on 14.07.2019)

generally have a significant impact on the people in their locales, region or the country as a whole”<sup>5</sup>

- European Union has three sorts of approaches to address the issue:
  - Civil law criminalizing participation in a criminal association
  - Common law based on conspiracy to commit crime
  - Scandinavian approach, based on criminal law content and rejects the “criminal organization” element
- Illegal disposal of hazardous waste is the only one of the most widely recognized forms of environmental crimes
- UN Minamata Convention: is the link with the EU policy on mercury, banning all exports of mercury and preventing the uses of mercury where it may enter the environment. The Convention signed and to be ratified by all Member States and the EU<sup>6</sup>
- European Parliament: adopted a resolution on a joint action to prevent and combat mafia type organized crimes, and urged the creation of a European wide approach on combatting illegal waste trafficking, including related organized crime groups<sup>7</sup>

### **Trafficking and illegal dumping of hazardous waste**

- illegal not only refers to dumping of waste but also to its transportation, or management of landfills in violation of international or domestic legal provisions
- in addition to being a serious threat it causes social and economic instability
- it is coupled with low risk of prosecution – and the lack of harsh sentences made it a business opportunity for criminal networks
- involvement of organized crime organizations working in a well-organized network, which enables disposing or dumping hazardous waste illegally<sup>8</sup>
- to cut costs and maximize profit, a growing number of legal enterprises participate in trafficking or illegally dumping their waste through facilitators – because gaming the system costs less than obeying the rules
- rising production of hazardous waste (especially electrical and electronic waste) it is a transboundary movement
- major producing and importing countries are affected by the global threat – even though all exports, illegal trade and dumping of hazardous waste are banned
- countries have different approach to hazardous waste for example China and India accept it in order to recycle and recover raw materials; African countries on the other hand are looking material (second hand) usable after repair
- illicit waste trafficking is a significant threat for destination countries because of the untreated hazardous waste dumping or manual disassembling with no regard to health and safety issues
- illegal waste management is an increasing threat for producing countries as well because of its link with

<sup>5</sup> “Organized Crime and Terrorism.” Film Piracy, Organized Crime, and Terrorism, by Gregory F. Treverton et al., RAND Corporation, 2009, pp. 11–26. JSTOR, [www.jstor.org/stable/10.7249/mg742mpa.8](http://www.jstor.org/stable/10.7249/mg742mpa.8) ; (accessed on 28.10.2019)

<sup>6</sup> The UN Environment: Minamata Convention on Mercury (2013); <http://www.mercuryconvention.org/Convention/History/INC5/tabid/3439/language/en-US/Default.aspx> (accessed on 11.09.2019)

<sup>7</sup> European Parliament (2013): European Parliament resolution of 23 October 2013 on organized crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report) (2013/2107(INI)); <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0307+0+DOC+PDF+Vo//EN> (accessed on 19.07.2019)

<sup>8</sup> EUROPOL (2013) : Threat Assessment 2013 Environmental Crime in the EU, <https://www.europol.europa.eu/publications-documents/threat-assessment-2013-environmental-crime-in-eu> (accessed on 22.08.2019)

- fraud
- tax evasion
- money laundering
- control of legitimate companies in the waste management sector
- examining the link between criminal activities and illegal trade of e-waste is problematic given the remaining not specified grey areas of extension
- waste trafficking is facilitated by the corruption of public officials in charge of permits, also associated with law enforcement and customs as well as politicians, who can easily avoid bureaucratic hurdles related to permit granting procedure
- increase in the volume of illegal trade between the European Union and the most affected destination countries in Africa and Asia
- distortion of market and fair competition rules → firms that offer safe disposal of waste cannot compete with criminals therefore they are forced to lower their prices and the quality of their services in order to stay competitive.

