EFFACE

European Union Action to
Fight Environmental Crime

Actors and Institutions Relevant to Fighting Environmental Crime

Work package 2 on "Instruments, actors, and institutions"

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ABSTRACT

There are numerous actors and institutions, internationally and regionally, that are relevant for the efforts of the European Union to combat environmental crime both on its territory and beyond. This report examines the roles of some prominent actors and institutions, including amongst others, INTERPOL, the the United Nations Office on Drugs and Crime, World Customs Organisation, the United Nations Environment Programme, the United Nations Economic Commission for Europe, EUROPOL, Eurojust and the Directorate General Environment of the EU Commission. Some of these organisations have their own units to address environmental crime whilst some do not, by virtue of their mandates. Together, most of these organisations are linked to one another in the form of some formal and informal agreements. To date, one of the most significant cooperation is that between INTERPOL, UNODC, WCO, the Convention on International Trade in Endangered Species of Wild Fauna and Flora and World Bank called the International Consortium on Combating Wildlife Crime. This report will try to demonstrate how environmental crime is inherently linked to other forms of especially serious and organised crime. Several organisations described in this report have made that connection between environmental crime and these other forms of crime and do not treat environmental issues in isolation. The analysis contained in this report will cover, to the extent possible, the actual behaviour of cooperation amongst these organisations. For this, relevant literature and documents as well as interviews with experts and practitioners have been used.

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LIST OF ABBREVIATIONS

CBD	Convention on Biological Diversity
CCC	Customs Co-operation Council
CCP	Container Control Programme
CCPCJ	Commission on Crime Prevention and Criminal Justice
CEN	Customs Enforcement Network
CEP	Committee on Environmental Policy
CFP	Common Fisheries Policy
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COSI	Standing Committee on Internal Security
DELC	Division of Environmental Law and Conventions
DG	Directorate General
DG ENV	Directorate General Environment
EAP	Environmental Action Plan
EaP GREEN	Greening Economies in the Eastern Neighbourhood Programme
EC	European Commission
ECC	Environmental Crime Committee
ECEC	Environmental Compliance and Enforcement Committee
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
EEA	European Environment Agency
EESC	European Economic and Social Committee
EFCA	European Fisheries Control Agency
EIPA	European Institute of Public Administration
EMAS	EU Eco-Management and Audit Scheme
ENPE	European Network of Prosecutors for the Environment
ENVI	The Environment, Public Health and Food Safety Committee
ENVICRIMENET	European Network for Environmental Crime
ENVIRONET	An internet-based tool, introduced by the WCO, to share information quickly and securely amongst environmental law enforcement officers worldwide to enhance environmental border protection
EP	European Parliament

EU	European Union
EUROPOL	European Police Office
GATT	General Agreement on Tariffs and Trade
GCI	Green Customs Initiative
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
ICCWC	International Consortium on Combating Wildlife Crime
IMPEL	EU Network for Implementation and Enforcement of Environmental Law
INTERPOL	International Police Organisation
IUCN	International Union for the Conservation of Nature
IUU	Illegal, unreported and unregulated fishing
JDP	Joint deployment plans
JIT	Joint Investigation Team
JURI	Legal Affairs Committee
LEAF	Law Enforcement Assistance for Forests
MEA	Multilateral Environmental Agreement
MEP	Member of Parliament
MoU	Memorandum of Understanding
NIS	Sub-Directorate for Environmental Security
NORAD	Norwegian Agency for Development Cooperation
OECD	Organisation for Economic Co-operation and Development
PECH	Committee on Fisheries
REFCO	Network of Prosecutors against Organised Crime
SEG	Senior Experts Group
SOCTA	Serious and Organised Crime Threat Assessment
SRIEU	Special Representative of INTERPOL to the EU
TFEU	Lisbon Treaty
UK DEFRA	United Kingdom Department for Environment Food and Rural Affairs
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNDG	United Nations Development Group
UNDP	United Nations Development Programme

UNEA	United Nations Environment Assembly
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organised Crime
WCO	World Customs Organisation
WHO	World Health Organisation
WTO	World Trade Organisation

Introduction

International and regional organisations are emerging as vital players in "developing generally applicable norms and standards"[1] so much so that "some scholars argue that this development can be framed as a new discipline of international law: global administrative law".[2] International and regional organisations are mostly represented by sovereign states. Thus, they act in the interest of the international community and are influential instigators of change, including in the environmental field. However, critics of contemporary power dynamics are have been asking for greater transparency, stricter regulation and better control within these organisations so that the interests of all states are fairly represented.[3]

Environmental crime has been on the radars of international and regional organisations for some time. The International Criminal Police Organisation (INTERPOL), the United Nations Environmental Programme (UNEP) and the European Union (EU) are a few examples of organisations that have been championing the fight against environmental crimes such as illegal wildlife trade, the illegal shipping and trade of hazardous waste, illegal fishing and illegal logging.

