

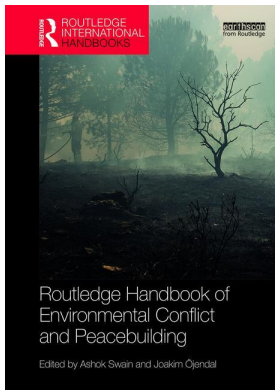
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On: 26 May 2019

Access details: *subscription number*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



Routledge Handbook of Environmental Conflict and Peacebuilding

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Transnational environmental crime

Publication details

<https://www.routledgehandbooks.com/doi/10.4324/9781315473772-3>

Peter Stoett

Published online on: 17 Apr 2018

How to cite :- Peter Stoett. 17 Apr 2018, *Transnational environmental crime from:* Routledge Handbook of Environmental Conflict and Peacebuilding Routledge

Accessed on: 26 May 2019

<https://www.routledgehandbooks.com/doi/10.4324/9781315473772-3>

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Transnational environmental crime

Peter Stoett

Introduction

Transnational environmental crimes (TECs) are severe threats to environmental security today. The sheer magnitude of TEC is staggering; the scope and level of complex organization surprising to even seasoned veterans of both environmental policy and law enforcement. Illegal logging alone is estimated to be a \$30–100 billion industry, representing 10–30 percent of the global wood trade (Nelleman 2012). Indeed, a new field of “green criminology” (Stretesky, Long, and Lynch 2014; Bierne and South 2007; South and Brisman 2013; White 2008) has emerged in response to the rise of environmental crimes (a rise at least partly attributed to new legislation that outlaws formerly legal behavior). Taking green criminology to the international level, many authors and intelligence units are directing their focus onto the role played by multinational corporations, armed rebel groups, corrupt governments and/or bureaucracies, “environmental black market” dynamics (Brack and Hayman 2002), and other causal variables.

It is not difficult to argue that environmental crimes, which destroy natural capital and reduce ecosystem resilience (including the socio-ecological ecosystems of which humans are an integral part), are threats to national security (Ivanović 2010). It is important to note, however, that the more widespread and irreparable crimes, such as the estimated \$20-billion illegal trade in wildlife (most of it destined now for Asia) or the emission of dangerous contaminants contrary to international conventions, are threats to global environmental security – to the biosphere (Banks et al. 2008). There is no other way to view, for example, massive illegal fishing operations that, coupled with habitual legal overfishing, drive fish stocks to near-extinction. And TECs are often linked to organized crime cartels (who are doubling-up on drug, arms, and human trafficking, money laundering, and/or other combinations) or are perpetrated by rebel groups such as the Lord’s Resistance Army or Somalia’s al-Shabaab militants seeking quick funding for arms and atrocity, which reinforces the internationalization of environmental crime today.

If TEC is tied inextricably to environmental security, it is also tied to environmental justice at the global level. For example, the shipping of hazardous waste to the southern hemisphere by industrial countries was considered an environmental injustice long before it was treated as

a TEC, though it is clearly viewed as the latter today. In the same vein, we might suggest that climate justice issues will be legal ones in the future if the international climate change regime can evolve in a similar trajectory. However, we also need to be careful that, as TEC legislation and conventions proliferate in response to several coterminous ecological crises, we do not permit this to be used to the detriment to local communities for political gain. This too applies to environmental security in the broader sense, since it can be seen as a justification for greater state control and even military involvement; with TEC, however, it is a more acute problem: responses involve law enforcement and judicial consequences. For the greatest environmental crime, however, there is no punishment forthcoming.

The gravest TEC: ecocide?

