

SECURITY AND DEVELOPMENT DIALOGUE ON ENVIRONMENTAL CRIME

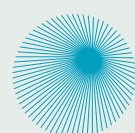
**PRIORITIES FOR MULTILATERAL ACTION
AGAINST ENVIRONMENTAL CRIME**

18 JULY 2024

**ECO
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INTRODUCTION

The Security and Development Dialogue on Environmental Crime, held virtually on 18 July 2024, was the first in a series of meetings to discuss how the challenges and weaknesses in existing responses to environmental crime can be addressed through the multilateral system.

This series, hosted with financial support from the European Union through the ECO-SOLVE project, provides a unique platform for stakeholders from diverse backgrounds (foreign policy, security, law enforcement, anti-corruption, anti-money laundering, criminal justice, environmental protection, development and business) to share perspectives on the complex and evolving challenges posed by environmental crime. It builds on the Global Initiative Against Transnational Organized Crime's Development Dialogues, which, since 2013, have brought together experts, government officials and other stakeholders to exchange policy and programming views on sensitive contemporary issues at the intersection of organized crime, development and politics, with the aim of strengthening policymaking and interventions.

This series of multidisciplinary and cross-regional virtual events focused on environmental crime aims to provide key expert input – at both the technical and political levels – to align political priorities and innovative thinking with practical action in the multilateral system, and to support more effective diplomatic engagement to address this key global issue. Each event will be held ahead of, and with a view to informing, upcoming key multilateral events (see timeline).

This report provides an overview of the discussions at the first dialogue, which were held under the Chatham House Rule, meaning comments cannot be attributed to individuals. Throughout the dialogue, participants took stock of the state of play of intergovernmental discussions and existing initiatives on environmental crime in various multilateral forums. Speakers focused on priorities for action, areas where current responses to these crimes could be improved, and debated the effectiveness of the current international legal framework to prevent and combat crimes that affect the environment.



FIGURE 1 Upcoming key multilateral events to respond to environmental crime.

MULTILATERAL INITIATIVES ON CRIMES THAT AFFECT THE ENVIRONMENT

Why should environmental crime be a priority for the international community?

There was general agreement among participants of the problems posed by environmental crime, in particular its scale, complexity and gravity, and the dynamic nature of its illegal markets and flows. Participants agreed that there is a pressing need to take effective measures to better prevent and combat environmental crimes, to make them less profitable for their perpetrators and to end impunity. Given the transnational nature of these criminal activities, this must be done not only at the national level, but also at the regional and international levels.

Speakers identified environmental crime as an aggravating factor in the triple planetary crisis of biodiversity loss, pollution and climate change by endangering species and ecosystems. They expressed grave concern about the impact of environmental crime on human health, and highlighted its role in reducing the resilience of ecosystems to climate change, particularly forests and oceans, undermining their critical function as major carbon sinks.

Participants also highlighted that responding to environmental crime has clear links to the broader international agenda on sustainable development, including the need to address the root causes of these crimes through preventive measures, such as the promotion and development of sustainable alternative livelihoods, and through measures to engage and support civil society, local communities and indigenous peoples. These groups were particularly highlighted as needing more support to do their work, with the benefit that their involvement increases the effectiveness and long-term sustainability of responses.

Some speakers stressed the need to integrate development-oriented strategies into policy responses to environmental crime to reconcile efforts to protect the planet, eradicate poverty and achieve sustainable development.¹

To what extent is environmental crime considered a priority by the international community?

Environmental crime is not new – it has been brought to the attention of the international community and recognized as a matter of serious concern and a political priority since it was first addressed by the UN Economic and Social Council (ECOSOC) in 1989 and by the 8th UN Crime Congress in 1990. Conference participants recalled that, at that time, the international community was particularly concerned about pollution crimes and the impact of environmental crime on the natural environment, species and non-renewable resources. The role of criminal law in the protection of the environment was recalled as one of the priority themes that guided the work of the UN Commission on Crime Prevention and Criminal Justice (CCPCJ) between 1992 and 1996, resulting in the adoption of

three ECOSOC resolutions during this period, which addressed environmental crime through a comprehensive and cross-cutting approach, in parallel with the negotiation of a number of new multilateral environmental agreements.