These days, environmental crimes can be prosecutable. For instance, EU Directive 2008/99/EC on the protection of the environment through criminal law and Directive 2009/123/EC on ship-source pollution and on the introduction of penalties for infringement contain provisions that provide for the criminal liability of persons. In order to apprehend the perpetrators, there is much reliance on data sharing, international cooperation and the effective enforcement of national, regional and international environmental laws.

In this report, the term "actors and institutions" shall refer to international and regional organisations as they relate to the fight against environmental crime. The international organisations featured in this report have been selected because of their prominence as influential actors and institutions within the field of environmental crime. These organisations include INTERPOL, United Nations Office on Drugs and Crime (UNODC), United Nations Economic Commission for Europe (UNECE), UNEP and World Customs Organisation (WCO). The regional/European actors and institutions featured as possessing a unique position to contribute to the fight against environmental crime include the European Police Office (EUROPOL), European Union's Judicial Cooperation Unit (Eurojust) and various other EU institutions, such as Directorate General Environment (DG ENV), EU Committee on Trade in Wild Fauna and Flora and the European Fisheries Control Agency (EFCA).

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[1] Chiara Giorgetti, 'International Norms and Standards Applicable to Situations of State Fragility and Failure: An Overview', in Hassane Cissé et. al. (eds), *The World Bank Legal Review* (vol. 3) (International Bank for Reconstruction and Development, Washington D.C. 2012) p. 290.

[2] *Ibid*, fn. 76.

[3] Sophie Crockett, *The Role of International Organisations in World Politics* (report written at Royal Holloway, University of London, 7 February 2012).

1 International Organisations

1.1 INTERPOL

The International Criminal Police Organisation (INTERPOL) is the world's largest international police organisation, with 190 country members. The idea for such an organisation came about in 1914 when police officers and judicial representatives from 14 countries decided to establish transboundary police cooperation.[4]

1.1.1 Mandate and Competences

INTERPOL's mandate can be found in its Constitution.[5] The Constitution, together with the General Regulations and Appendices, the latter of which regulate the application, modification and interpretation of the Constitution, aims at "the widest possible mutual assistance between all criminal police authorities and suppression of ordinary law crimes".[6] Ordinary law crimes are crimes that are not political, military, religious or racial in character.[7]

As the only global police organisation that has a worldwide communication system, INTERPOL is best placed to transmit information relating to criminal investigations or prosecutions. For example, the European Union (EU) has constantly strengthened its interaction and cooperation with INTERPOL in the face of evolving transnational crime challenges,[8] such as environmental crime. As such, INTERPOL is often mentioned in international conventions and multilateral or bilateral treaties, even if it is not a party to that instrument. Requests for cooperation, mutual legal assistance and extradition can be addressed at INTERPOL under the auspices of the Rome Statute of the International Criminal Court, the United Nations Convention against Transnational Organised Crime (UNTOC) and the United Nations Model Treaty on Extradition. At the European level, there is also mention of INTERPOL in the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters and the European Convention on the Transfer of Proceedings in Criminal Matters. Within the European Union (EU) cooperation can be sought from INTERPOL via the Convention implementing the Schengen Agreement, the Council Decision establishing the European Police Office (EUROPOL) and the Council Act establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. There are many more legal instruments that refer to INTERPOL than the ones mentioned above.[9]

However, despite its reputation as a global police operation, INTERPOL, does not have direct enforcement competence. It is not a supranational law enforcement agency as it has no agents who are able to make arrests. As such, INTERPOL functions as a liaison amongst law enforcement agencies of its member countries. An Environmental Crime Committee (ECC) was set up in 1992 to assist INTERPOL in the field of environmental crime enforcement. The ECC served as a forum where law enforcement officials from INTERPOL member countries could meet in order to discuss new strategies and practices, share their experiences and expertise, and

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[4] INTERPOL, 'History', <http://www.interpol.int/About-INTERPOL/History> accessed 15 January 2014.

