

Instruments

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On the Criminal Law Dimension of the Green Deal

Abstract

With regard to the Green Deal, it has been reasonably found that “while there is a welcome focus on the rule of law and enforcement, accountability will have to be operationalised within key sustainability processes at national level”.¹ On the other hand, the Area of Freedom, Security and Justice within the EU (Art. 4(2)(j) in conjunction with Art. 67 et seq. TFEU) foresees common and aligned measures to address environmental crimes, i.e. the EU shall further cooperation among the Member States’ law enforcement and judicial authorities (Art. 82, 87 TFEU).

The Green Deal is, to-date, a political agenda that needs to be brought into action, also with a view to law enforcement and judicial measures.

On the Criminal Law Dimension of the Green Deal

In 2016, INTERPOL found: “Environmental crime contributes to destroying the ecosystem, as criminals damage environmental quality, hasten biodiversity loss, and deplete natural resources. However, environmental crime also impacts our society, as it constitutes a direct threat to development, peace, and security” [...] “there is clear evidence that environmental crime has connections with other illegal activities, with criminal networks engaged in many other crimes. In other words, there is a host of other illegalities which accompany, facilitate, or result from environmental crime” [...] therefore “environmental crime can no longer be seen purely as a conservation issue, as its adverse impacts are also threatening sustainable development, good governance, rule of law, and national security”.²

Investigations in this field are usually based on the underlying assumption that a significant part of the extraction and use of natural resources as

1 IEEP, Analysis of the Political Guidelines of the President-elect of the European Commission, 2019, p. 4.

2 INTERPOL and UNEP, Strategic Report: Environment, Peace and Security, 2016, pp. 56 and 58.

well as illicit use of protected flora and fauna are operated by organised crime and terrorist groups (or: there is at least a great deal of influence there).³ The roughly estimated annual turnover of illegal activities in the area of environmental crime ranges from USD 100-260 billion.⁴ According to a report done by the UN and Interpol in 2016, environmental crime is now the fourth largest criminal global activity (after drug smuggling, counterfeiting and human trafficking); the EU is directly affected by environmental crime as origin (e.g. waste trafficking) or destination market (e.g. illegal logging) or as a transit point between two regions of the globe (e.g. between Africa and Asia for wildlife products).⁵

Hence, illegal extraction (exploitation) of natural resources and illicit use of protected flora and fauna is an enormously important economic sector for criminal networks.

The effects, such as massive human rights violations, corruption, money-laundering, environmental crimes up to the destruction of entire economic cycles in some parts of the world result in a vicious circle in which the Criminal Networks create a vacuum that they then fill again to strengthen their power, influence and range of activities. These Environmental Crimes, such as the massive and uncontrolled (illegal) extraction of natural resources (ecocide) as well as the illicit use of protected flora and fauna enables to a remarkable extent the existence of Organised Crime and Terrorism through generating first and foremost money, but also social, political and economic influence.

These illegally acquired resources are forming part of the global economic system: wood, coal, oil, sand, stone, gravel, water, protected plants and animal species, rare earths, and many more. This makes the international community at large – the customer side of the value chain – responsible for supporting Organised Crime and Terrorism. In other words: In order to combat the phenomenon of Organised Crime and Terrorism sustainably, it has to be thought about how and through which measures implemented in the international community the illegal extraction and use of natural resources as an existential basis for criminal networks and terrorist groups can be tackled and involved parties can be held accountable.

The criminal law objective of the Green Deal is to contribute to preventing illicit activities of organised criminal groups and terrorist groupings

3 Cf. esp. Kevin Bales, *Blood and Earth*, Penguin Random House, 2016.

4 Cf. Gerstetter, Christiane et al., *Status Quo und Weiterentwicklung des Umweltstrafrechts und Sanktionen: Instrumente zur Verbesserung der Befolgung von Umweltrecht (Compliance)*, in: Umweltbundesamt, 2019, p. 30.

