

CRIMES AGAINST MARINE ENVIRONMENT

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Foreword

- Environmental crimes can be broadly defined as illegal acts that directly harm the environment.
- Such offences pose a threat to the environment and therefore call for an appropriate response.
- Often perceived as 'victimless' and incidental crimes, environmental crimes frequently rank low on the law enforcement priority list, and are commonly punished with administrative sanctions which are themselves often unclear and minor.

Contens

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The main areas of environmental crimes

- While the definition of environmental crime is not universally agreed, it is often understood as a collective term to describe illegal activities harming the environment and aimed at benefitting individuals or group.
- According to the European Commission, environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health.
- The main areas of environmental crime are the illegal emission or discharge of substances into air, water or soil; trade in wildlife; trade in ozone-depleting substances; as well as shipment or dumping of waste.
- Many emerging definitions for environmental crime have actually constrained the term by limiting it to crimes associated with breaches of environmental legislation only with the result of reducing the prosecution and punishment, since environmental crime is typically only seen to refer to infractions (fines) or misdemeanours (fines or shorter term imprisonment), rather than felonies.

The response to the environmental crime

- Environmental crime is highly lucrative, it can be as profitable as illegal drug trafficking, but the sanctions are much lower which make this activity extremely attractive for organized crime.
- Led by vast financial gains and facilitated by a low risk of detection and scarce conviction rates, criminal networks and organized criminal groups are becoming increasingly interested in environmental crimes.
- A person who commits environmental crime exploits the lack of international consensus and the divergence of approaches taken by countries. What may constitute a crime in one state is not in another. The capacity of governments to enforce criminal law greatly varies.
- The INTERPOL General Assembly Resolution of 2010 states that there is a vital need for a global response to combating environmental crime and INTERPOL should play a leading role in supporting the international enforcement efforts.
- Unlike any other known crime, environmental crimes are aggravated through their additional cost and impact on the environment and cost to future generations.

The response to the environmental crime

- Environmental enforcement challenges is determined by these specific issues included:
 - a lack of resources and insufficient prioritisation of environmental crime cases,
 - insufficient specialised knowledge and practical experience,
 - the use of different investigative approaches in different jurisdictions, including a lack of recognition of environmental crime as organised crime,
 - the existence of different perceptions about key legal concepts of the environmental legal framework and
 - challenges caused by the multidisciplinary nature of environmental enforcement.

The response to the environmental crime

- Environmental criminality was clearly identified as an “emerging threat”. There is an overarching lack of awareness on the seriousness of the crimes involved, among the public but in particular within law enforcement.
- Environmental crime is a “hidden crime” and is not easily visible. It is not noticed as a threat or a ‘real’ crime. Criminal profit is quickly accrued and by the time the damage becomes apparent the offenders are long gone. Most of the serious damage is not immediate but mid- to long-term.
- Eurojust’s experience indicates, as a general tendency, the lack of recognition of environmental crime as organised crime, which hampers the initiation of cross-border cases.

Directive 2008/99/EC of the European Parliament and the Council of 19 November 2008 on the protection of the environment through criminal law (ECD)

- Recital of Article 3 of the ECD quotes that Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:
 - (a) **the discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water**, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
 - (b) **the collection, transport, recovery or disposal of waste**, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
 - (c) **the shipment of waste**, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
 - (d) **the operation of a plant in which a dangerous activity** is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the **quality of water**, or to animals or plants;
 - (e) the production, processing, handling, use, holding, storage, transport, import, export or disposal of **nuclear materials or other hazardous radioactive substances** which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
 - (f) the killing, destruction, possession or taking of specimens of **protected wild fauna or flora species**, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
 - (g) **trading in specimens of protected wild fauna or flora species** or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
 - (h) any conduct which causes the significant **deterioration of a habitat within a protected site**;
 - (i) the production, importation, exportation, placing on the market or use of **ozone-depleting substances**.