There is an ongoing movement, especially visible in Europe, to have most environmental crimes – or even environmentally harmful acts that are still considered legal – declared acts of ecocide. This would entail utilizing a maximalist definition of the term ecocide.¹ While the movement has gained steam, it relies primarily on the idea of using the International Criminal Court (ICC) as a judicial body to pursue corporations and individuals committing acts of ecocide defined so broadly that we would need to expand the capacity of the ICC beyond any recorded institutional growth in history (see Higgins 2015). Nonetheless, ecocide remains a well-known word in the environmental security literature and it is generally viewed from a more specific, even minimalist, perspective.

Defined in the minimalist, military sense – the deliberate destruction of the environment for strategic gain – ecocide is bad for everyone involved: it rarely results in or even contributes to military victory; it leaves an indelible impression on local environments that takes generations to erase, if indeed it is even possible to “move on” from such catastrophic loss; it threatens fundamental ecosystem services and thus human security (food, water, liberty). Following the intentional attack on southeast Asian ecosystems by the United States in the late 1960s and early 1970s, an international agreement was reached that is designed to limit ecocide, which often has international origins: the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD).

If there is a global prohibition on ecocide, it is during wartime only. ENMOD remains the clearest pronouncement on this, though Additional Protocol I of the Fourth Geneva Convention also mentions it.² However, ENMOD is perhaps most famous for being nearly useless. It survives as a phantom convention: we know it exists but have never seen it in action. It lacks its own secretariat, being housed in the Chemical Weapons Convention in The Hague. Despite calls to use ENMOD as a behavior-altering mechanism, it languishes behind the priorities of national security and general strategic approaches to warfare today.

Environmental crime

Transnational environmental crime, on the other hand, has been the subject of numerous scholarly efforts to arrive at a common definition, and forms of it are already integrated into hundreds of national legislative efforts, though, as Mégret suggests, “[l]aws addressing environmental crimes are traditionally seen as an extension of public and administrative laws protecting the environment, rather than as a fully developed branch of criminal law” (2011: 200).

In a broader sense Wellsmith (2011) and others refer to “the field of eco-criminology”; a similar phrase, “green criminology,” is used by Zaitch, Boekhou van Solinger, and Muller (2014). Wellsmith (2011: 127) adds:

There is no fixed definition of environmental crime, and the behaviours encompassed are varied including illegal waste discharges, fly tipping and illegal logging. Environmental law includes offences relating to neighbour noise, graffiti, littering, dog mess, wildlife and countryside, planning and rights of way, but many commentators concentrate on environmental offences concerning pollution and waste. In legal terms, then, the concept of the environment is much narrower than that considered by eco-criminologists, and offences involving nonhuman animals are rarely considered (perhaps with the exception of the illicit trade in endangered species, or the presence of nonhuman animals that may cause harm to the environment or public health).³

Forni places emphasis on “the trading and smuggling of plants, animals, resources and pollutants in violation of prohibition or regulation regimes established by multilateral environmental agreements and/or in contravention of domestic law” (Forni 2010: 34 in White 2011: 5). Wright suggests that transnational environmental crime can be split broadly into two categories: trafficking in natural resources and trafficking in hazardous substances. “The former includes the trade in endangered species (see Wyatt 2013), illegal logging and illegal exploitation and trafficking of mineral resources while the latter includes the illegal trade in ozone depleting substances and the dumping and trafficking of waste” (Wright 2011: 333). White (2011: 3, 7–8) offers what is perhaps the most extensive peer-reviewed list of TEC:

- Unauthorised acts or omissions that are against the law and therefore subject to criminal prosecution and criminal sanctions;
- crimes that involve some kind of cross-border transference and an international or global dimension; and
- crimes related to pollution (of air, water and land) and crimes against wildlife (including illegal trade in ivory as well as live animals).
- Transgressions that are harmful to humans, environments and non-human animals, regardless of legality per se; and
- environmental-related harms that are facilitated by the state, as well as corporations and other powerful actors, insofar as these institutions have the capacity to shape official definitions of environmental crime in ways that allow or condone environmentally harmful practices.