### EU level

- EU has a competence to harmonize the environmental criminal law as a part of its environmental obligation
- missing link between organized crime more broadly – including the absence of an express link between environmental criminal law and anti – money laundering law, in addition lack of clarity in the relationship between criminal and non-criminal (administrative) law in the field of environment
- no specific EU – level sanctions to address environmental crimes - sanctions depend on the Member States and their appropriate toolbox of instruments – criminal, administrative and civil law – complementary sanctions can be applied but not in ever MSs
- voluntary associations of professionals working on environmental crimes with the purpose of sharing information and best practices
- a significant amount of environmental crimes cannot be investigated by law enforcement institutions due to the limited awareness, complexity of establishing causality of environmental crime and the lack of financial resources
- Member States are not obligated to report on ongoing investigation or enforcement process to EUROPOL and EUROJUST, therefore opportunities missed for the cross-border cooperation
- creation of environmental democracy by engaging directly or indirectly in environmental justice
- in order to reach vulnerable parts of society, the role of local communities, NGOs and civil societies is crucial
- Aarhus Convention establishes rules on access to justice and environmental matters for individuals and environmental NGOs<sup>9</sup>
- public participation in environmental decision making is prevented, because rights of individuals and communities are not well understood
- victim`s lack of awareness about their rights
- certain crimes are not provable only after a longer period of time

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<sup>9</sup> European Commission: The Aarhus Convention;  
<https://ec.europa.eu/environment/aarhus/index.htm> (accessed on 15.10.2019)

- quantification of damage is not forthright – especially concerning health or loss of livelihood
- it hard to bring action against crimes committed by subsidiaries or subcontractors because they often face obstacles before the EU Court
- the European Union is a member of the multilateral environmental agreements and developed expertise in its instruments, tools, networks, NGOs and enforcement agencies that operate and are involved in both EU and transnational cases
- EU enforcement networks and agencies are :
- European Network for Prosecutors and IMPEL - national and transnational level
- European Union provides funding for the International Consortium on Combating Wildlife Crime (ICCWC)
- Finally, the existing UN Convention of Corruption covers only a public sector segment of it. Regrettably enough, this instrument does not cover private sector at all. As professor Bajrektarevic defined it: “corruption is seemingly victimless tradeoff between influence and gain”.<sup>10</sup> That means that it stretches from private to public sector easily.

## International level

### UN ODC

- UNODC, established in 1997, is a network which coordinates actions and encourages cooperation among international agencies and NGOs in the fight against illicit drugs and international crime. It has a mandate to assist Member States in their fight against transnational crimes and offers advice to State parties in order to raise awareness of the importance of environmental crime and organized crime on different ways they can be combatted<sup>11</sup>
- State parties have difficulties dealing with organized environmental crime due to the *lack of legal and criminal policy tradition in the field* – the intervention of international institutions is becoming more relevant
- however, it is still unclear how organized environmental crime should be addressed, as a specific criminal offence or just an aggravated circumstance of other related environmental crimes.<sup>12</sup>

### Financial Action Task Force (FATF)

FATF included organized crime in its list of designated categories of offences. FATF is an intergovernmental body, which provides insights on how to best address environmental crime and identify possible ways how investigation and prosecution of such crimes may be assisted. FAFT has 35 member states and two regional organizations (European Commission and the Gulf Cooperation Council) with the objective of developing and promoting policies to combat the financing of terrorism measures and anti-money laundering, handle high-risk, non-

<sup>10</sup> Bajrektarevic, A. (2011), *The JHA Diplomacy: The Palermo Convention – Towards the Universal Criminal Justice*, Addleton Academic Publishers, NY – 3(1)2011 GHIR

<sup>11</sup> The United Nation Office on Drugs and Crime (UNODC): About UNODC, <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> (accessed on 22.08.2019)

<sup>12</sup> European Commission: EFFACE Brussels (2015): Organized Crime and Environmental Crime International Legal Instruments (summary); [https://efface.eu/sites/default/files/EFFACE\\_Organised%20Crime%20and%20Environmental%20Crime\\_International%20Level.pdf](https://efface.eu/sites/default/files/EFFACE_Organised%20Crime%20and%20Environmental%20Crime_International%20Level.pdf) (accessed on 29.09.2019)

cooperative jurisdictions, and respond to new threats as identified by the UN Security Council and the G20.<sup>13</sup>

### **Green Customs Initiative**

The initiative was launched in 2004 to enhance the capacity of customs and other relevant border control officers. The partnership that comprises international organizations, monitors and facilitates legal trade activities and aims to investigate and prevent illegal trade in environmentally sensitive products, considering trade related conventions and multilateral environmental agreements.<sup>14</sup>

