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Defining Environmental Crime in International Law: Conceptual Ambiguities, Enforcement Gaps and Criminological Recognition

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Abstract:

Green crimes, a contemporary term for environmental crimes within green criminology, pose a significant threat to the planet. Numerous anthropogenic activities, illegal exploitation of natural resources, cases of corporate negligence and a range of wrongful and destructive acts against the nature remain unrecognized as crimes under international law. This gap primarily exists due to the lack of an adequate legal response from the international community to establish an internationally enforceable definition of environmental crimes. Consequently, crimes against the environment are often neglected and frequently escape prosecution owing to sovereignty concerns and inconsistent priorities. This article argues that the lack of a universal definition of environmental crime, legal ambiguities and enforcement deficiencies create critical enforcement gaps and institutional lacunae in the identification and prosecution of numerous harmful activities against the environment in international law. Through a doctrinal legal research design and the application of a green criminology framework, this article contends that the current international legal framework is insufficient. Therefore, to bridge the gap between environmental harm and accountability under international law, an interdisciplinary collaboration and development of coherent legal standards is crucial.

Keywords: International law, environmental crimes, environmental harm, green criminology, ecocide, ecological resistance

INTRODUCTION

Green criminology involves the study of green crimes, a contemporary term referring to offences committed against environment. (Aliozi, 2021: 1). The absence of a universally accepted and internationally enforceable definition requires urgent deliberation from the international community, as the rapid rise in several harmful activities against the environment and transnational environmental crimes poses a significant challenge. All states share an equal responsibility to protect the nature from criminal acts and destructive practices (Bajrektarevic, 2019: 1). Moreover, the lack of appropriate and unified legal tools to fulfil erga omnes obligations related to the protection of the environment is difficult to navigate (Negri, 2022: 146).

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The study of environmental crimes and green criminology raise fundamental questions such as; What constitutes an environmental crime and why should such acts be criminalized under international law (Megret 2013)? In this regard, effective global action is required to define environmental crime and its scope thereby establishing the parameters for future international legal instruments to combat these crimes. Therefore, this article explores a critical gap in international law arising from the lack of an internationally recognized and enforceable definition of environmental crime. It further highlights the conceptual complexities and diverse perspectives that shape the scholarly discourse surrounding environmental criminality. Ultimately, the article advocates for establishing a definition grounded in green criminological principles, with particular emphasis on ecocide, to strengthen the international legal frameworks and enhance accountability for environment.

LITERATURE REVIEW

Rob White (2008) examines the key themes, concepts and conundrums of environmental or green criminology in his book "Crimes against Nature: Environmental Criminology and Ecological Justice." His work is centered on criminological approaches to environmental challenges that include conceptual understandings of harm, victimization, law enforcement and social control. The book reviews some specific concerns regarding the nature of environmental harm and appropriate response to it. It essentially refers to the work that has been done on environmental crimes over the last fifteen years or so. It is a criminological investigation of specific crimes against nature, which include a wide range of offences against humans, the environment and non-human creatures. He further states that the extent and scope of many environmental problems have grown so large and the evidence has become so overwhelming, that we can no longer ignore them. Oil spills, air pollution, energy crises and insufficient drinking water are all examples of environmental deterioration that we face on a daily basis. The well-being of planet Earth is undoubtedly in jeopardy, according to global and local assessments. What is happening to the ecosystem, species in general and humans in particular, is a topic worth debating. Different viewpoints on the nature–human interaction, disagreements over values and interests and disputed notions of what constitutes the 'best of all worlds' all play a role in responding to environmental devastation. Hence, the environment has received criminological attention, complicating and confounding the investigation.

Ludwik A. Teclaff (1994), in "Beyond Restoration - The Case of Ecocide," under the chapter "Prohibitions, Penalties and Compensation," discussed that the international community's initial response was slow, gradual and ineffective. Nevertheless, the threat of ecocide in the twentieth century could not be dismissed. He suggested that the actions must be taken to ensure that the threat of ecocide is adequately addressed. The goal of every environmental protection policy should be to prevent damage as well as to restore damage that has already happened. All environmental protection initiatives should include punitive measures and liabilities, particularly strict liability with substantial compensation. However, where a credible threat of global ecocide exists, prohibition, as in the 1963 Nuclear Test Ban Treaty, may be the only appropriate reaction. Prohibition may be politically and economically impractical in the case of activities that are part of economically beneficial processes. Since the mid-twentieth century, incidents of ecocide have progressively escalated, with the threat of greater and more frequent occurrences ahead.