[5] The Constitution was adopted at the 25th session of the General Assembly (June 1956, Vienna) and entered into force on 13 June 1956.

[6] ICPO-INTERPOL Constitution and General Regulations, arts. 2(1) – (2).

[7] *Ibid*, art. 3.

[8] INTERPOL, 'INTERPOL's global tools strengthening European security' <http://www.interpol.int/News-and-media/News/2013/PR075> accessed 15 February 2014.

[9] *See* INTERPOL, 'Conventions mentioning INTERPOL', <http://www.interpol.int/About-INTERPOL/Legal-materials/Conventions-mentioning-INTERPOL> accessed 5 February 2014.

establish international cooperation in the fight against international environmental crime. This will be explored in the paragraphs below.

1.1.2 Work on Environmental Crime

In an interview with INTERPOL on its environmental crime work, it was mentioned that the involvement of organised criminal networks, in particular already established networks, is on the increase[10] .[11]

As it takes a lot of careful planning to traffic waste, timber, or animal products such as ivory and rhino horn across countries and continents, it makes sense for the environmental crime perpetrators to link up with other criminal networks such as those in the fields of weapons, drugs and people smuggling, and use their trafficking routes.

Why is environmental crime attractive?

1. There is a relatively lower risk of apprehension (as INTERPOL fully recognises, police resources committed to investigating environmental crime are significantly less than resources used to combat the above-mentioned other crimes);
2. Financial rewards are comparable to the profits made from these other more traditional types of (serious) crime; and
3. If caught, the penalties are relatively low (in March 2013, two criminals were caught in Ireland attempting to smuggle eight rhino horns into Europe worth €500,000. They eventually received a fine of €500 each which equates to 0.1% of the value of the contraband).[12]

INTERPOL has a long history of combating organised crime and now brings this experience to environmental crime since environmental crime often occurs hand in hand with other offences ("cross-over" crimes) such as passport fraud, corruption, tax evasion, bribery, forgery, money laundering and murder.[13] Investigating these cross-over crimes can also be an effective way of identifying and arresting environmental criminals. Financial investigations, for example, can uncover bribery and reveal links between environmental crime networks and government corruption.

In March 2012, the 1992 Environmental Crime Committee (ECC) was restructured and the Environmental Compliance and Enforcement Committee (ECEC) was formed.[14] Both the ECC and ECEC have been involved in several global and regional programmes to combat environmental crime.[15]

The Environmental Crime Programme is INTERPOL's primary vehicle in the field. Therein, three specialised working groups have been created, the Wildlife Crime Working Group, the Pollution Crime Working Group and

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[10] Interview with INTERPOL Environmental Security Unit, 9 July 2014 (hereinafter "Interview with INTERPOL").

[11] *Ibid*.

[12] *See* Wildlife Extra, 'Irish Connection to major rhino horn thefts and smuggling ring' <http://www.wildlifeextra.com/go/news/irish-rhino.html#cr> accessed 15 February 2014.

[13] Interview with INTERPOL.

[14] INTERPOL, 'Crime areas: Environmental Crime: Environmental Compliance and Enforcement Committee' <http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-Compliance-and-Enforcement-Committee> accessed 15 January 2014.

[15] Global and regional operations that have been undertaken by the ECC and ECEC include Operation RAMP on illegal trade in endangered reptiles and amphibians, Operation TRAM on illegal trade in traditional medicines containing wildlife products, Operation HAZ and HAZ 2 on illegal transportation of hazardous materials, Operation TIGRE on illicit trade of tigers, Operation MOGATLE on illegal trade in ivory and rhino horn, Operation COSTA on illegal trade in ivory and Operation EDEN on illegal trade of e-waste. In February 2013, the ECEC engaged in the first international operation targeting large-scale illegal logging and forest crimes, which aimed at the development of practical cooperation and communication among national environmental law enforcement agencies and international organisations.

the Fisheries Working Group, which bring together criminal investigators from all around the world with the aim to share information and initiate targeted projects to tackle specific areas of environmental crime.[16] The Programmes' main objectives are:

1. leading global and regional operations to dismantle the criminal networks behind environmental crime using intelligence-driven policing;
2. coordinating and developing international law enforcement best practice manuals, guides and other resources;
3. providing environmental law enforcement agencies with access to its services by enhancing their links with INTERPOL National Central Bureaus; and
4. working with the ECEC to shape the Programme's strategy and direction.