The initiative has the following partners:

- Basel Convention (Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal);
- OzonAction;
- Cartagena Protocol (Cartagena Protocol on Biosafety (Secretariat of the Convention on Biological Diversity);
- Rotterdam Convention (Prior Informed Consent (PIC)
- Procedure for Certain Hazardous Chemicals and pesticides in International Trade);
- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora);
- Stockholm Convention (Stockholm Convention on Persistent Organic Pollutants (POPs));
- INTERPOL;
- UNEP (United Nations Environmental Programme);
- Minamata Convention (Minamata Convention on Mercury)
- UNODC (United Nations Office on Drug and Crime);
- OPCW (Organization for the Prohibition for Chemical Weapons);
- WCOOMD (World Customs Organization)

### **Supporting legislations, agreements**

UN Transnational Environmental Crime - Division of Environmental Law and Conventions (DELIC)

- Montevideo Program IV - UNEP/GC/25/INF/15<sup>15</sup>

The Montevideo Program is aiming to increase linkages between environmental law and other areas, most of all the three pillars of UN (peace and security, human rights and development). It assists the international community to highlight gaps and challenges and provides a comprehensive framework for the development of legal principles and obligations in the field of the environment. These are the illegal trade in wildlife, environmental crime, marine litter and micro plastics, and lead in paint and batteries, amongst others.<sup>16</sup>

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<sup>13</sup> FATF (2019): Mandate <https://www.fatf-gafi.org/media/fatf/content/images/FATF-Ministerial-Declaration-Mandate.pdf> (accessed on 28.08.2019)

<sup>14</sup> UN Environment (2019): The Green Customs Initiative; <https://www.greencustoms.org/> (accessed on 30.09.2019)

<sup>16</sup> UN Environment (2019): The Montevideo IV Programme; <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-2> (accessed on 01.11.2019)



- (a) “Assist States:
- i) To improve progressively their environmental standards at the global, or regional or sub regional level;
  - ii) To promote coherence between environmental law and other laws, both at domestic and international levels, to ensure that they are mutually supportive and complementary, and that the environmental protection is an integral part of sustainable development;
  - iii) To study the ways in which developing countries have integrated environmental policy into their governmental processes and advise Governments as appropriate;
  - iv) To promote the ecosystem approach as a means of ensuring coherent implementation of international agreements, including through capacity-building activities;
- (b) Conduct studies on the legal aspects of, obstacles to and opportunities for consolidating and rationalizing the implementation of multilateral environmental agreements, so as to avoid duplication of their work and functions;
- (c) Upon request of negotiating States, provide an analysis of linkages between agreements under negotiation and the existing agreements;
- (d) Conduct studies to assist relevant conferences of the parties to multilateral environmental agreements to take action to improve ways of harmonizing and otherwise rationalizing the reporting obligations in multilateral environmental agreements;
- (e) Enhance cooperation and coordination among the secretariats and conferences of the parties to relevant multilateral environmental agreements in order to have more coordinated activities and procedures;
- (f) Promote synergies in the implementation of related multilateral environmental agreements at the national and regional levels”.<sup>17</sup>

- DELC Capacity Building Programmes for the Judiciary
- Directive 2008/99/EC =Environmental Crime Directive
- Ship-Source Pollution Directive
- International Convention for Prevention and Pollution from Ships (MARPOL) Convention
- Directive 2004/35/EC on environmental liability – polluter pays principle was introduced
- Directive on Market Abuse - Directive 2014/57/EU - requires Member States to ensure that certain offences are punishable with a defined maximum term of imprisonment; it also obligates Member States to adopt rules on the liability of legal persons
- Article 83(1) TFEU and Article 83(2) TFEU:
  - Article 83(1) TFEU lists ten crimes (so-called Euro Crimes) which are deemed to have sufficient cross-border impact that the EU can set minimum rules in their regard. These are: terrorism; trafficking in human beings; sexual exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime and organized crime. Environmental crime is not on the list; however, the article goes on to state that “on the basis of developments in crime”