Consequently, nations have focused on strengthening liability mechanisms and advancing preventive measures. Liability has been imposed on operators of high-risk, high-damage industries, while states have attempted to limit their own culpability. However, liability only operates after irreversible damage has occurred, it was believed that adopting and implementing preventive measures would encourage authorities to act before calamity struck. State-to-state communication is essential to build a voluntary liability regime. Furthermore, an efficient international regime is a necessary precondition for a society free of fear of ecocide, but unless it is structured on a reconciliation of the twin requirements for economic progress and environmental preservation, it may just provide a breathing place.

In "The International Crime of Ecocide", Mark Allan Gray (1996) demonstrated that states, individuals and organizations who cause or tolerate severe environmental damage breach a duty owed to humanity, constituting an international delict known as "ecocide". He defined ecocide as willful or negligent violation of fundamental state and human rights. The seemingly radical concept of ecocide, when defined in this way, may be traced back to international law concepts. Its parameters can be expanded and refined as environmental awareness grows, resulting in more international agreement and legal growth. The element of waste makes ecocide ethically repulsive and it has the potential to elevate it from a mere international delict to an international crime. Gray proposes that ecocide could be prosecuted as a case of strict liability. This criterion would encourage preventive conduct, advance the "polluter pays" and "precautionary" ideas and make issues of proof of knowledge, purpose and causation more straightforward. The right to life and the right to health constitutes two most fundamental human rights supporting the legal recognition of ecocide.

In "Green War: An Assessment of the Environmental Legislation of International Armed Conflict," Michael N. Schmittt (1997) identifies and evaluates the law that might govern environmental operations during conflicts. The importance of this task is highlighted by the lack of agreement on the text of the relevant statute. As a result, the history of environmental damage during wartime, as well as the legal reactions to it, is examined in this work. He explained that any complete legal analysis must begin with a historical survey since law is both contextual and directive. It is contextual in the sense that it is understood and implemented in the context of the social, political and economic milieu in which it operates. It is also critical to clarify terminology, notably for the term "environment".

In his research work, "*Climate Torts and Ecocide in the Context of Proposals for an International Environmental Court,"* Patrick Foster (2011) argues that a proposed International Environmental Court (IEC) should possess wide personal jurisdiction over states and individuals, adjudicating both civil and criminal environmental matters. Furthermore, environmental harm caused by humans occurs both wartime and peacetime. The term 'ecocide' has been used to describe severe, large-scale and long-term human devastation of ecosystems throughout the last half century. Based on the concept's history, the continuous need for a recognized worldwide crime and the feasibility of its adoption in the framework of international law, this work also aims to give the parameters for a workable legal definition for ecocide.

Matthew Hall (2013), in his work "Victims of Environmental Harm: Rights, Recognition, and Redress under National and International Law", pointed that there is a vacuum in the field of green

criminology, i.e., the lack of a special focus on those who are genuinely suffering harm as a result of environmental deterioration. As a result, the author has attempted to substantively conceptualize and investigate the role of such "environmental victims" in both national and international criminal justice systems. He noted that with the increased focus on climate change and environmental deterioration in recent years, the criminal culpability of people, corporations and even states for the harmful acts against nature has received unprecedented attention. As a result of these advances, a new field of criminology known as "green criminology" has emerged. Victims' rights, compensation and treatment by criminal justice systems, as well as participation in the process, are among them. It is frequently asserted that environmental crimes have no clearly identifiable victim groups. It is difficult, for example, to link a specific discharge of a restricted material to a specific type of environmental or human health damage. Cross-border mistakes make the finest candidates for crimes that do not include any violation of the law. It makes little difference whether the crimes and perpetrators occur within a single state or across international borders. Asymmetries in legal definitions and enforcement allow firms to conduct things that are illegal in certain jurisdictions but permissible in other places. Most legal systems have highly specific laws that regulate only the most severe forms of ecological damage (toxic dumping, illegal logging, selling unsafe foodstuff, depriving people of food), but none of them recognize the harm done to the earth's future sustainability by individuals or human societies. In the meantime, the environmental wrongs can cause damage to a large number of people, groups and communities.

Margrethe Storaas (2019) in “Ecocide, a crime against Peace? A conceptual analysis of world peace from a case of applied ethics on ecosystem harm” states that despite the continuous effort of a decade at the UN, there is still a gap regarding an international law against ecocide, showing the reluctance of the international community to deal with severe, long-lasting environmental destruction. Constituents and law enforcement authorities in the UN, the EU, and other blocs are unable to fully grasp the concept of ecocide due to a lack of public discussions on ecosystem degradation and its connection with the core values of international law.