Of course, if more resources would be available they could be used across a number of other INTERPOL units (including organised crime, anti-corruption and financial crime units) to more effectively tackle the entire field of environmental crime.[17]

1.1.3 Cooperation with other Organisations

As allowed by Article 41 of the Constitution, [18] INTERPOL has concluded strong relationships with a wide variety of international organisations,[19] both intergovernmental and non-governmental, in many areas of criminal interest,[20] such as, indeed, environmental crime, crime of corruption, crimes against children, trade in firearms, trafficking in illicit goods and counterfeiting.

Of interest here are the following:

INTERPOL and UNEP

In November 2013, INTERPOL initiated a plan for cooperation on environmental crime with the United Nations Environment Programme (UNEP). The INTERPOL – UNEP conference, held on 6 November 2013, brought together executive leaders from around the world to draft a common international strategy to tackle environmental crime. The main topics of discussion during the conference focused on cooperation between intergovernmental organisations and the planned international environmental enforcement actions. Both INTERPOL and UNEP recognise that only by way of mutual cooperation with common objectives, is it possible to achieve an impact on the activities of the individuals, networks and companies that illegally exploit the environment, biodiversity and natural resources.[21] This strategic conference has followed earlier cooperation

[16] INTERPOL, 'Crime areas: Environmental crime' <http://www.interpol.int/Crime-areas/Environmental-crime/Environmental-crime> accessed 15 January 2014.

[17] Interview with INTERPOL.

[18] ICPO-Interpol Constitution and General Regulations, art. 41.

[19] United Nations and several of its specialised agencies; European Union; Commonwealth of Independent States; International Criminal Court; African Union; Organisation of American States; Arab Interior Ministers' Council; United Nations and several of its specialised agencies; European Union; Commonwealth of Independent States; International Criminal Court; African Union; Organisation of American States; Arab Interior Ministers' Council.

[20] INTERPOL, 'Legal materials: Cooperation agreements'<http://www.interpol.int/About-INTERPOL/Legal-materials/Cooperation-agreements> accessed 15 January 2014.

[21] INTERPOL, 'INTERPOL – UNEP International Environmental Compliance and Enforcement Conference' <http://www.interpol.int/Crime-areas/Environmental-crime/Events/Meetings/INTERPOL-Environmental-Compliance-and-Enforcement-Events-2013> accessed 15 February 2014.

between INTERPOL and UNEP in the field of illegal logging – see their 2012 report *Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the World's Tropical Forests.*[22]

INTERPOL and ICCWC-GCI

INTERPOL is also involved in a number of other intergovernmental networks to ensure effective communication and collaboration between strategic international partners to coordinate efforts against environmental crime. These include the International Consortium on Combating Wildlife Crime (ICCWC)[23] and the Green Customs Initiative (GCI).

INTERPOL and EUROPOL

The cooperation between INTERPOL and the European Police Office (EUROPOL) is based on an operational agreement signed in 2001 – enabling the exchange of operational, strategic and technical information. Both organisations have liaison officers stationed at each other's headquarters to facilitate cooperation. Sharing of information must be done in compliance with both organisations' regulations.

Whilst INTERPOL's mandate is global and covers a wider range of crime types, EUROPOL's mandate relates to the EU and its Member States and allows it to deal with certain crimes – organised crime, terrorism and other forms of serious crime, including illicit trafficking in endangered plant species and varieties and environmental crime. Currently, environmental crime is not given as high a priority under EUROPOL's mandate when compared to INTERPOL.[24]

INTERPOL and Eurojust

Following negotiations that ended in April 2013, INTERPOL and European Union's Judicial Cooperation Unit (Eurojust) entered into a Memorandum of Understanding (MoU) to establish, define, encourage and improve cooperation between both organisations in the fight against serious crime, particularly when it is organised, in accordance with their legal frameworks. The MoU also includes the possibility to organise joint training activities, exchange expertise and best practice in areas of common interest, exchange strategic and technical information and combine efforts to provide expertise and support to Joint Investigation Teams (JITs).[25]

