

**Beiträge zum Internationalen und
Europäischen Strafrecht**

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**International Criminal Law –
a promising pathway to promoting
global environmental protection?**

Von

Sina Alica Jung



Duncker & Humblot · Berlin

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European Criminal Law and Procedure

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To My Parents

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A. Introduction

“We are on a highway to climate hell with our foot on the accelerator.”¹

UN Secretary-General, António Guterres

While it took approximately 300,000 years to reach the threshold of one billion humans inhabiting the earth², the most recent billion was added within a time span of only 12 years.³ On 15 November 2022 the world’s population officially exceeded the 8 billion-mark and the next billion is expected to be reached in the ensuing 15 years.⁴ However, this unprecedented population growth does not come without costs. Population growth is inextricably linked to an expansion of production and consumption. However, while the highest fertility rates are in countries with the lowest income per capita, the highest per capita consumption is in countries with the highest income per capita and not in the countries with the highest population growth.⁵ The high standard of living in the world’s industrial nations is primarily based on the availability of natural resources. It is estimated that the use of raw materials per capita is four times larger in industrialised countries than in developing countries.⁶ This inequality is further exacerbated by the fact that lesser developed countries are typically resource rich. Thus, the bulk of environmental crime is committed by subsidiary companies operating in the Global South where they are largely free to pursue their profits, whereas their partner companies are headquartered in the Global North where strict environmental regulations are in place.⁷

As such, particularly the lack of a consistent global environmental governance system permits multinational corporations to evade liability for widespread ecological destruction. According to the United Nations Environment Programme (UNEP) and Interpol, environmental crime has become the world’s fourth largest

¹ *Fiona Harvey/Damian Carrington*, World is on ‘Highway to Climate Hell’, UN Chief Warns at Cop27 Summit, The Guardian, Nov. 7, 2022, <https://www.theguardian.com/environment/2022/nov/07/cop27-climate-summit-un-secretary-general-antonio-guterres>.

² *Craig Welch*, Earth Now has 8 Billion People – and Counting, Where Do We Go From Here?, National Geographic, Nov. 14, 2022, <https://www.nationalgeographic.com/environment/article/the-world-now-has-8-billion-people>.

³ United Nations, Day of Eight Billion, <https://www.un.org/en/dayof8billion> (last visited Feb. 18, 2025).

⁴ Id.

⁵ Id.

⁶ Umweltbundesamt, Resource Use and Its Consequences (2019), <https://www.umweltbundesamt.de/en/topics/waste-resources/resource-use-its-consequences> (last visited Feb. 18, 2025).

⁷ EUROPOL, Environmental Crime in the Age of Climate Change (2022).

crime sector after drug trafficking, crimes of counterfeiting and human trafficking, increasing at a 5% to 7% rate per year, thereby exceeding the global economic growth rate by two to three times.⁸ UNEP and Interpol broadly describe ‘environmental crime’ as “a collective term to describe illegal activities harming the environment and aimed at benefitting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources, including serious crimes and transnational organised crime”⁹. Thus, besides illegal logging and deforestation, illegal fishing and trade, illegal mining, illegal discharging of hazardous waste, wildlife poaching and trade, environmental crime is also deeply intertwined with tax fraud, money laundering, forgery and terrorism.¹⁰ Environmental crime is estimated to generate illicit profits ranging between 110 and 281 billion USD per year.¹¹ At the same time the annual global loss resulting from environmental crime is estimated to reach 80 to 230 billion EUR.¹² To put it in a nutshell, the most vulnerable countries, which have traditionally contributed the least to the environmental crisis, are at the same time the most affected by its repercussions. This striking inequality signals the need for a global environmental governance system ensuring that environmental crime does not go unpunished.

This thesis aims to assess the legal lacunae in international law rendering current global environmental protection inadequate (Chapter B.) prior to discussing two possible legal means of promoting global environmental protection. In Chapter C., the possibility of incorporating a fifth crime of ecocide into the Rome Statute will be examined, and in Chapter D. the adoption of an International Environmental Convention, which could either be indirectly enforced through national courts or directly enforced through an International Environmental Court, will be assessed with regards to the desired goal of promoting global environmental protection.

⁸ European Commission, Question and Answers on the Revised EU Directive on Environmental Crime, https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_6745 (last visited Feb. 18, 2025).

⁹ UNEP, *The Rise of Environmental Crime, A Growing Threat to Natural Resources, Peace, Development and Security* 17 (2016).

¹⁰ *Id.* at 30.

¹¹ INTERPOL, *INTERPOL Makes Public Appeal to Help Track Environmental Fugitives* (2019), <https://www.interpol.int/News-and-Events/News/2019/INTERPOL-makes-public-appeal-to-help-track-environmental-fugitives> (last visited Feb. 18, 2025).

¹² European Commission, *European Green Deal: Strengthening EU Law to Combat Environmental Crime* (2021).

B. Legal lacunae in current global environmental protection

Although environmental protection is afforded by several bodies of international law, including international environmental law, international humanitarian law, human rights law and international criminal law, international law currently fails to afford effective global environmental protection. In the following, the legal lacunae under international law which render current global environmental protection inadequate will be examined.

I. International environmental law

The field of law primarily concerned with environmental protection is international environmental law.¹ While international environmental law has developed into a distinct area of public international law, it is also closely linked to numerous other fields of international law such as international economic law, human rights law or international humanitarian law.² In this section, a brief overview over the historical development of international environmental law will be given prior to an analysis of the current legal lacunae in this field of law.

1. History of international environmental law

International environmental law is a rapidly growing area of law whose history is longer than some might expect. While the idea of environmental regulation goes back to Ancient Rome, where environmental regulations were adopted to ensure the city's water supplies³, modern international environmental law did not emerge until the second half of the 19th century.⁴ Prior to the late 1960s environmental destruction did not occur on a large scale, states hesitated to interfere with the sovereignty of other states over their resources and environmental harm was not perceived as a

¹ *Frédéric Mégret*, The Problem of an International Criminal Law of the Environment, 36 Colum. J. Envtl. L. 195, 218 (2011).

² *Philippe Sands/Jacqueline Peel*, Principles of International Environmental Law 4, 811–926 (4th ed., 2018).

³ Encyclopedia Britannica, Environmental Law <https://www.britannica.com/topic/environmental-law> (last visited Feb. 18, 2025).

⁴ *Philippe Sands/Jacqueline Peel*, Principles of International Environmental Law 21 (2018).