Morgera (2020) in “*Corporate Environmental Accountability in International Law*,” examined that despite growing international enforcement mechanisms, the enforcement challenges persist due to the lack of consensus over binding and non-binding corporate environmental responsibilities. Therefore, the international community is faced with the issues of inconsistent enforcement and the absence of a unified legal framework.

Spaapen, White and Kluin (Eds.) (2014) shed light on the complex nature of the environmental offences in “Environmental Crime and its Victims: Perspectives within Green Criminology.” Furthermore, White and Heckenberg (2014) in “*Green criminology: An Introduction to the Study of Environmental Harm,”* explain that the lack of a clear conceptual framework separating environmental crimes from conventional offences has hindered effective responses to long-term, widespread and severe ecological harm affecting both human and non-human victims.

In the same vein, different categories of the environmental offences i.e., primary and secondary green crimes that directly or indirectly harm the environment are discussed by Wanodyo Sulistyani (2019), in “Environmental Crime Victims under Criminal Justice System: A Study on the Development of Environmental Victimology”. Thus, clearer categorization helps in conceptual clarity and legal response accordingly.

Finally, Gibbs, Gore, McGarrell and Rivers (2010), in their work "Introducing Conservation Criminology: Towards Interdisciplinary Scholarship on Environmental Crimes and Risks," stress the need for the integration of an interdisciplinary framework for conservation criminology, noting that conventional criminology has historically neglected the harm-oriented perspectives concerning the environmental degradation.

THEORETICAL FRAMEWORK

This study is grounded in an interdisciplinary framework informed by the field of green criminology, which provides the foundational insight to detect the environmental harm beyond the scope of traditional criminology. Considering harm as social and ecological injustice is the essence of the present study. For this purpose, the theory of deep ecology is pertinent to conducting the research on ecocide. Deep ecology is a philosophical and ethical movement that emphasizes the intrinsic value of the natural environment and advocates a strong ethical identification with all forms of life. For a healthy society, the environmental ethic of ecological consciousness is required. Therefore, a policy based on ecological resistance for humans' protection, economic growth, peace and national security is a dire need currently. Deficient environmental protection and ecological resistance are the substantial reasons for ecocide. Ecological resistance condemns the loss of species of animals and plants and the taming of the oceans. Furthermore, it challenges the public or private right to inflict harm upon the environment, whether through sate-led actions or corporate exploitation.

RESEARCH METHODOLOGY

This article employs a doctrinal legal research design. Primarily, it reviews and analyses literature on environmental harm and crime to identify the challenges of defining, enforcing and recognizing environmental crimes. Accordingly, this article draws upon the scholarly work of green criminologists, international law theorists and political ecologists. Furthermore, it critically reviews the literature to highlight accountability gaps and the fundamental barriers to ecological justice that enable powerful state and corporate actors to evade responsibility. Through this approach, the study develops a coherent and interdisciplinary framework aimed at addressing these deficiencies and informing potential solutions.

THE INSTITUTIONAL LACUNA: GAPS IN INTERNATIONAL LAW AND ADJUDICATION

There is a pressing need for global political commitment to establish coordinated legal action that can be articulated further in a workable international treaty addressing environmental harm. There are certain requirements to establish an improved institutional framework based on harmony and an effective monitoring system along with efficient reporting for which collaboration of all states is mandatory. In this way, an effective implementation of the environmental legal standards can be achieved at various tiers (Bajrektarevic 2019: 1).

The perception of environmental offences as "victimless" contributes to their low prioritization in national enforcement agendas, leading to inadequate governmental and law enforcement responses (Davies et al., 2008, p. 18). Although the international community has achieved remarkable progress in International Environmental Law (IEL) through biodiversity and climate conventions (Mistura 2018: 225), current IEL contains only limited norms criminalizing environmentally

harmful conducts (Negri 2022: 146). Traditional international criminal law is also insufficient in protecting the environment (Mistura 2018: 208). Crucially, there is no internationally recognized crime category such as ecocide, specifically addressing severe environmental destruction under international law. Similarly, no specialized international court holds jurisdiction over environmental crimes or perpetrators. (Negri 2022: 148). The international criminal justice system currently lacks the power to control ecosystem destruction, as ecocide is not recognized as a legally enforceable green crime. Defined within green criminology as severe, large-scale and widespread anthropogenic harm to the environment, ecocide must therefore be declared an international crime (Aliozi 2021: 2).