5 Cf. INTERPOL-UN, *Environment, Peace and Security*, 2016.

(for the reasons of readability, these two terms are referred to in the following as ‘Criminal Networks’) with the aim to defeat or at least mitigate consequences thereof for the purpose of realising the objective set out in Article 67(3) TFEU – “ensure a high level of security within an area of freedom, security and justice” – in line with the Agenda of the Security Union and with the “need to ensure full compliance with fundamental rights. Security and respect for fundamental rights are not conflicting aims, but consistent and complementary policy objectives”⁶ as proclaimed in Article 2 TEU: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. This objective is not limited to the EU Member States, as Article 3(5) TEU specifies: “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter”.

The UN Sustainable Development Goals (SDGs) No. 13 and 17 provide an intergovernmental framework for concerted actions against the furthering of climate change in form of environmental damages caused by organised criminal groups. The Commission has stated that “the sustainability agenda, with the 17 Sustainable Development Goals (SDGs) at its core, is about making people’s lives better. The EU and the United Nations are determined to protect the planet from degradation, so that it can support the needs of the present and future generations. We will pursue this goal through sustainable consumption and production, sustainably managing its natural resources, ensuring just transition and economic viability, and taking urgent action on climate change”⁷.

Whereas SDG 13 proclaims justiciability of such activities, SDG 17 foresees the strengthening of responsible institutions with a multi-stakeholder and this inter- and cross-agency approach, specifically aimed to “encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships”.

Without prejudice to the causes for given and future scenarios and situations relevant from the Security Union’s perspective, the Green Deal measures and activities should understand environmental (and specifically:

6 European Commission, *The European Agenda on Security*, p. 3.

7 European Commission, *Sustainable Development Goals*, 2019.

criminal) laws, ultimately, as a tool to implement and put into effect Human and Fundamental Rights.

To boost the effectiveness of the Security Union, the Green Deal responds to the specific objectives related to ensuring the efficient and effective functioning of the Area of Freedom, Security and Justice (AFSJ) with respect for Human and Fundamental Rights and the different legal systems and traditions of the Member States (Article 67(1) TFEU). This comprises, on the one hand, the absence of internal border controls for persons (Article 67(2) TFEU) and thus the individual transnational mobility inside the Internal Market as set out in Article 26(2) TFEU in conjunction with Articles 45 et seq., 56 et seq. TFEU (and, to a certain extent, regarding Associated States); on the other hand, this freedom is subject to restrictions deriving from the need to ensure security and justice. Hence, the law enforcement and justice authorities in the different (legal) systems of the Member States and the overarching harmonised EU approach (as set out in Annex I of the Europol Regulation No. 2016/794) face the challenge of countering criminal activities utilising the area of freedom.

The Green Deal of 2019 cannot be seen as a stand-alone project. Apparently, the EU considers countering environmental crime as one of its priorities and has stepped up its activities in this field:

- The EU Agenda on Security (2015)⁸ highlighted the link between environmental crime and organised crime, as well as the link between environmental crime and money-laundering and terrorist financing. It provided for the Commission to “review existing policy and legislation on environmental crime”;⁹
- In 2016, the Council in its Conclusions invited the Commission to monitor the effectiveness of EU legislation in the field of countering environmental crime;¹⁰ in the same year, the Council chose environmental crime as the subject for the 8th Mutual Evaluation round;¹¹

8 Cf. European Commission, The European Agenda on Security, Strasbourg, 28.4.2015 COM(2015) 185 final.

9 Page 18 of the Agenda on Security (footnote 4): “The Commission will consider the need to strengthen compliance monitoring and enforcement, for instance by increasing training for enforcement staff, support for relevant networks of professionals, and by further approximating criminal sanctions throughout the EU”.