Directive 2008/99/EC of the European Parliament and the Council of 19 November 2008 on the protection of the environment through criminal law (ECD)

- The list of environmental offences that must be considered criminal offences by all Member States, if committed intentionally or with serious negligence.
- It must be pointed out that ECL Directive does not create a list of new illegal acts, because the existing law already provides for these prohibitions. Therefore, the Member States, by transposing this directive will only have to attach to these existing prohibitions some criminal sanctions.
- The ECD only sets a minimum standard of environmental protection through criminal law to be adopted by the Member States and Member States are free to maintain or introduce more stringent protective measures. It does not lay down measures concerning the procedural part of criminal law nor does it touch upon the powers of prosecutors and judges.
- Thus, the ECD defines a number of serious offences that are detrimental to the environment and it requires EU countries to introduce effective, proportionate and dissuasive penalties. Common rules on criminal offences make it possible to use effective methods of investigation also on environmental crimes.

Directive 2004/35/CE of the European Parliament and the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (ELD)

- The ELD aims at ensuring that the financial consequences of certain types of harm caused to the environment will be borne by the economic operator who caused this harm. Insofar as the ELD provides for the financial responsibility of an operator, it lays down a framework, based on the polluter-pays principle, which can be qualified as one of environmental liability”, even though liability under the ELD has few in common with standard civil liability rules.
- There are three categories of environmental damage under the ELD:
 - “damage to protected species and natural habitats”, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The habitats and species concerned are defined by reference to species and types of natural habitats identified in the relevant parts of the Birds Directive 79/409 and the Habitats Directive 92/43;
 - “water damage”, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in the Water Framework Directive 2000/60, of the waters concerned;
 - “land damage”, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms.

Convention on the Protection of Environment through Criminal Law, Strasbourg, 1998

- The Council Convention on the Protection of Environment through Criminal Law is aimed at improving the protection of the environment at European level by using criminal law in order to deter and prevent conduct that is most harmful to it.
- It also seeks to harmonize national legislation in this field.
- This new legal instrument, not in force and with only 3 ratifications, obliges Contracting States to introduce specific provisions into their criminal law or to modify existing provisions in this field.
- It establishes as criminal offences a number of acts committed intentionally or through negligence where they cause or are likely to cause lasting damage to the quality of the air, soil, water, animals or plants, or result in the death of or serious injury to any person.

The approach towards criminalising environmental harms

- The lack of legal certainty may also be a weakness in ECD that defines what constitutes an environmental crime by reference to a behaviour being unlawful under other environmental directives.
- Explicitly, the structure chosen implies that the definition of environmental crime depends upon the violation of national legislation implementing the environmental acquis.
- Therefore, the approach towards criminalising environmental harm of the ECD makes it difficult to determine which behaviour constitutes environmental crime.
- At the same time, the Council of Europe Convention on the Protection of the Environment through Criminal Law, 1998 has a different structure.
- The behaviour that has to be criminalised is described in a more direct manner in the Convention itself, which has never entered into force.

Protection of environmental security

- In 2014, the INTERPOL General Assembly passed a Resolution on **INTERPOL's response** to emerging threats in Environmental Security.
- In that Resolution, instead of defining environmental crime, INTERPOL focused on **environmental security** by recognizing the impact that environmental crime and violations can have on a nation's political stability, environmental quality, its natural resources, biodiversity, economy and human life.
- At the European level, there are more than 200 directives on environment as subject matter in force. Nevertheless, there are cases of severe non-observance of European environmental law.
- National legislatures have addressed environmental exploitation through a more or less comprehensive network of **administrative laws**. National laws have made regulations as to the extent of **permissible pollution and acceptable risks** in most environmental areas, frequently leaving to the administrative entity the task of establishing the allowable level of pollution in individual cases.
- There definitely exists a close **relationship between administrative laws and criminal law** in the provisions of administrative law regulating allowed use of environment in statutory provisions, the provisions of subsidiary legislation, such as ordinance or regulations, or by administrative decisions aimed at environmental security.
- The author brings forward the opinion that an active role of the **judiciary** may essentially contribute to environmental protection.