More specifically, he lists:

- illegal transport and dumping of toxic waste (see Clapp 2001);
- transportation of hazardous materials such as ozone-depleting substances;
- the illegal traffic in real or purported radioactive or nuclear substances;
- proliferation of ‘e’-waste generated by the disposal of tens of thousands of computers and other equipment (see Gibbs, McGarrell, and Sullivan 2015);
- the unsafe disposal of old ships and aeroplanes;
- local and transborder pollution, that is either systematic (via location of factories) or related to accidents (e.g. chemical plant spills);
- biopiracy in which western companies are usurping ownership and control over plants developed using ‘traditional’ methods and often involving indigenous peoples in the third world;
- illegal fishing and logging.

Lorraine Elliott (2011: 2) offers an even more detailed list of potential TECs:

the trafficking of illegally logged timber (sometimes called ‘stolen’ timber), the illegal trade in endangered and threatened species, the black market in ozone depleting substances and other prohibited or regulated chemicals, the transboundary dumping of toxic and hazardous waste, and illegal fishing. Other challenges such as carbon fraud and corruption with REDD projects (Reducing Emissions from Deforestation and Forest Degradation) are also now included under this rather broad heading.

Shover and Routh (2005: 323) expand the litany further, including “littering, improper disposal of radioactive materials, taking game out of season, intentional discharge of hazardous substances into storm drains or waterways, and theft of flora, fauna, and natural resources.” In terms of domestic law, they differentiate between environmental “crime,” which “requires prosecutors to demonstrate either that defendants knowingly, intentionally, or recklessly violated the law or were negligent,” and environmental “illegalities,” which are “violations of rules that do not require demonstration of intent to violate” (2005: 324). “Generally, illegalities are violations of regulatory rules promulgated and enforced by environmental protection agencies. They are regarded by many as substantially less serious than criminal acts, and they generally carry minor civil penalties” (2005: 323–324). However, the accumulated impact of such illegalities can be disastrous to local and global ecology.

I would suggest that the more clear-cut (pun unintended) violations of domestic and, even, international environmental law, are not ecocidal in nature (or to nature, perhaps). Ecocide demands a concerted, systemic effort with intent. But the broader category of environmental injustice captures nicely the environmental harms described above, as well as the more specific, legally approachable cases of abject environmental negligence so often demonstrated by humans in the pursuit of financial profit or political gain. However, since organized criminal activity is by definition concerted and planned, we might stretch the definition a bit to include transnational organized environmental crime. This deserves some attention, since most governments can at least agree that non-state-sanctioned criminal behavior is worth fighting. I will return to this theme below with a short discussion of Interpol, but turn briefly now to convention law and the ICC.

Treaty law and conventions

We do not have the space needed to delve at any depth into the sea of international conventions on the environment that exist today (see Stoett 2012). We should note that “there are still areas of TEC that are not covered by an overarching international agreement, for example illegal, unreported and unregulated fishing and logging” (Wright 2011: 337), though efforts to overcome this are being made. Some of the major international initiatives that formally specify certain activities as violations of international law, and which have been integrated with domestic legal regimes in cases where states have ratified them, include:

- UN Convention on the Law of the Sea, 1982, and the Convention for Prevention of Maritime Pollution by Dumping Wastes and Other Matters, 1972;
- Convention on International Trade of Endangered Species of Wildlife Fauna and Flora (CITES), 1973;
- International Tropical Timber Agreement, 1983;
- Vienna Convention for the Protection of the Ozone Layer, 1985;

- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987;
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989;
- United Nations Framework Convention on Climate Change, 1992; and the Kyoto Protocol, 1997; and the Paris Agreement, 2015;
- Antarctic Treaty, 1959; and related protocols;
- Convention on Biological Diversity, 1992 (and two protocols);
- Convention to Combat Desertification, 1994;
- Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995;
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998;
- Minamata Convention on Mercury, 2013.