10 Cf. Doc. 15412/16: The Council Conclusions on Countering Environmental Crime of December 2016.

11 Ibid.

- In 2016, an EU Action Plan to combat wildlife trafficking¹² set out the need to review the EU policy and legislative framework on environmental crime, in line with the European Agenda on Security – in particular by reviewing the effectiveness of the Environmental Crime Directive including the criminal sanctions applicable to wildlife trafficking throughout the EU;
- In 2017, the Council in its Conclusions recognised the need to address environmental crime, and especially illegal waste exports and wildlife trafficking, as a priority of the EU policy against organised crime for the period 2018-2021;¹³
- In 2018, the Commission published an EU Action Plan to improve environmental compliance and governance, including in the area of combating environmental crime.¹⁴ One of the actions relates to preparation of a good practice guidance document on strategies for combating environmental crimes and other related breaches, with a particular focus on waste and wildlife offences.

Already in 2015, the EU Commission found: “Of course, legal implementation of EU instruments at national level is not enough. The tools of the EU security framework will only take full effect when national law enforcement agencies feel confident in existing instruments and share information readily. The proposal for a new legal basis for Europol,¹⁵ currently before the co-legislators, seeks to enhance Europol's analytical capabilities, trigger operational action on the part of Member States, and reinforce the agency's data protection regime. Member States should use Europol as their channel of first choice for law enforcement information sharing across the EU”.¹⁶

The current Europol mandate does not reflect the urgent need to have stronger inter-, cross- and multi-agency alignment at transnational cooperation level inside the EU and with a view to Third States, though it has been demanded that, as environmental crime “is a cross-cutting crime type that often converges with fraud, corruption, tax evasion, customs breaches, money-laundering, and/or other financial crimes, multi-agency cooperation

12 EU-action plan against wildlife trafficking, 2016.

13 Council Conclusions on setting the EU-Priorities for the fight against organized and serious international crime between 2018 and 2021.

14 EU-action to improve environmental compliance and government.

15 Now: Regulation (EU) 2016/794.

16 European Commission, *The European Agenda on Security*, p. 8.

is an essential approach to enable an effective response to wildlife crimes at the domestic level, and should be a common practice”.¹⁷

Specific measures under the political Green Deal agenda need to include activities to better understand the interrelated phenomena of intrinsic and extrinsic drivers of challenges that create gaps in the democracy, the rule of law, society and economy where organised criminal actors step in to make use of a changing situation. The scope of the Green Deal should hence focus on crimes that cause damage to humankind as a whole, i.e. crimes within the categories ‘illicit trafficking in endangered animal species, illicit trafficking in endangered plant species and varieties, environmental crimes’ (cf. mandate of Europol in Annex I of Reg. 2016/794). The term ‘environmental crimes’ is neither defined in the Europol Regulation, nor in the authoritative Directive 2008/99/EC on the protection of the environment through criminal law, nor in the relevant multi-agency UN Resolution of 2016.

However, all documents referred to proclaim contextualisation with organised crime and terrorism, most notably and recently the UN Resolution of 2016: “All relevant United Nations resolutions recognise that cooperation between the United Nations and international organizations such as INTERPOL can contribute to tackling terrorism, including preventing foreign terrorist fighter travel, and combating transnational crime, in particular transnational organized crime, including smuggling of migrants, trafficking in persons, drug trafficking, intentional and unlawful destruction of cultural heritage and trafficking in cultural property, piracy, illicit trade in small arms and light weapons, illicit trafficking in nuclear, biological, chemical and radiological materials, cybercrime, corruption and money-laundering and crimes that affect the environment, such as illicit trafficking in wildlife”.