1.1.4 Cooperation with the European Union

Whether it be through a provision in a legal instrument or not, INTERPOL and the EU have been cooperating closely on matters of joint interest, sharing their resources and expertise and presenting a combined response to law enforcement challenges such as maritime piracy and trafficking in firearms.[26] In 2008, as a result of this

[22] INTERPOL and UNEP, 'Green Carbon, Black Trade: Illegal Logging, Tax and Laundering in the World's Tropical Forests'<http://www.unep.org/pdf/RRAlogging_english_scr.pdf>accessed 15 January 2014.

[23] ICCWC comprises five international organisations, including UNODC, the Secretariat of the CITES, INTERPOL, the World Customs Organisation (WCO) and the World Bank. More on ICCWC in the sections below. The EU is one of the donors of the consortium.

[24] Interview with INTERPOL.

[25] According to the definition provided by Eurojust, a Joint Investigation Team is "a team consisting of judges, prosecutors and law enforcement authorities, established for a fixed period and a specific purpose by way of a written agreement between the States involved, to carry out criminal investigations in one or more of the involved States".

[26] INTERPOL, 'European Union' <http://www.interpol.int/About-INTERPOL/International-partners/European-Union> accessed 5 February 2014.

cooperation, the office of the Special Representative of INTERPOL to the EU (SRIEU) was created, with the following objectives:[27]

1. to increase INTERPOL's visibility to the EU institutions, agencies, and governing bodies involved in activities related to law enforcement;
2. to promote collaboration with the EU areas pertaining to law enforcement so as to avoid duplication and develop creative synergies;
3. to act as a Privileged Partner in EU forums and in EU initiatives regarding the law enforcement arena; and
4. to manage EU-funded projects.

In addition to this, the Environmental Crime Programme cooperates with a number of national bodies of EU Member States amongst which the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the Environment Agency for England and Wales, the Netherlands Government, the Norwegian Agency for Development Cooperation (NORAD) and the United Kingdom Department for Environment Food and Rural Affairs (UK DEFRA).

Operational cases between INTERPOL and EU Member States are created on an ad hoc basis. These are only enabled if national authorities are ready to share their information and publicly discuss the level of assistance they might need from INTERPOL.[28]

[27] INTERPOL, 'International partners: European Union'<http://www.interpol.int/About-INTERPOL/International-partners/European-Union> accessed 15 January 2014.

[28] Interview with INTERPOL.

Box 1: Project Adan[29]

An example of how INTERPOL provides assistance to its country members, including EU Member States is Project Adan, an INTERPOL criminal intelligence analytical study conducted on the trafficking of elephant ivory:

> Project Adan was involved in 14 major ivory seizures between January 2005 and July 2007. Analysis of ivory seizures by INTERPOL provided significant opportunities to identify smuggling networks either by way of ongoing joint investigations or other enforcement tools such as controlled deliveries. Data were also provided by various NGOs. INTERPOL brought together investigators from different countries (e.g. Cameroon and Hong Kong) who had been working on similar major seizures and provided them with the analytical capability to assist with their own investigations.
>
> At the time of this Project, international trafficking in ivory was identified as a serious criminal activity, with estimates indicating that more than 90% of the elephants killed during the decade 1995-2005 were poached for ivory. Ivory is a low value commodity in source countries, but generates good profits on the retail market. In 2006, 1kg of ivory sold for US$35 in East Africa but could be resold for up to US$750 in Asia.[30]
>
> The investigation looked at the possible similarities and links existing between these seizures and concluded that sophisticated networks were essential in undertaking this type of criminal activity. The involvement of organised crime groups in trafficking large quantities of ivory was clearly identified.
>
> Project Adan managed to identify the links between elephant poaching and organised crime and terrorism.

[29] Information provided by INTERPOL.

[30] Today, 1 kg of ivory is estimated to cost US$1,800. An average female elephant has 10kg of ivory, which makes her worth US$18,000. The retail value of 10kg can be sold for up to US$60,000. According to an article in The Guardian in July 2014, the rising demand in China has pushed the price of 1kg of ivory to £1,225 or US$2,100. Researchers from Kenya studied ivory sales in China and have stated that this price had risen from what used to be £437 or US$750 in 2010.