The environmental crime implementation in the Republic of Croatia

- Croatian **Criminal Code in its Part XX regulates criminal acts against environment** specifying
 - the crimes of environment (Art. 193),
 - discharging the polluting substances from the vessel (Art. 194),
 - endangering ozone layer (Art. 195),
 - endangering the environment with waste (Art. 196),
 - endangering the environment with industrial plant (Art. 197),
 - endangering the environment by radioactive substances (Art. 198),
 - endangering with noise, vibrations or ionizing radiation (Art. 199),
 - destroying protected natural areas (Art. 200),
 - destroying habitat (Art. 201),
 - trading in protected natural values (Art. 202),
 - illicit introduction of wildlife or GMO in the environment (Art. 203),
 - illicit hunting and fishing (Art. 204),
 - killing or torturing of animals (Art. 205),
 - transmitting contagious diseases and organism harmful for plants (Art. 206),
 - manufacturing and putting on the market harmful means for treatment of animals (Art. 207),
 - unconscionable administering of veterinary assistance (Art. 208),
 - devastation of forest (Art. 209),
 - altering water regime (Art. 210),
 - illicit exploitation of mineral resources (Art. 211),
 - illegal construction (Art. 212),
 - beneficial repentance (Art. 213) and
 - severe crime against environment (Art. 214).

The environmental crime implementation in the Republic of Croatia

- In 2015 - 1 imprisonment punishment, 112 probation imprisonment sanctions, 12 fines and 5 community service sentences has been pronounced.
- In 2016 - 3 imprisonment, 92 probation, 18 community services sentences has been pronounced.
- In 2017 - 5 imprisonment, 96 probation, 1 community services sentences has been pronounced.
- The reason for low number of detecting and reported crimes is in still insufficient activity of competent institutions whose task is detecting and reporting the crimes.
- Timely detecting of such acts and reporting the criminal act is indispensable for the purposes of prevention.
- In practice, there are cases where state attorney qualifies the crime endangering the environment by improper waste management as minor infringement.

Conclusions

- An offence is a crime only if the state decides to punish certain behaviour through criminal law. It implies that the definition of environmental crime depends upon the violation of national legislation implementing the environmental acquis.
- Environmental crimes represent an emerging form of transnational organized crime requiring more analysis and better responses. What makes environmental crime so lucrative is that a small number of perpetrators are actually caught and even fewer are punished. Few perpetrators are sentenced to jail, sentences that are pronounced are often light and fines are negligible compared to the profits and gains.
- Criminalizing an environmental offence can be an effective and dissuasive way to achieve proper implementation of environmental law. However, there are large differences between the criminal sanctions provided for environmental offences and often existing criminal sanctions are not sufficiently stringent to ensure a high level of environmental protection. At the level of the European Union, the lack of legal certainty may also be a weakness in ECD, which defines what constitutes an environmental crime by reference to a behaviour being unlawful under other directives.
- Environmental crime should not be seen to refer to infractions resulting in fines or misdemeanours consequential to fines or shorter-term imprisonment, because, in authors' opinion environmental crimes should fall under already established laws on serious crimes.

Conclusions

- In author's view, proper relationship between criminal law and non-criminal law enforcement avenues is of utmost importance to achieve the objectives of environmental protection more effectively. Nevertheless, compliance with environmental administrative law cannot always preclude criminal liability.
- The increase in environmental crime, combined with its complex, transnational character, requires an integrated and coordinated approach, from administrative, law enforcement and judicial authorities at the national level to cross-border cooperation at the international level.
- Key concepts of environmental criminal law need to be further harmonised and more consistently interpreted across the EU Member States. The penalties for environmental crime should also be more uniform and dissuasive.
- The author bring forward the opinion that an active role of the judiciary may essentially contribute to environmental protection.