Already in 2000, the United Nations Interregional Crime and Justice Research Institute (UNCRI) found in relation to environmental crimes, “organised crime and transnational criminal networks [...] need deeper analysis and research”; specifically, UNCRI sets out what is needed:

- Deeper understanding of dynamics behind particular crime types;
- Strategic and tactical intelligence about organized crime, transnational criminal networks;
- Assessment of capacity and gaps in global enforcement networks;

17 UNODC, *Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime*, 2017, p. 24.

- Development of performance indicators/metrics;
- Ongoing assessment and evaluation.¹⁸

In the last two decades, few steps have been taken at domestic and international level in this direction. This leaves gaps in legislation and perceptions of the (organised) civil society and public authorities as to understanding the interlinked character of crimes. The development of comprehensive policies is impeded – thus substantiating the need for the directly or indirectly affected target group members to address the present situation. To illustrate the thematic focus, the following examples shall be referred to:

No.	Commodity	Main Illicit Activity	Main Impacts	Secondary Illicit Activity
1 ¹⁹	Sand, stone (esp. gravel)	mining		Eviction, forced labour, slavery, human trafficking, fraud, smuggling, corruption, bribery; cross-financing of other illicit activities
2 ²⁰	Wood (timber)	logging	Eco-system failure. Erosion. Tax evasion. Money-laundering.	Eviction, fraud, smuggling, corruption, bribery; cross-financing of other illicit activities
3 ²¹	Fishes	fishing	Deaths by killing. Extinction.	Marine pollution, slavery, human trafficking, corruption, bribery; cross-financing of other illicit activities
4 ²²	Wildlife	extraction	Drought.	Trafficking, corruption, bribery; cross-financing of other illicit activities
5 ²³	Flora	extraction		Trafficking, corruption, bribery; cross-financing of other illicit activities
6 ²⁴	water	theft		Smuggling, corruption, bribery; cross-financing of other illicit activities

18 UNCRIC, *Organized Crime, Transnational Criminal Networks and Environmental Crime*, 2002, p. 21 et seq.

19 Paul Salopek, *Inside the deadly world of India’s sand mining mafia*, 2019.

20 <https://eia-international.org/forests/illegal-logging-and-timber-trafficking/>.

21 Cf. <https://ejfoundation.org/news-media/ghanas-fisheries-minister-calls-for-end-of-damaging-saiko-fishing>.

22 EU Commission, *Environmental Compliance and Combatting Environmental Crime*, July 2016.

23 Cf. www.interpol.int/en/Crimes/Environmental-crime/Wildlife-crime.

24 Cf. www.brookings.edu/research/water-theft-and-water-smuggling/.

The table below shows the main applicable international instruments and the main legislative measures in the EU related to the commodities 1-6:

No.	Main International Instruments	Main EU Measures in the same Area
1	None	none
2	None specific; indirectly: UNFCCC ²⁵	Reg 1024/2008 ²⁶ ; Reg 995/2010 ²⁷
3	PSMA ²⁸	Reg 1005/2008 ²⁹
4	CITES ³⁰	Reg 338/97 ³¹
5	CITES	Reg 338/97
6	None specific; partially: PUTWIL ³²	none

A reason for the limited availability of international instruments at intergovernmental level may be found in the United Nations' General Assembly Resolution 1803 (XVII) of 14 December 1962 on "Permanent Sovereignty over Natural Resources" which proclaims in No. 1: "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned"³³ That Resolution refers neither to environmental protection nor to the public good or illicit activities of Criminal Networks.

EU measures to counter criminal activities in the scope of Nos. 1-6 presented in the table above have repeatedly been criticised because they are deemed ineffective due to Member States' failure to adequately comply, including their LEAs and judiciary.³⁴

These examples – Nos. 1-6 above – allow initial categorisation of environmental crimes as (in)directly addressed by the Green Deal and differentiation from the understanding of environmental crimes as listed in Article 3 (a)-I and (i) of Dir. 2008/99/EC on the protection of the environment through criminal law (that are not primarily, be it directly or indirectly, envisaged by the Green Deal). Against the background of the table above,

25 United Nations, Framework Convention on Climate Change, 1992.

26 Commission Regulation (EC) No 1024/2008.

27 Regulation (EU) No 995/2010.

28 United Nations, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 200.

29 Council Regulation (EC) No 1005/2008.

30 Convention on International Trade in Endangered Species of Wild Fauna and Flora.

31 Council Regulation (EC) No 338/97.

32 United Nations, Convention on the Protection and Use of Transboundary Watercourses and International Lakes.

33 www.ohchr.org/Documents/ProfessionalInterest/resources.pdf.