After 2001, the international community began to address environmental crime through a sectoral approach, with the adoption of numerous resolutions on wildlife trafficking in Vienna, New York and Nairobi, and resolutions in Vienna on trafficking in timber and in precious metals, and illegal mining.

Since the 2010s, however, there has been a resurgence of a comprehensive approach to environmental crime, which serves as an umbrella to address cross-cutting issues common to all these crimes. In 2021, the UN General Assembly endorsed a first-ever resolution on crimes that affect the environment as a whole, adopted by the CCPCJ following the Kyoto Crime Congress. This resolution built on the first resolutions of the UN Convention against Corruption (UNCAC) and UN Convention against Transnational Organized Crime (UNTOC) Conferences of Parties, which addressed crimes that affect the environment and related corruption in 2019–2020.

Resolutions, declarations and decisions on environmental crime have also been adopted in other UN forums (such as the UN Security Council and the UN Environment Assembly), as well as in other multilateral forums (including IUCN World Conservation Congresses, several G7 meetings, the G20 anti-corruption and environment working groups, and the G20 Rome Leaders' Declaration). Environmental crime was also addressed in the Leaders' Pledge for Nature adopted by 96 countries at the UN Summit on Biodiversity in 2020 in New York.

Participants compared the various multilateral initiatives and commitments implemented by UN agencies and international organizations. Each has sought to engage different stakeholders and address different facets of the problem. International law enforcement, border control and criminal justice organizations have established technical assistance programmes to promote international cooperation against environmental crime at the operational level, such as INTERPOL's Environmental Security Programme, the World Customs Organizations' Environment Programme, and the UN Office on Drugs and Crime's Global Programme for Combating Wildlife and Forest Crime. The UN Environment Programme and secretariats of multilateral environmental agreements have promoted environmental rule of law and contributed to research, capacity-building efforts and interagency cooperation against environmental crime.² Other initiatives include the Financial Action Task Force, which conducted work and published reports on money laundering from environmental crime in 2019–2021. A wide range of regional organizations and partnerships were also addressed.

Participants highlighted several emerging coalitions and initiatives that aim to promote multilateral discussions on environmental crime, such as the UN Group of Friends on Wildlife Trafficking; the UN Group of Friends on Preventing and Combating Crimes that Affect the Environment; the Nature Crime Alliance; and the International Initiative of Law Enforcement for Climate. Each initiative brings a new constellation of actors and represents a new piece of the puzzle.

Areas for improved engagement

Participants generally agreed that there has not been a lack of activity at the multilateral level, but rather a lack of coordination of all existing commitments, processes and initiatives across the different multilateral forums and sectors. Despite all this activity, the actions of different

groups of stakeholders have often been undermined by a lack of uptake by other sectors, and progress in the multilateral system has often been isolated.

Participants highlighted the significant impact of environmental crime on biodiversity,³ and the importance of integrating responses to environmental crime into strategies and policies aimed to prevent, halt and reverse biodiversity loss, and to implement the targets of the Kunming-Montréal Global Biodiversity Framework. However, they argued that the political agenda and documents adopted by the international community (including those addressing biodiversity, climate change, water and pollution) reflect a lack of awareness and recognition of environmental crime as a criminal threat, with far-reaching consequences for the broader global environmental and climate agenda, and the implementation of the 2030 Agenda for Sustainable Development. They also noted that even development-oriented initiatives and interventions rarely address environmental crime in an explicit way.

Three core principles, which were reiterated throughout the dialogue, were proposed as the basis for a more uniform approach: 1) making better use of existing tools and breaking the silos between them; 2) innovating to make existing agreements, frameworks and instruments work better for law enforcement and judicial systems; and 3) overcoming obstacles that hinder practical progress, such as disagreements on definitions of different forms of environmental crime.

The lack of a universal definition of environmental crime was a key element of the discussion. There is no single international legal instrument that provides such a universal legal definition. Instead, there is a 'political definition' endorsed by the international community in the 2021 Kyoto Declaration, which provides a non-exhaustive list of crimes affecting the environment.⁴ However, this definition overlooks many environmental crimes that have a serious impact on the people and the environment. There is therefore still a need to achieve full awareness and recognition of the threat posed by environmental crime at the UN level.