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<sup>17</sup> UNEP (2010): Fourth Programme for the Development and Periodic Review of Environmental Law <https://wedocs.unep.org/bitstream/handle/20.500.11822/25474/MontevideoIV.pdf?sequence=1&isAllowed=y> (accessed on 24.09.2019)

- Under Article 83(2) TFEU the introduction of minimum rules on the definition of criminal offences and sanctions is possible if they are essential for ensuring the effectiveness of a harmonized EU policy or its enforcement
- Directive 2014/95/EU that introduces mandatory disclosure requirements related to, among others, the environment for companies with at least 500 employees
- Timber Regulation (Regulation 2010/955/EU)– to alleviate potential damage in the third countries which are source countries<sup>18</sup>
- UN Minamata Convention: banning all exports of mercury and preventing the uses of mercury where it may enter the environment. It was signed and to be ratified by all Member States and the EU<sup>19</sup>

## Supporting legal definitions

### Organized Crime Convention (Palermo Convention)

- only indirectly refers to organized environmental crime as one of those serious crimes that could be covered by the convention
- the convention provides a legal framework for sanction serious crimes as well as the legal tools to criminalize as offences those activities related to environmental crime. It enables to investigate and to bring to justice those criminals involved in different roles in criminal groups and criminal organizations
- States can cooperate on a wide range of offences related to transnational organized crime:
  - “Serious crime: conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” enables the CoP to identify new forms and dimensions of transnational organized crime, with a view to facilitating a more uniform approach at the use of the Convention for the purposes of international cooperation.
  - The Convention does not define organized crime but envisages a working and open definition of serious crime in Article 2.b just using as a reference the minimum penalty of 4 years imprisonment
  - (b) “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty
  - When determining the scope of application of the Convention, Article 3 b) specifies that serious crime is also “where the offence is transnational in nature and involves an organized criminal group
  - Criminal Groups and Criminal Organizations: Article 2.a of the Organized Crime Convention defines organized criminal group but not criminal organizations. “Organized criminal group” shall mean 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”. – it does not incorporate the modus operandi criteria – such as use of violence, hierarchy and adaptation to the environment
  - These definitions are open and focused on:

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<sup>18</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995> (accessed on 31.09.2019)

<sup>19</sup> Minamata Convention On Mercury (2017):

<http://www.mercuryconvention.org/Portals/11/documents/Booklets/COP1%20version/Minamata-Convention-booklet-english.pdf> (accessed on 20.10.2019)

- the number of participants –at least three persons;
- the duration – a flexible requirement of existing for a period of time;
- the aim: to commit offences for the purpose of financial or other material benefits;
- the type of crime they commit, serious crime as defined by the Convention
- Criminalization of participation in a criminal organized group: Article 5 of the Convention requires States Parties to foresee the introduction into their criminal law systems of a number of offences relating to participation in an organized criminal group that must be a common minimum standard for all States parties, without prejudice to the differences among their common law or continental law systems and the possibility of adopting stricter provisions.
- Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:
    - Agreeing with one or more other persons to commit a serious crime for directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal
    - Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
      - Criminal activities of the organized criminal group
      - Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above
    - Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.
- Confiscation, Seizure and Disposal of Proceeds of Organized Crime and the International Cooperation for Confiscation: Article 12 and 13 deal with confiscation and seizure calling on State Parties to adopt legislation to enable them to carry out confiscation of both proceeds from crime and all instrumentalities used during the commission of the offences. Article 12 focuses on domestic measures and Article 13 with international cooperation agreements.
- Legal persons and organized crime: Article 10 of the Convention requires States to adopt measures to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences defined in the Convention. Paragraph 2 states that, “subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative” leaving the States Parties the possibility of choosing among these three possible liability regimes considering their legal systems and the prevalence of the principle “societas delinquere non potest”. However, States Parties must “ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-sanctions, including monetary sanctions.”
- Extradition: The Organized Crime Convention establishes a supple legal framework for extradition in its Article 16 that relies on the domestic law of State Parties for most of the conditions, procedures and requirements. However, in a limited number of areas the UN Convention establishes some principles and conditions to be respected by State Parties: the dual criminality principle, rules on provisional arrest, extradition of

nationals for fiscal offences and the obligation to consult with the requesting State before refusing extradition.”<sup>20</sup>