34 Cf. e.g. The Guardian, 'No evidence' that EU's illegal timber policy is working, 2016.

this leaves solely Article 3 (f)-(h) of that Directive within the EU's regulatory scope, with its prohibition on:

- 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;
- 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;
- any conduct which causes significant deterioration of a habitat within a protected site.

The EU Environmental Crime Directive³⁵ has the objective to contribute to a more effective protection of the environment and full application of the existing EU environmental legislation through criminal law, to ensure a level playing field in the Member States by approximating the criminal offenses, and to ensure deterrent sanctions and overall effective sanctioning systems in all Member States. To achieve this objective, the Directive:

- establishes a common set of offenses that Member States must criminalise;
- approximates the scope of liable perpetrators, esp. by requiring that legal persons incur liability;
- requires Member States to extend criminal liability to inciting, aiding and abetting such offenses;
- approximates criminal sanctions (and seeks stricter criminal sanctions) by requiring all Member States to ensure effective, proportionate and dissuasive criminal penalties for environmental crimes. However, the sanctions for legal persons, while required to be effective, proportionate and dissuasive, need not be criminal sanctions.

The Environmental Crime Directive criminalises certain violations of more than 60 legal instruments in the environmental field that are listed in two annexes to the Directives.

Since the objective of Directive 2008/99 is “to ensure a more effective protection of the environment”³⁶ – which does not encompass measures in the context of Criminal Networks’ activities as such and hence does not relate *sui generis* to organised crime (despite of the Directive’s title), terrorist

35 Directive 2008/99/EC.

36 Cf. Recital 14 Directive 2008/99/EC on protection of environment through criminal law.

groups or any related crimes – and there are 60 or more EU legislative measures to analyse,³⁷ it becomes apparent that the current status quo of the EU's regulatory framework is insufficient to address the threats caused by activities of Criminal Networks. To this end, the preparation of Green Deal agenda measures can easily be based on prior experiences of relevant public authorities and, even more, of Civil Society Organisations with a view to the fact that also the legislative acts of the EU addressing organised crime and terrorist groups do not take into account the environmental law dimension.

However, the EU Security Agenda 2015 implicitly acknowledged the failure (inter alia) of the Directive to sufficiently address organised crime: “[...], serious and organised cross-border crime is finding new avenues to operate, and new ways to escape detection. There are huge human, social and economic costs – from crimes such as trafficking in human beings, trade in firearms, drug smuggling, and financial, economic and environmental crime. Organised crime groups [...] exploit the vulnerabilities of people seeking protection or better economic opportunities and are responsible for the loss of lives in the name of profit. Organised crime also feeds terrorism [...]”³⁸

The Green Deal's implementing measures should be designed in the form of responses to the cases outlined above, to the shortcomings of the EU legislation, to the addressed aspects referred to by the EU, and the needs firstly formulated by UNCRIC.

Implementing measures of the Green Deal should understand prevention in a comprehensive manner: Where court competence and *de facto* admissibility – *ratione temporis*, *ratione materiae*, *ratione personae*, *ratione territoriae* – of a case is provided for inside the EU at domestic and EU Courts' level, prevention would become manifest in the – from the Criminal Networks' perspective – dissuasive fact that courts' competence is legally established by EU laws. Courts' competence means jurisdiction, thus, Green Deal legislative measures should serve to shape the instrument to establish judicial jurisdiction regarding criminal proceedings.