Some overlooked issues raised by participants include

- illegal logging;
- illegal mining and other pollution crimes (for example, the unlawful release of and illicit trafficking in pollutants, such as ozone depleting substances or chemicals addressed under the 2023 Global Framework on Chemicals);
- crimes affecting the marine environment, including crimes in the fisheries sector and illegal marine pollution;
- the illegal abstraction and exploitation of water resources; and
- the illegal misuse of carbon emission trading schemes and innovative schemes such as payments for ecosystem services, green bonds, biodiversity offsets and credits, and benefit-sharing mechanisms.

While there is widespread support for further action, states need to ensure that political leadership translates their shared goals into concrete initiatives. Awareness, political will and leadership are major prerequisites for action to be taken at the multilateral level.

HOW THE INTERNATIONAL COMMUNITY CAN ACHIEVE A MORE EFFECTIVE RESPONSE TO ENVIRONMENTAL CRIME

Priorities for action

Despite the progress made at the multilateral level, environmental crimes continue to proliferate, diversify and become more complex and sophisticated. There was broad agreement among participants on the need to do more to raise awareness on environmental crime and to strengthen criminal law tools, financial intelligence and anti-corruption frameworks as core elements for a more effective and impactful global response. Speakers recommended the following priorities for action:

- Strengthen regional and international legal frameworks, and criminalize environmental crime at the national level. This should ensure a strong legal basis, clarify which activities that harm the environment are illegal, and treat them as serious crimes and as predicate offences for money laundering, with effective prison sentences and higher financial penalties to end impunity for perpetrators, especially high-level offenders.
- Step up financial investigations to identify, trace, seize, confiscate and recover the proceeds of environmental crimes, significantly disrupt the criminal supply chains, and pursue high-level offenders to bring them to justice.
- Strengthen legal and regulatory frameworks to reduce and mitigate the risks of corruption,⁵ fraud and money laundering, especially along value and supply chains, as well as corruption involving political elites, and build stronger control capacities for regulators.
- Address convergence not only between environmental crimes but also with other crimes (such as drug, firearms and human trafficking) to enable the use of more robust mandates for law enforcement and other authorities.⁶
- Establish and develop specialized law enforcement agencies and judicial authorities to ensure effective and sustained enforcement of legislative and regulatory frameworks, and boost action at the operational level.⁷
- Increase resources, capacity building and technical assistance at the international level, particularly in developing countries, to harmonize national legal frameworks, reduce discrepancies in operational capabilities among states⁸ and improve international cooperation.
- Complement the criminal justice approach with preventive measures to address the underlying root causes of environmental crime, as well as measures to ensure the effective remediation of the damage caused to the environment and to victims.

Another set of priorities concerned coordination and multistakeholder engagement. Given the many knowledge gaps and the importance of evidence-based approaches to inform decision-making, legislation and operational responses, and given the evolving nature of environmental crime, participants agreed on the need to improve and scale up data collection. Multistakeholder cooperation, including with academia, the scientific community and the private sector, is essential in this regard.

It was also noted that international coordination needs to be strengthened to consolidate, expand and replicate effective responses in a more sustainable and efficient manner, to ensure that capacity building and technical assistance are fit for purpose, and to avoid creating new initiatives that may duplicate existing efforts and projects.

Lastly, participants stressed that responses at all levels must include a human rights-based approach (including protecting environmental defenders, witnesses and whistle-blowers from retaliation, not criminalizing vulnerable communities, and recognizing livelihoods) and a multistakeholder approach, engaging with, empowering and supporting key stakeholders from civil society (including local communities) who contribute to preventing and combating environmental crime, and providing protection and assistance to those who are at risk; and cooperating with the private sector (in particular with companies operating in the forestry, minerals, fisheries, waste, chemicals, transportation, digital and financial sectors). It was also noted that coordination between different components of civil society (such as conservation and anti-corruption actors) should be fostered.

In summary, several speakers highlighted the serious gap between the intent of existing legal agreements and policies, and their implementation and enforcement. Prioritizing the measures listed above could help to close this gap.