This is but a partial list. Yet as any casual observer of global environmental politics knows, the consequences of non-compliance are minimal in all cases. Most conventions have opt-out clauses, or graduated compliance time frames. While the overall body of treaty law is impressive, it presents limited opportunities for those concerned with pursuing environmental criminal law at the international level. There is utility in shaming countries that are habitually problematic, but this is not the same thing as charging someone with a crime. Treaty law is the foundation of TEC law, providing both legal precedent and normative context. But we need specific mechanisms to pursue TEC if it is to hinge on individual or even corporate responsibility, include ecocide during and out of wartime (international and non-international war), and deter/encourage human behavior across scales.

The ICC and the ICJ

As Freeland (2005: 358) reminds us, the Rome Statute (in force since 2002) “does not deal with acts that constitute a ‘mere’ violation of the over 200 International Environmental Agreements (IEAs) that exist: nor a breach of the domestic legislation in various jurisdictions that regulate the environment.” He suggests that an environmental crime potentially giving rise to international criminal responsibility could be regarded as “a deliberate action committed with intent to cause significant harm to the environment, including ecological, biological and natural resource systems, in order to promote a particular military, strategic or other aim, and which does in fact cause such damage” (*ibid.*). There is scope within the definition of crimes in Part 2 of the Statute to pursue environmental war crimes. We’ve seen this utilized, to some extent, in the separate trial of deposed Liberian leader and war criminal Charles Taylor, which also took place in The Hague. But those concerned with a broader approach call for the adoption of a specific section on “Crimes Against the Environment” in the Rome Statute, thus enabling the ICC to deal effectively with the charge of ecocide. Within this context, some would include all forms of environmental harm, whereas others would limit this new obligation to wartime harm.

Even if there was some consensus that the ICC can move beyond property-related crimes with environmental consequences (the well-accepted “pillaging” framework) and into the full-fledged prosecution of war leaders who have violated ENMOD or perpetrated other large-scale environmental crimes during war, this would hardly satisfy those who want to move toward a universal crimes against the environment regime, especially if the definition of ecocide they wish to employ is so broad it includes what many would consider distinctly national, and even regional, acts of pollution. Nor would it satisfy those concerned with transitional justice (which so often ignores

environmental impacts of destructive behavior).⁴ The ICC is in no condition to take on additional responsibilities, and it would be nothing short of a political miracle if this were allowed to occur in the first place (Security Council clearance, for example, would be necessary). Gilman's call for states to adopt universal jurisdiction statutes that encompass environmental war crimes as a way to "jumpstart the development of environmental war crime law" (2011: 470) is perhaps a more sensible way forward. Others suggest that relying on the ICC for environmental crime prosecution relieves the state of its responsibilities in the overall process of environmental degradation.⁵

Article 8(2)(b)(iv) of the Rome Statute now criminalizes as a war crime, in international armed conflict, "[i]ntentionally launching an attack in the knowledge that such attack will cause . . . widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."⁶ However, beyond concerns over land grabs, it is unlikely the ICC will assume responsibility for ecocide as a crime, or even as a war crime. It will remain partially focused on property crimes and pillage during wartime (including civil conflicts), and thus there will be a small avenue toward integrating environmental concerns with international criminal law. But it would be chimerical to expect it to go any further under present circumstances, which include a virtual Security Council veto on specific cases, an overloaded set of extant demands, and limitations on funding and time. The establishment of a new world court mandated specifically to pursue charges of transnational environmental crime would seem, by default, the only way forward here. National governments can, of course, adopt ecocide legislation (including universal jurisdiction, as complicated as that will prove) and tighten their own environmental policy, but ultimately a new convention and court will need to be established. Pedersen (2012) covers the lobby for the establishment of an International Environmental Court in some detail; he ultimately rejects the idea but acknowledges there are long-term benefits to keeping the dream alive. Earlier efforts⁷ cumulated in the development of an ICE Coalition, which "began campaigning for an international environmental court in the build-up to the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties 15 (COP15) meeting in Copenhagen in December 2009" (Pedersen 2012: 549). The UK-based Coalition has largely moulded its advocacy "on the experience of the Coalition for the International Criminal Court, which successfully advocated for the creation of the ICC" (Pedersen 2012: 549; see also Hinde 2003 on the role of NGOs and non-state actors in the prescribed court). An evolving definition of environmental justice can buttress the application of TEC law.