As a consequence of the right to free movement within the EU, the tendency by Member States to extend their jurisdiction and the advancements in technology which have taken place in the last decades, there is a growing

37 Ibid., Annex A.

38 European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Agenda on Security, Strasbourg, 28.4.2015 COM(2015) 185 final, p. 12.

number of situations where several Member States have jurisdiction to investigate and conduct criminal proceedings regarding the same facts.³⁹

If Member States were not obliged to inform each other of cases which could give rise to a conflict of jurisdiction or to consult each other in order to settle a conflict of jurisdiction, this could lead to proceedings being conducted in a Member State which is not best suited for this (e.g. when the relevant evidence and witnesses are located in another Member State) or to parallel proceedings being conducted in different Member States.

To mitigate these risks, the Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings⁴⁰ has been adopted. The objective of this instrument is to promote closer cooperation between Member States conducting criminal proceedings, in order to:

- agree on a solution to avoid negative consequences arising from parallel criminal proceedings;
- prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts.

That Framework Decision establishes a mandatory consultation procedure in cases where parallel criminal proceedings are conducted in different Member States. If the consultation procedure does not result in a consensus being reached, the Member States involved shall refer the case to Eurojust. Apart from that Decision, which applies to criminal proceedings in general, there are a numerous EU instruments with special rules on preventing and settling conflicts of jurisdiction, such as:

- Framework Decision on the European Arrest Warrant (Article 16 FD 2002/584/JHA);
- Framework Decision on combating terrorism (Article 9 FD 2002/475/JHA);
- Framework Decision on attacks against information systems (Article 10 FD 2005/222/JHA);
- Framework Decision on the fight against organised crime (Article 7 FD 2008/841/JHA);

39 Cf. e.g. Thorhauer, Nathalie Isabelle, *Conflicts of Jurisdiction in Cross-Border Criminal Cases in the Area of Freedom, Security, and Justice: Risks and Opportunities from an Individual Rights-Oriented Perspective*, *New Journal of European Criminal Law*, Sage Publications, 2015.

40 Council Framework Decision 2009/948/JHA.

- Council Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (Article 26 Reg 2017/1939).

When it comes to crimes committed by Criminal Networks which have (in)direct effect on or within the Internal Market and/or adversely on the AFSJ, there are still significant and immanent jurisdictional shortcomings in the Member States⁴¹ in the absence of a *functioning* common EU-wide approach.⁴²

Unlike in cases of crimes against humanity as taken-up by Europol,⁴³ where jurisdiction has been declared universal,⁴⁴ no such competence is foreseen in crimes addressed by the Green Deal explicitly or implicitly or any other international legislative instrument at inter- or supranational level.

From a holistic perspective, also the role of European Public Prosecutor's Office has to be analysed: Regulation 2017/1939 implements enhanced cooperation as to the EPPO.⁴⁵ Currently, enhanced cooperation is based on Art. 20 TEU in conjunction with Art. 326 et seq. The TFEU is applied in the fields of divorce, patents, property regimes, and the European Public Prosecutor's Office EPPO (furthermore, it is approved for the field of a financial transaction tax)⁴⁶. With regard to the EPPO, there has been a specific mechanism applied which qualifies as enhanced cooperation in consequence, but is based on Art. 86 TFEU. This specific norm allows motions of Member States in order to counter crimes affecting the financial interests of the EU and bypass the Council's unanimity requirement.

In the absence of a common inter- or supranational definition of the term 'environmental crimes' as such, the Green Deal faces the opportunity to apply a broad interpretation of illicit activities; such interpretation is limited by the focus on organised groups committing crimes.