Strengthening the international legal framework to prevent and combat environmental crime

Robust national legal frameworks are the first building block to ensure effective responses to environmental crime and a prerequisite for international law enforcement and judicial cooperation. Indeed, without legislation criminalizing environmental crimes, competent authorities do not have the necessary powers and tools to monitor, investigate and prosecute, and judges cannot convict the perpetrators of these crimes. However, there are major disparities between national legislation on environmental crimes and the resources devoted to enforcing them regionally and globally. National legislation often addresses environmental crimes under environmental or administrative law, which do not provide the necessary tools and mechanisms to effectively respond to and deter illegal activities involving organized criminal groups.

This has prompted legislative reforms in some countries to develop criminal law to protect the environment more effectively. Elements of these reforms include broadening the scope of criminalized environmental offences and improving the definitions of previously criminalized offences to ensure effective prosecution; increasing the level of sanctions – including higher fines, especially for legal persons – to make them more dissuasive; criminalizing environmental crimes as serious crimes and predicate offences for the purposes of money laundering to provide law enforcement and judicial authorities with relevant criminal law tools; and

promoting the specialization of law enforcement units and judicial authorities, and giving them the necessary resources and powers to take effective action.

Participants cited examples of progress in addressing these gaps at the domestic and regional levels, such as the United States' Lacey Act and the new Environmental Crime Directive adopted by the European Union in April 2024, which will strengthen and further harmonize the legislations of all EU member states. In addition, members of the Council of Europe recently agreed on a new convention on the protection of the environment through criminal law to replace the previous convention, which did not enter into force, and facilitate international cooperation against environmental crime.

At the global level, however, the picture is far more troubling. Participants highlighted two key issues with the current international legal framework.

First, its complexity and fragmentation, with more than 1 400 multilateral environmental agreements and conventions, as well as multilateral trade agreements, conventions on transnational organized crime and corruption, international human rights laws and instruments, international standards for risk-based anti-money-laundering frameworks and on forced labour, and guiding principles on corporate due diligence. Most of these instruments are used and implemented in isolation, including the UNTOC and the UNCAC. As they complement each other, synergies could be enhanced to make their enforcement more effective.

Second, that despite this proliferation of instruments, serious gaps and legal loopholes remain, particularly regarding the criminalization and enforcement of environmental crimes. Participants recalled that only two multilateral environmental agreements contain an obligation to criminalize (the Basel Convention) or to penalize (the Convention on International Trade in Endangered Species) some illegal activities affecting the environment, but they are trade-related instruments with narrow application scopes and no criminal law tools to ensure effective enforcement and international cooperation.

Speakers underlined these issues by highlighting the existing gaps in relation to crimes that affect the marine environment, including illegal marine pollution, and in the enforcement and implementation of existing instruments.

It was also noted that despite recent progress at the national and regional levels,⁹ preventive measures at the global level, in particular corporate due diligence mechanisms and human rights-based approaches, are lacking. If properly implemented, such measures would enhance the accountability of legal entities, promote transparency, prevent corruption, illegal exploitation and criminal infiltration along value chains, protect human rights, and improve the livelihoods and resilience of indigenous and affected communities, such as traditional small-scale fishers. Synergies between existing regional and international prevention mechanisms also need to be enhanced.¹⁰

Participants expressed different views on the way forward:

- Some called for the universalization of the recently agreed Council of Europe convention on the protection of the environment through criminal law, recalling that any state can ratify it after its adoption.
- Some argued that the international community should focus on improving the use of existing tools, particularly those provided by the UNTOC and the UNCAC. If used more effectively, they could facilitate and strengthen international cooperation, in

particular among law enforcement and judicial authorities, and enhance the capacity to detect, investigate and prosecute these crimes; to disrupt illicit flows of environmental commodities, waste and other pollutants along legal supply chains; to dismantle organized criminal groups; and to seize and confiscate the proceeds of environmental crimes.