Meanwhile, the International Court of Justice will handle cases that many would consider to be ecocidal in nature if and when states request it to do so. The latest high-profile case (Australia/New Zealand vs. Japan) on Southern Ocean "scientific whaling" is exemplary: the court decided against Japan on the basis not that whaling or even whaling-for-science was against international norms, but that Japan was not conducting Convention-regulated scientific whaling but was running a small commercial whaling operation. Japan agreed to adhere to the decision, though it publicly retains the threat of leaving the International Whaling Commission altogether and has since resumed a minke whale hunt, much to the consternation of many observers. But, as in keeping with ICJ's mandate, no individuals were charged with any form of crime, and no sanctions have been placed on Japan despite decades of misconduct. The ICJ offers no hope as a venue to pursue transnational environmental crime other than when it is part of a treaty or border dispute, though it might be called on to offer more advisory opinions in the future. An advisory opinion on whether large greenhouse gas emitters are in breach of international law would be most welcome, for example – efforts to have the ICJ engage the issue were unsuccessful in the past but may have more chances now that the Paris Agreement on climate change received sufficient ratifications to enter into force in 2016.

It is painfully clear that at present the anti-TEC legal crusade is largely a European initiative.⁸ Recent EU elections indicate there is mixed support within the EU itself for Union-wide projects. But Europe – as is so often the case with international law – is so far ahead of the rest of the world, it looks as if this is a European project. For example, there is already a European Network of Prosecutors for the Environment (ENPE). The International Network for Environmental Compliance and Enforcement does have its own Prosecutors Network, but the ENPE is the only advanced regional affiliation.⁹ We can hypothesize that the Eurocentric character of this movement will harm the chances of a more global effort involving southern hemispheric states in particular. This is not to suggest the European efforts should be diminished in any way, but that all efforts must be made to circumvent the post-colonial charges a European-led initiative is bound to raise. This will be particularly important if there is a serious movement toward the establishment of a new world court.

Other responses

CITES is a trade treaty—it wasn't designed to respond to organized crime. CITES meetings aren't the right forum to sit and discuss organized crime responses; the right people aren't in the room.

You wouldn't appoint someone from the pharmaceutical industry to head a task force combating narcotic trafficking. So why assign a CITES administrator to lead the war against fauna- and flora-related criminal activity?

If we agree, as I think we should and must, that organized crime now plays a major role in wildlife trafficking, then surely the issue for discussion is not illicit trade, it's crime?

(John Sellar, former head of law enforcement for CITES in Steyn 2015)

The link between the illegal wildlife trade and terrorist organizations in operation mainly in Africa piqued the interest of several western states, but the link between TEC and transnational organized crime is, naturally enough, attractive to Interpol, which has adopted TEC as a new organizational focus:

A significant proportion of both wildlife and pollution crime is carried out by organized criminal networks, drawn by the low risk and high profit nature of these types of crime. The same routes used to smuggle wildlife across countries and continents are often used to smuggle weapons, drugs and people. Indeed, environmental crime often occurs hand in hand with other offences such as passport fraud, corruption, money laundering and murder.

(Interpol 2017)¹⁰

This assertion is, in my view, indisputable; anyone who has witnessed the illicit wildlife trade or toxic waste dumping knows intuitively that there are bigger forces, including corrupt and armed government forces, at work here.