Presently, there exists no specialized environmental court. Consequently, disputes are being adjudicated through non specialized courts or tribunals such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea, EU courts and human rights courts. This situation creates a legal vacuum. To some extent, the International Criminal Court (ICC) deals with environmental damage when caused by war crimes. However, the jurisdiction of the court remains limited. As far as peacetime environmental crimes are concerned, they are often left unaddressed by the ICC. Therefore, a collaborative action of the states is mandatory to prosecute peacetime offences and harm against nature (Negri 2022: 148). Although both environmental crimes and corporate/state crimes address harm caused by corporations or large organizations to the environment; however, the two fields remain largely unconnected. Hence, the definitional debate remains contentious regarding the elements of crime.

Environmental crimes and corporate crimes often overlap within the white-collar crime framework of Sutherland, ignoring the role of states in corporate crimes. Consequently, scholarly discourse has shifted from the violations of environmental laws to the wider concept of ecological harm. To resolve this issue, green criminology emerged in the 1980s that links the environmental degradation with the social evil causing social injustice, ascribing this harm to the irresponsible governments and states. Influenced by Lynch's radical humanism and South's call for a unifying "green perspective", the field seeks to consolidate disparate research on environmental harm, advocating for explicit links to state-corporate crime studies. This approach analyses the perspective of 'environmental harm' as the pivotal issue for investigating unregulated authority and social injustices (Bradshaw 2014: 166).

Defining Environmental Crime: Complexity, Scale and Jurisdictional Hurdles

A significant challenge in the enforcement of criminal law is the complex nature and multifaceted nature of environmental crimes. The absence of an internationally enforceable definition makes the situation more complicated. (Markovic 2022: 117).

The Absence of a Universal Environmental Crime Definition

The implementation of more than 270 multilateral environmental agreements (MEAs), along with numerous international legal instruments, varies widely in different jurisdictions at different tiers (Pink & White 2016: 5). Environmental crimes are perceived as victimless, leading to weak, inconsistent and inadequate responses from the law enforcement agencies (LEAs). Despite the severe nature of environmental crimes, many states struggle to criminalize and prosecute such offences against nature. International environmental law and international criminal law operate as

two specialized regimes of international law that cannot be enforced in any national jurisdiction without the expressed consent of the state along with explicit provisions against the harmful conduct to uphold the principle of sovereignty (Pathak 2016: 383-4).

The complexity of environmental crimes necessitates a collaborative approach among states. This requires investment in enforcement policy, capacity building and performance management, alongside cross-jurisdictional negotiation due to the global dimensions of such crimes, detection difficulties and links to criminal syndicates (Franjic 2021: 252). Traditional international mechanisms include legal instruments, institutions, seminars and conferences, but states are generally unwilling to compromise their sovereignty over environmental crimes. However, there is a broad support for the development of IEL frameworks incorporating criminal sanctions while respecting national interests (Pathak 2016: 384).

The Vast and Varied Landscape of Environmental Harm

The complication regarding incomplete data and limited analysis persists due to the lack of recognition of violations and harms inflicted upon nature by states. Therefore, it is difficult to provide accurate global estimates of the environmental crimes (Lireza & Koci: 2023, 238). There is a need for a multidisciplinary approach to eliminate the impact of all environmental crimes, including corporate and white-collar offences, for which the broader concept of harm against the environment must be considered for prosecution (Olivi 2022: 18). Unfortunately, in most countries, the legislation against the environmental crimes is substandard. In addition, there are insufficient legal frameworks and enforcement mechanisms which leads to the neglect of serious environmental violations. Thus, it is arduous to quantify resource loss and money laundering. Although existing laws govern serious crimes against the environment, there is still a lack of understanding regarding serious violations. Consequently, many nations frequently misapply the law, which results in unsuccessful prosecutions or insignificant punishments. Criminals frequently exploit these legal ambiguities to develop their illegal business sectors with little risk. In addition, there are many instances in which laws are applied incorrectly, neglecting the role of organised crime, tax evasion, violence, trafficking and the financing of armed non-state organisations (Nellemann et al., 2016: 17). The diverse and multilayered nature of environmental harm at the global, regional and local levels further complicate efforts to determine the loss and extent of damage. In addition, environmental crime is not a single event or one-time occurrence but a chain of interlinked events that are not easily detectable. There are some harms that are unknown to the world at the moment; however, they may have profound consequences future generations (Pathak 2016: 385-6).