1.2 UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

The United Nations Office on Drugs and Crime (UNODC) is a United Nations (UN) agency and a member of the United Nations Development Group (UNDG).[31]

UNODC covers around 150 countries through its field office network of regional, country and programme offices.[32] UNODC works with its member countries to enhance their efforts to combat the intertwined problems of drug use, transnational drug trafficking, organised crime, corruption and terrorism, by helping to create and strengthen legislative, judicial and health systems to fight these forms of crime and to safeguard some of the most vulnerable persons in society.

1.2.1 Mandate and Competences

UNODC's work in a general sense is "guided by international mandates based on the rule of law".[33] "Within these mandates, UNODC gathers and analyses evidence that identifies trends and serves as a platform for action".[34] Particularly, its job is to provide technical assistance in countering illicit drug trafficking, crime and terrorism worldwide.

Further guidance is derived from a broad range of international legally binding instruments and a set of UN standards and norms on crime prevention and criminal justice.[35] Its role towards UN member countries include assisting in combating transnational crime through various means, such as with the ratification and implementation of international conventions, developing expertise tools and resources, strengthening the rule of law, technical assistance programmes and conducting research and analysis.[36]

UN General Assembly Resolution 58/4 has given UNODC the mandate to serve as the Secretariat of the Conference of the State Parties, of the UN Convention against Corruption (UNCAC) adopted in 2003. UNODC also acts as the "custodian" of the 2002 United Nations Convention against Transnational Organised Crime (UNTOC or the "Palermo Convention") and is responsible for the Secretariat of the Commission on Crime Prevention and Criminal Justice (CCPCJ). As such, part of the UNODC's operational work is underpinned by UNTOC and CCPCJ.

Like INTERPOL, UNODC does not have an enforcement mechanism of its own. Its role is to help build the capacity of member countries in the areas of criminal investigation and law enforcement by, amongst others, technical assistance and training. Actual enforcement rests solely with the member countries themselves.

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[31] UNDG, 'UNDG Members'<http://www.undg.org/index.cfm?P=13> accessed 15 January 2014.

[32] United Nations Rule of Law, 'The United Nations Office on Drugs and Crime (UNODC)' <http://www.unrol.org/article.aspx?n=unodc> accessed 15 January 2014.

[33] UNODC, 'Briefing Note for the UN Resident Coordinators: Overview of UNODC' (September 2012) <http://rconline.undg.org/wp-content/uploads/2011/11/UNODC-Overview-for-RC-updated-as-September-2012.pdf> accessed 5 February 2014.

[34] *Ibid*.

[35] UNODC, 'Mandates' <http://www.unodc.org/mexicoandcentralamerica/en/romex/mandatos.html> accessed 5 February 2014.

[36] Australian Government, 'Australian Multilateral Assessment March 2012: United Nations Office on Drugs and Crime' <http://aid.dfat.gov.au/partner/Documents/unodc-assessment.pdf> accessed 5 February 2014.

1.2.2 Work on Environmental Crime

The work of UNODC in countering environmental crime includes local, regional and global initiatives. UNODC has very recently become involved in combating environmental crime. It is not written as such in its mandate[37] but, if and when the need arises, UNODC will approach other organisations for cooperation. Member countries determine what is a (serious) crime and therefore about the applicability of UNTOC. Member countries have been requesting UNODC to look into wildlife trafficking and more recently timber trafficking despite the member countries not labelling these activities as environmental crimes in general.[38] In 2010, UNODC and four other organisations formed a consortium called the International Consortium on Combating Wildlife Crime (see below for more on ICCWC).

UNODC plays an important administrative/advocacy role in strengthening the capacity of governments to investigate, prosecute and adjudicate crimes of trafficking in forest products,[39] wildlife trafficking at sea[40] as well as crimes against protected species of wild flora and fauna,[41] in support of international legal frameworks such as the Convention on Biological Diversity (CBD) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[42] While the strengthening of national criminal justice systems is an important part of UNODC's work, the comparative advantage of the UN lies in assisting countries in tackling transnational issues and not in the first place in helping to fight crimes at the national level.[43]

1.2.3 Cooperation with other Organisations

UNODC's role in the international arena takes the form of an intermediary. It acts as a liaison between states and international organisations and facilitates regional networks of cooperation against organised crime. In short, it works actively in promoting and facilitating cooperation between various authorities from all parts of the world.