On the enforcement side, national police and Interpol have begun at long last to take TEC more seriously, perhaps a reflection of rising western concern over links with terrorism, but also reflecting the growth of expertise and intelligence about environmental crimes in general (Blindell 2006). The advent of “situational crime prevention” (Graycar and Felson 2010) and “intelligence-led policing” (Gibbs et al. 2015; Elliott 2009) is of particular interest from a criminological perspective, part of a broader movement to combat transnational organized crime (Coyne and Bell 2011) and terrorism (McGarrell, Chermak, and Freilich 2007).

Interpol has branched out considerably into the TEC area in the preceding two decades; its interventions include the Interpol Wildlife Crime Working Group, Pollution Crime Working Group, and Fisheries Crime Working Group, all of which report to the umbrella Environmental Compliance and Enforcement Committee. Interpol has been active in establishing NESTs – National Environmental Security Task Forces – in many countries with recognized TEC issues. The NESTs are assisting in legislative, judicial, and enforcement measures, an unusual case of sovereign states collaborating with foreign advisors on such basic matters.¹¹

A major innovation has been the recognition of the illegal exploitation of marine living resources (often referred to as “fisheries crime”). The Obama administration made this an American foreign policy priority as well in mid-2004. The key point in all these crimes is their transnational nature: they are

either committed in more than one state or are committed in one state but with a substantial part of the preparation, planning, direction, or control taking place in another state. In effect, the products, the perpetrators, and often the profits move across borders with the knowing intention of obtaining illegal gain.

(Elliott 2012: 89)

Today we can argue that TEC is a factor in the policy agenda of several international agencies such as the United Nations Environment Programme, the UN Office of Drugs and Crime, the Regional Intelligence Liaison Offices of the World Customs Organisation, the UN Commission on Crime Prevention and Criminal Justice, and Interpol. Transnational efforts integrating police and civil society forces include the Coalition Against Wildlife Trafficking (CAWT), the Asia Regional Partners’ Forum on Combating Environmental Crime (ARPEC), the Multilateral Environmental Agreements Regional Enforcement Network (MEA–REN), the ASEAN Wildlife Enforcement Network (ASEAN–WEN), the South Asian Wildlife Enforcement Network (SA–WEN), and the International Network on Environmental Compliance and Enforcement (INECE). In March 2011, five international organizations – CITES, Interpol, the UN Office of Drugs and Crime, the World Customs Organisation and the World Bank – joined together to form the International Consortium on Combating Wildlife Crime (ICWC) (Elliott 2011: 3). Since so many of the crimes they are involved in investigating are either causes of, or at the very least perpetuate, environmental injustice, they should be applauded (see Hoare 2007). They will not allow us to indict the state system for its complicity in global ecocide, of course, but they are establishing new boundaries in international legal enforcement.

Private security against TEC?

The role played by the private security sector is often overlooked. Make no mistake: many natural resources, especially mineral and oil/gas wealth, are closely protected already. This armed protection is supplied either by the state apparatus or by private security firms employed by states or corporations for this specific purpose. (Of course, this is the protection of private property, not of environmental health; the latter may be a pleasant side effect.) Another teasing possibility is that the private sector could begin to play a larger role here, as the rise of the private military/security (or renewed mercenary) industry suggests, and as some have called for in the responsibility to protect (R2P) context. As O’Reilly (2011) suggests, however, the “transnational security consultancy industry” has more to do with rescuing the rich than spreading environmental justice or human rights. Still, the potential contribution of the private sector to TEC management and enforcement should not be overlooked, especially in terms of forensic technology and other areas of research. And, of course, if a burgeoning international

environmental law sector is before us, so is the proliferation of private law firms dealing partially or exclusively with it. Carbon trading, complete with the newest form of white collar environmental crime, carbon fraud, will be a bonanza for law firms and prosecutors alike if it involves the kind of money it promises to deliver to participants in the game.