Inadequate Implementation and Enforcement of Environmental Law

Despite numerous international legal instruments, including treaties and binding or non-binding agreements that focus primarily on the environment or contain significant environmental provisions (Hicks 1999: 2-3), the enforcement of these international instruments remains a complicated issue in many jurisdictions. Persistent uncertainty with respect to the legal implications of such instruments is affecting the enforcement and regulatory efforts of states. Moreover, the ambiguity within legal frameworks hinders effective action to secure the 'environmental rule of law.' Consequently, states may struggle to hold offenders accountable,

undermining overall environmental protection efforts (Faure & Kindji 2020: 12). It is the requirement of the dynamics of environmental harm that each crime should be addressed effectively by utilizing different skills, knowledge and expertise so that overall enforcement against environmental crimes can be strengthened (Franjic 2021: 252). In addition, there is no effective international criminal law framework for environmental crimes due to several key reasons. First, several environmentally harmful acts are not declared illegal under international law. Second, the complexity in nature and the diffuse scope of these crimes make a problem of collective culpability regarding the detection and imposition of liability. Furthermore, detecting criminal intent for applying liability to wrongful acts against the environment becomes difficult due to several cases of negligence. The vague definition of environmental crimes renders many wrongful acts under the national jurisdiction, thus, causing issues of enforcement under international law. Finally, international criminal law's focus on individual liability is exceptionally challenging to establish international legal responsibility for environmental harm (Pathak 2016: 286).

Anthropocentrism and Its Discontents in Criminological Thought

The rapid rise of environmental crimes, estimated to increase by five to seven per cent annually indicates the growing involvement of organised criminal groups in environmental wrongful conduct. Moreover, due to several anthropogenic activities, the human impact on the environment is dangerously high. While ignoring the severity of the environmental offences, the traditional criminology only imposes fines and issues warnings to powerful corporate perpetrators. Nevertheless, the adverse effects of climate-induced erratic rainfall, decline of species, loss of biodiversity from illicit wildlife trade and overexploitation of natural resources outweigh the restrictive effect of fines and warnings. Additionally, criminology has predominantly left the research regarding green crimes to disciplines like conservation biology and ecology. Furthermore, the anthropocentric view of the criminology only considers humans as victims, thereby neglecting the plants, animals and other species of the ecosystem. This narrow perspective restricts a comprehensive understanding of victimization within environmental crimes (Van Uhm & Siegel 2019: 730-1).

Prototypes, Not Solutions: The Preliminary State of International Measures

Another complication lies in achieving consensus among all states on the formal recognition and prosecution of environmental crimes under international law. Priority must be established in cases of severe, long term and wide spread harm to the environment. However, achieving such agreement remains an arduous political challenge necessitating the adoption of a *de lege ferenda* (forward-looking law reform) perspective while considering the persistent lack of international consensus. Despite repeated failures to secure a consensus within the international community, a universally agreed and internationally enforceable definition is crucial to address the legal vacuum regarding the definition. There is also a need to incorporate all the elements of such a definition necessitating to address both direct individual criminal liability and the responsibility of a state for international environmental crimes. In this way, international obligations can be imposed directly on the violators. Additionally, both states and victims can respond to violations of international law. However, it would be beneficial to channel such collective actions through the United Nations, thereby ensuring coherence, legitimacy and global participation (Smith 2024: 4-5).

CONCLUSION

A continuous rise in environmental crimes has emerged as a pressing global concern. However, the international community has been unable to effectively mitigate the harmful impact of environmental crimes due to significant challenges in their recognition. These challenges stem largely from vague definitions, inconsistent enforcement and a longstanding neglect of ecological harm within criminology discourse. Despite the existence of several multilateral environmental agreements, the international legal framework continues to exhibit structural weaknesses, particularly as states are reluctant to compromise their sovereignty for the sake of ensuring accountability for environmental crimes. Nevertheless, there is growing support for the establishment of new international legal norms, such as the criminalization of ecocide, to strengthen and unify global responses that help to bridge the gap between environmental harm and legal accountability. In this regard, a multidisciplinary approach must be adopted to treat environmental protection as an essential aspect of collective security. Therefore, addressing these crimes requires multidisciplinary collaboration and harmonized legal frameworks. For this reason, the international community should start formally recognizing and criminalizing severe, large-scale, widespread and long-term environmental destruction such as ecocide, to address the dire need for a universal definition. Doing so would contribute to the development of a robust international legal framework capable of addressing environmental or green crimes and safeguarding the planet for future generations.

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