At international level, the term 'organised criminal group' is understood in the meaning of Article 2(a) of the UN Convention on Transnational Organised Crime 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

41 Cf. www.business-humanrights.org/en/kik-lawsuit-re-pakistan.

42 Cf. Guardian, No evidence that EU's illegal timber policy is working, 2016.

43 Cf. last indent of Annex I Regulation (EU) 2016/794 on Europol, OJ L 135, 24.5.2016, p. 53-114.

44 Cf. Art. 5 Statute International Criminal Court.

45 Council Regulation (EU) 2017/1939.

46 Cf. Council of the EU, <https://data.consilium.europa.eu/doc/document/ST-10097-2019-INIT/en/pdf>.

Convention, in order to obtain, directly or indirectly, a financial or other material benefit".⁴⁷

The EU follows this definition of organised crime groups;⁴⁸ similarly, 'terrorist groups' are defined as structured groups of more than two persons, established for a period of time and acting in concert to commit terrorist offences (whereas 'structured group' means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure).⁴⁹ There is no universal definition of the term 'terrorism', neither at EU nor at intergovernmental level. Instead, Art. 3(1) and (2) of Dir 2017/541 on terrorism lists offences considered of terrorist character; most of them are similar to those of organised crime groups' activities, esp. Art. 3(1)(a)-(c): attacks on persons' life, attacks upon the physical integrity of a person, kidnapping or hostage-taking.

As there are intersections between the crimes committed by either of the groups, definitional accuracy is blurred. Hence, Green Deal measures and activities should apply a differentiation according to the groups' motives: While terrorist groups need financial resources to conduct other illicit activities, organised crime groups have a purely commercial interest as the sole end in itself. Acknowledging that crimes must be understood in the broadest sense and include activities of terrorist groups, the AFSJ faces threats from both categories of groups, though they may have different aims but use similar (and sometimes the same) methods.

Related to the questions who the relevant criminal actors are and where they are active, Green Deal activities should better analyse legislative acts at intergovernmental, supranational and Member States' levels concerning Criminal Networks and environmental impacts. Insofar, the criminal offences defined in Article 3 Dir 2008/99/EC on environmental crimes and in Article 3(d)(f)(g)(h)(j) of Dir 2017/541 on combating terrorism have to be interrelated to allow measurement of negative impacts and detriment.

The character of criminal activities related to the Green Deal typically results in adverse effects that are neither limited to a specific group of victims per se nor to a specific geographic region sui generis. Whereas the direct damage resulting from such activities may be confined to places and attributed to specific or (specifiable) individuals in a certain region, the indirect negative consequences have to be understood in a contextualised manner related to transnational if not global outcomes.

47 Available at www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

48 Cf. Article 1(1) of Council Framework Decision 2008/841/JHA.

49 Cf. Article 2 No. 3 of Directive (EU) 2017/541.

The Green Deal should therefore follow a comprehensive approach in regard to understanding harms done to the environment – holistically: to the climate – by Criminal Networks. By means of categorising the types of crimes, the Green Deal could at least illustrate the interlinkages between criminal acts, environmental damage and negative impacts on the functioning of societies, state institutions and the rule of law in democratic regulatory regimes.

Whether it be extrinsic – such as climate change effects – or intrinsic factors that facilitate environmental crimes, both have adverse effects on the access to natural resources of humans and their livelihood. To that end, climate change law addresses the causes and the consequences: whereas the causes are subject to climate policies; here, the Green Deal’s law enforcement dimension should address the consequences of environmental crimes and related aspects in forms caused solely by Criminal Networks. Otherwise, structures of organised criminal activities may serve to undermine state regimes (institutions of democracy) or the stability of the enforcement and justice (rule of law) in any given country, and become *de facto* alternatives for the affected individuals to make a living in the absence of attractive options.