A cautionary note: remembering environmental justice

Environmental security will not be a just pursuit if it is not rooted in human security and the respect for the individual and the community that term implies (Brisman 2008). Similarly, the pursuit of anti-TEC policies must be embedded within the context of respect for human rights lest it be misused for political gain. This is a sensitive issue in any decolonized context, or in the theatre of active conflicts where military presence is ubiquitous.

Ironically, perhaps, efforts at conserving nature are also possible sources of environmental injustice, and there is a little information on the level of displacement of both indigenous and non-indigenous persons caused by conservation projects (for historical treatments see Warner 2006, and Brockington and Igoe 2006, who refer to “eviction for conservation”). It is imperative that we retain human security, indigenous peoples’ rights, women’s rights, and other human rights-based themes in equal standing to anti-TEC measures lest they become convenient excuses for the spread of state power or the forceful economic disenfranchisement or physical dislocation of ethnic and other groups.

This is akin to the eco-global criminology now advocated by Robert White (2011, 2008), which insists that voices from the periphery are heard as we chart new paths towards the eradication of TEC; it echoes the work by Peluso and Watts (2001) and others who demand we avoid simplistic causal assumptions and look at the situational violence found in conflict zones before advocating one-size-fits-all solutions that could very well further marginalize local voices, especially under authoritarian regimes.

Another factor worthy of consideration is post-conflict justice: restitution for those who have suffered ecocide or, even, TEC outside of wartime (Carranza 2008; Drumbl 2009). If it is hard to deny the centrality of access to natural resources in environmental peacebuilding; it is equally obvious that transitional justice must reflect the recognition and compensation for egregious environmental crimes. We have a long way to go, however, in this normative shift.

Conclusion

Transnational environmental crime can no longer be considered a tangential threat to environmental security. The scale and scope are just too large and deep. Entire communities are often affected when resources are ransacked or permanently ruined by illegal loggers, miners, fishermen, and others. Often, the criminals involved are also trading in arms, drugs, and humans at the same time, and foreign investors from various organized criminal groups benefit at the expense of impoverished poachers, hazardous waste handlers, enslaved fishermen, and others caught up in the brutal trades of TEC. Efforts to break the complex links between poverty, markets for associated products, and criminal expertise are most welcome and Interpol and other organizations involved in the broader global governance context are playing an increasingly visible role.

At the same time, however, it is important to remember that environmental security is challenged by an array of actors and international economic and social structures, and that if TECs are defined in such a restricted manner that they only include egregious environmental crimes such as wildlife poaching, we are limiting its potential as an avenue toward increased environmental justice. Ecocide during wartime, legal but deleterious extractive industries, continued

climate negligence by industrialized countries, dooming small island states to physical extinction: these, too, are the crimes of the century.