- Among the latter, some called for an in-depth analysis to take stock of existing instruments at the international level (including the UNTOC and the UNCAC), including their provisions, and the effectiveness of their implementation to prevent and combat environmental crime. This could inspire an additional protocol to the UNTOC and ensure that it would bring added value commensurate with the investment that such negotiations would entail.
- Other speakers expressed the view that existing tools are not sufficient to ensure uniform criminalization of environmental crimes and effective international cooperation against them. They expressed a strong support for the need for new instruments. The prospect of a specific universal criminal law instrument dedicated to crimes affecting the environment would offer a solution to a myriad of issues, as it could be used to harmonize definitions, criminalization provisions and sanctions; promote the widespread adoption of effective preventive measures; facilitate international cooperation; and ensure enforcement through monitoring and the provision of technical assistance.

Proponents of additional protocols to the UNTOC for this purpose pointed to the low levels of criminalization for serious crimes and predicate offences for money laundering reported in recent reports of the UN Office on Drugs and Crime, and expressed their determination to build on the current political momentum to move rapidly towards a new UNTOC protocol or several additional ones.

It was announced that one country intends to table a draft resolution at the upcoming Conference of the Parties to the UNTOC in October 2024, seeking a mandate to start negotiations on three additional UNTOC protocols on trafficking in fauna, the illegal exploitation of and trafficking in flora (including timber), and mineral resources.

The question remains as to how these different proposals could be meaningfully taken forward, and how potential initiatives in other multilateral forums could take them into account and avoid duplication of efforts. Overall, participants agreed on the need to ensure that upcoming multilateral discussions on crimes that affect the environment are inclusive and expert driven. This will require the meaningful participation of intergovernmental experts with different backgrounds, as well as members from civil society, non-governmental organizations, corporations, academia, the scientific community and other relevant stakeholders.

CONCLUSION

This dialogue confirmed that environmental crime, which affects both people and the planet, requires a global response and holistic strategies to effectively address and prevent the complex challenges it poses. Collective action and coordination need to be improved and strengthened at both the policy and operational levels, across different sectors and areas of expertise. The capacities of state and non-state actors also need to be enhanced and scaled up.

To this end, legal and regulatory frameworks need to be strengthened and practical mechanisms put in place to ensure and monitor their enforcement. The global response to environmental crime does not suffer from a lack of international legal instruments. Rather, the international community needs to better assess their implementation and effectiveness, focus on criminalization and enforcement, and address identified gaps.

Ultimately, more discussion is needed for the international community to reach a common understanding of priorities for action in multilateral forums, to build a critical mass that can tip the balance in favour of more ambitious commitments and actions against crimes that affect the environment, and to reach consensus on the form these should take.

Notes

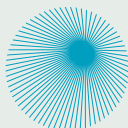
- 1 This is the spirit of initiatives such as the Paris Pact for People and the Planet, and the Seed Fund for Country Packages for Forests, Nature and Climate.
- 2 Including with the creation of international interagency partnerships such as the Green Customs Initiative (2004) and the International Consortium on Combating Wildlife Crime (2010).
- 3 According to article 2 of the Convention on Biological Diversity, biological diversity includes diversity within species, between species and of ecosystems.
- 4 See paragraph 87 of the 2021 Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development, https://www.unodc.org/documents/commissions/Congress/21-02815_Kyoto_Declaration_ebook_rev_cover.pdf.
- 5 It was noted that building and activating anti-corruption systems takes considerable time and effort, but are key as corruption not only facilitates environmental crimes, but also ensures that they are not effectively investigated, prosecuted and adjudicated, and leads to violence against activists who try to shed light on them.
- 6 To increase other authorities' interest in addressing environmental crime, and provide opportunities for law enforcement and policymakers to raise the profile of these crimes and be effective in addressing them.
- 7 It was noted that, while specialized units, targeted training and equipment for law enforcement and criminal justice actors can be very costly, the damage caused by environmental crime to the environment, public health, risks of unfair competition among legal and illegal companies, as well as reduction in tax collection involve higher costs.
- 8 Including technological capabilities and innovation on which law enforcement and judicial actors also rely.
- 9 For instance through mechanisms established in Latin America, the Caribbean and in Europe. There has also been progress through jurisprudence of regional and international bodies.
- 10 Including instruments of the UNTOC, the Food and Agriculture Organization, and the International Marine Organization.



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