### Definitions on hazardous waste

- *Basel Convention* defines ‘hazardous’ waste on the basis of the pollutants it contains such as lead, mercury, cadmium, chromium, arsenics, etc. Together with the definition of hazardous waste, international provisions stress the international ban to import any sort of hazardous waste to African states parties to the Bamako Convention, from any state not part of it.
- *Bamako Convention* uses a similar language to that of the Basel convention, but has a stronger reference to the prohibition of all imports of hazardous waste; it does not except on certain types of hazardous waste (like those for radioactive materials) made by the Basel convention.

### Gaps, barriers and potential solutions

Gaps and barriers	Potential Solutions
wide range of crimes associated with it	emphasis should be put on the prevention of environmental crimes in the linked legislations;
transnational	efforts should be harmonized; improvement of institutional collaboration between different agencies and stakeholders involved in environmental protection
lack of internationally recognized definition - only an often used common understanding	create an internationally recognized definition, which addresses environmental crime explicitly
lack of understandings and approaches between and among States – how to combat crimes	existing environmental standards should be systematized
knowledge gap between environmental crimes and corruption	establishment of gap bridging mechanisms; information systems that provide valuable information on companies and can serve as monitoring tools for law enforcement agencies
link between environmental crimes and corruption is to be favored by a number of circumstances; high tax burden, excessive	simplification of market regulations and increased transparency

<sup>20</sup> United Nations Convention Against Transnational Organized Crime And The Protocols Thereto (2014): United Nations Convention Against Transnational Organized Crime; [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOL\\_S\\_THERE\\_TO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOL_S_THERE_TO.pdf) (accessed on 15.07.2019)

regulation of legal markets (bureaucracy and high public spending)	
link between environmental crimes and corruption is facilitated by a legal approach is formalistic	initiating discussion on starting to create a concrete legal approach
organized crime networks are key actors in environmental crimes – control of public resources by influencing the public administration (on a local, regional, national level)	transparency of public permit and access granting systems, one stop shops
rising production of hazardous waste – especially electrical and electronic waste	positive incentives (e.g. providing for recycling facilities and creating markets for recycled (strategic) materials)
low risk of prosecution, light sentences and guarantee of high profits – lack of harsh sentences	more dissuasive penalties
increasing number of legal enterprises decide to traffic or illegally dump their waste through brokers and facilitators - gaming the system costs less than playing by the rules (obeying the rules)	create a system where rules are worth to follow; decrease the price of waste incineration/disposal
undetermined grey areas of extension makes it difficult to assess the link between criminal activities and illegal trade of e-waste	further investigation of related crimes, offences
environmental crime is interlinked with the exploitation of disadvantaged communities, human rights abuses, violence, conflict, money laundering, corruption	improvement of institutional collaboration between different agencies and stakeholders involved in environmental protection
distortion of market and of the rules of fair competition by criminal networks	creation of enforceable competition rules

### The way forward

As the identified gaps and barriers demonstrate, despite all of the strides taken towards an internationally enforceable definition on environmental crime, much still needed to be done. Institutional collaboration among stakeholders and agencies needs to be improved as well as the currently existing approaches need to be harmonized. This however cannot be carried out without proper financial support of these gap filling mechanisms that create a unified voice.

Coming to an agreement on the internationally recognized definition on environmental crime will yield further benefits. Not just because these types of crimes will be addressed explicitly, but more emphasis will be put on preventing them from happening with a proper set of comprehensive universal financial and legal instruments. An improved institutional framework between agencies and stakeholders that protects environment could cooperate on an extended basis, working towards combatting these types of crimes. The very creation of such framework could also contribute to the harmonization of monitoring and reporting systems, not just on the

European level but globally. It will also lead to more coordinated, more effective and properly financed policy instruments as well as more efficient enforcement and harsher sentences for perpetrators.

*Vienna, 09 NOV 2019*

## Acknowledgement

Many thanks to Mag. Anna Kaissa and Dr. Wolfram Kalt for their valuable inputs.

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