Notes

- 1 I have treated the question of defining ecocide at considerable length elsewhere, most notably in Stoett (2000), where I distinguish between minimalist (military action) and maximalist (neglectful environmental harm, such as air travel) definitional poles. In between we have military preparation and production and more conscious acts of ecological harm/sabotage outside of wartime, such as the dumping of toxic waste by organized criminals, which is a TEC.
- 2 ENMOD is the Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques, 10 December 1976. It prohibits Contracting Parties from engaging in “military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party.” Generally, it is assumed that ENMOD applies to large-scale environmental disruption projects, and not to small-scale environmental destruction during wartime. Regardless, it is best known today as a phantom treaty that has never really had an impact on decision-making on or off the battlefield. Importantly, it would not even apply to civil war contexts, though many examples of widespread, long-lasting or severely impactful environmental alteration for military purposes have taken place during non-international wars.
- 3 Zaitch et al. (2014: 92) assert: “A green criminological perspective offers the possibility of simultaneously focusing on three interrelated issues. Firstly, the perspective allows us to analyze who the perpetrators of criminal or harmful behavior are, how legal/illegal mechanisms operate and intertwine at micro and macro levels, and why these practices take place. Secondly, such a perspective can reveal who the victims are and which social and environmental harms can be identified when it comes to the exploitation of natural resources. Finally, this perspective also pinpoints the ‘rights’ being violated (whether constitutional, human, environmental, social, etc.), the social initiatives that defend them (communities affected, NGOs), and the measures and interventions that are put in place (or not) by private, state or international actors to guarantee, protect and enforce those rights.” White has his own conception, discussed below.
- 4 For example, enforced restitution for environmental harms is an under-studied necessity. Under the ICC, victims can access the Victims Trust Fund, but it is unlikely there is sufficient funding to restore ecologically devastated areas after severe conflict. See also Carranza (2008); more broadly on restitution from environmental crime see Skinnider (2011).
- 5 “There is currently no clear possibility that an international criminal prosecution of a state may be instigated in the ICC for any international crime, including actions that are intended to produce significant environmental degradation. Instead, states might have some degree of legal responsibility for the commission of international crimes under the principles of state responsibility or blame might be imputed to a state as a result of the commission of an international crime by one of its officials. However, this is quite a different level of culpability from accepting the possibility that a state itself may be *criminally responsible*. This distinction is more than a question of semantics – it carries with it the message that, irrespective of the degree of involvement by the machinery of a state, its culpability for actions that precipitate very serious consequences for humans and the environment is something less than the standards by which we judge individuals” (Freeland 2005: 347–348).
- 6 Though as Drumbl (2009: 9) notes, “other war crimes in the Rome Statute could incidentally address environmental harms. Examples include article 8(2)(a)(iv) (prohibiting extensive destruction and appropriation of property not justified by military necessity and carried out wantonly and unlawfully), article 8(2)(b)(xvii) (prohibiting the use of poison and poisoned weapons), and article 8(2)(b)(xviii) (prohibiting the employment of asphyxiating, poisonous, or other gases). These, however, are not environmental crimes *stricto sensu* but are ‘anthropocentric’—that is, they criminalize things or practices that principally are inhumane and only incidentally have devastating effects on the environment.” Note the language in Article 8(2)(b)(iv) borrows largely from ENMOD.
- 7 These include the drafting of a statute that, if it were ever accepted, would change the very nature of international law. Its scope was breathtaking, though it is probable those who drafted the statute were well aware of how unreachable their goals were. As described by Avgerinopoulou (2003: 16): “The International Court of the Environment is intended to be a permanent organ with global jurisdiction, comprised of 15 independent judges, elected by the United Nations General Assembly (UNGA) and paid out of the

budget of the United Nations. States and non-state actors, such as intergovernmental organizations, non-governmental organizations and individuals, will have access to the Court. The subject-matter jurisdiction of the court will include every environmental dispute that has caused or may cause substantial environmental damage at the international or national level and has not been settled through arbitration within a period of 18 months. The court will also be able to act preventively, by rendering preliminary measures. It will be able to carry out investigations and inspections either upon request or ex officio, in the case of urgency. It will provide services of arbitration and advisory opinions on global environmental issues. In addition, it will respond to requests of preliminary ruling by national courts, according to the successful example of the European Court of Justice. Civil remedies shall include interlocutory or perpetual injunction. The court will be able to issue orders for redress of an injured individual, for payment of the cost for the restoration of the damaged environment, or for payment into a World Environmental Fund. The UN Security Council will be entrusted with enforcement of the judgments.”

- 8 This should not surprise us; the Council of Europe adopted a Convention on the Protection of the Environment Through Criminal Law as early as 1998, which is echoed in EU Parliamentary Directive 2008/99/EC. See Collantes (2001).
- 9 The Latin American Environmental Prosecutors Network is a partial exception.
- 10 See also Cook, Roberts, and Lowther (2002).
- 11 Curiously, unlike Interpol’s fast immersion into TEC, EUROPOL has not yet followed suite; it does not include TEC on its lengthy list of official priorities, though Cigarette Smuggling and Outlaw Motorcycle Gangs make the grade.

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