Sources

Bales, Kevin, *Blood and Earth*, Penguin Random House, 2016

European Commission, *Environmental Compliance and Combatting Environmental Crime*, July 2016; https://ec.europa.eu/environment/integration/research/newsalert/pdf/wildlife_law_enforcement_the_vital_role_of_NGOs_56si13_en.pdf

European Commission, *Sustainable Development Goals*, 2019; https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_en

European Commission, *The European Agenda on Security*, Strasbourg, 28.4.2015 COM(2015) 185 final; https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf

European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Agenda on Security*, Strasbourg, 28.4.2015 COM(2015) 185 final; https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf

European Commission, *The European Agenda on Security*, Strasbourg, 28.4.2015 COM(2015) 185 final; https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf

- Gerstetter, Christiane et al., Status Quo und Weiterentwicklung des Umweltstrafrechts und Sanktionen: Instrumente zur Verbesserung der Befolgung von Umweltrecht (Compliance), in: Umweltbundesamt, 2019; www.umweltbundesamt.de/sites/default/files/medien/1410/publikationen/2019-11-07_texte_135-2019_umweltstrafrecht_0.pdf
- Guardian, No evidence that EU's illegal timber policy is working, 2016; www.theguardian.com/environment/2016/feb/10/no-evidence-that-eus-illegal-timber-policy-is-working
- Holland, Trygve Ben and Sarah Holland-Kunkel, André Röhl, Carina Zachau, European Security Union – On the Dichotomy of Liberty and Security in the Area of Freedom, Security and Justice, Verlag für Polizeiwissenschaften, 2022
- IEEP, Analysis of the Political Guidelines of the President-elect of the European Commission, 19 July 2019; <https://ieep.eu/uploads/articles/attachments/e4a4cddf03c2-4e53-9c6e-a302512ee85d/IEEP%20analysis%20of%20political%20guidelines.pdf?v=63730756931>
- INTERPOL and UNEP, Strategic Report: Environment, Peace and Security – A Convergence of Threats, 2016; www.interpol.int and www.unep.org
- Salopek, Paul, Inside the deadly world of India's sand mining mafia, 2019 www.nationalgeographic.com/environment/2019/06/inside-india-sand-mining-mafia/
- Thorhauer, Nathalie Isabelle, Conflicts of Jurisdiction in Cross-Border Criminal Cases in the Area of Freedom, Security, and Justice: Risks and Opportunities from an Individual Rights-Oriented Perspective, New Journal of European Criminal Law, Sage Publications, 2015
- UNEP, Sand, rarer than one thinks, 2014 https://na.unep.net/geas/archive/pdfs/GEAS_Mar2014_Sand_Mining.pdf
- UNCRC, Organized Crime, Transnational Criminal Networks and Environmental Crime, 2002, p. 21 et seq.; www.unicri.it/topics/environmental/conference/Expert_Group_II_-_Edmund_McGarrell.pdf

Legislative Acts / International Agreements

- Council Framework Decision 2008/841/JHA, OJ L 300, 11.11.2008, p. 42
- Council Framework Decision 2009/948/JHA, OJ L 328, 15.12.2009, p. 42-47
- Directive 2008/99/EC on protection of environment through criminal law, OJ L 328, 6.12.2008, p. 28
- Directive (EU) 2017/541 on combating terrorism, OJ L 88, 31.3.2017, p. 6-21
- Regulation (EC) No 1024/2008 of 17 October 2008 laying down detailed measures on the establishment of a FLEGT licensing scheme for imports of timber, OJ L 277, 18.10.2008, p. 23-29
- Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market, OJ L 295, 12.11.2010, p. 23-34
- Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ L 286, 29.10.2008, p. 1

- Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, p. 1-69
- Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53-114
- United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora; <https://www.cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>
- United Nations, Convention on the Protection and Use of Transboundary Watercourses and International Lakes; www.uncece.org/fileadmin/DAM/env/water/publications/WAT_Text/ECE_MP.WAT_41.pdf
- United Nations, Framework Convention on Climate Change, 1992; https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf
- United Nations, Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2007; www.fao.org/3/i5469t/i5469T.pdf
- UNODC, Enhancing the Detection, Investigation and Disruption of Illicit Financial Flows from Wildlife Crime, 2017