One such effort was in 2009 when UNODC helped set up the Network of Prosecutors against Organised Crime (REFCO, after its Spanish acronym as it focuses on Central America and the Dominican Republic)[44] with the objectives to foster regional cooperation and to strengthen the joint transnational investigation and prosecution capacities of, amongst others, the Network's ten members.[45]

In November 2010, UNODC joined forces with four international organisations – the Secretariat of the CITES, INTERPOL, the World Customs Organisation (WCO) and the World Bank to form the International Consortium on Combating Wildlife Crime (ICCWC). The Consortium aims at bringing coordinated support to governments, national wildlife and forest law enforcement agencies and sub-regional networks that work to protect the world's natural resources from criminal exploitation. ICCWC also aims to bring coordinated support to national wildlife

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[37] UNODC mandate requires it to work on "emerging crimes" and this can include environmental crimes.

[38] Interview with UNODC Division for Policy Analysis and Public Affairs, 13 May 2014 (hereinafter "Interview with UNODC").

[39] *See* ECOSOC Resolution 16/1.

[40] *See* CCPCJ Resolution 20/5.

[41] *See* ECOSOC Resolution 2011/36.

[42] UNODC. 'Wildlife and Forest Crime'<http://www.unodc.org/unodc/en/wildlife-and-forest-crime/> accessed 15 January 2014.

[43] Interview with UNODC.

[44] *See* UNODC, 'Network of Specialised Prosecutors against Organized Crime (REFCO)' <https://www.unodc.org/unodc/en/organized-crime/gptoc-refco.html> accessed 5 February 2014.

[45] Its members are the prosecution offices from Belize, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama.

law enforcement agencies and related sub-regional and regional networks.[46] In 2012, UNODC, in partnership with other members of ICCWC, developed the Wildlife and Forest Crime Analytic Toolkit, which is aimed at assisting governments in identifying the strengths and weaknesses of their criminal justice responses to wildlife and forest crime.[47] The EU is a donor of the ICCWC and has recently (November 2014) concluded its consultation with stakeholders in the field of wildlife crime following its Communication on the topic of February 2014 (see Section 2.5.2. on DG ENV's Work on Environmental Crime).

Bearing in mind that UNODC acts as custodian to UNTOC and as Secretariat of the CCPCJ, reports from UNTOC Conference of Parties have suggested that UNTOC – hence implicating UNODC – could be engaged in combating transnational environmental crime. The Executive Director of UNODC has put forth recommendations for UNTOC to specifically address environmental crime by means of a protocol.[48] In short, the idea is for UNODC (via UNTOC) to work with UNEP in addressing transnational environmental crime.

1.2.4 Cooperation with the European Union

On 17 April 2012, UNODC and the European External Borders Agency (Frontex), the EU agency for cooperation on border management, signed a working arrangement with the aim to strengthen cooperation between the two agencies in the field of crime prevention and human security.[49] This arrangement will focus primarily on activities such as risk and threat analysis, capacity building, training and information exchange, and mutual consultation.[50] One of the areas mentioned by UNODC Executive Director, Yury Fedotov, for joint effort is building the capacity of border control personnel to prevent and fight transnational organised crime.[51] Such an effort may include tackling transnational environmental crime at the borders, especially of course in this case as it relates to "the smuggling of migrants and trafficking in persons".

1.3 WORLD CUSTOMS ORGANISATION (WCO)

The WCO, headquartered in Brussels, is an independent intergovernmental body representing 179 customs administrations or countries around the world. Its mission is to enhance the effectiveness and efficiency of customs administrations worldwide.

1.3.1 Mandate and Competences

The WCO was established in 1952 following the 1950 adoption of the Convention establishing the Customs Co-operation Council (CCC).[52] In fact, the WCO was formerly known as CCC, up until 1994 when the Council

[46] UNODC, 'Joint Initiatives' <http://www.unodc.org/unodc/en/wildlife-and-forest-crime/joint-initiatives.html> accessed 5 February 2014.

[47] *Ibid*.

[48] UNICRI, 'International Conference Environmental Crime – Current and Emerging Threats: Action Plan on Combating Environmental Crime' (October 2012) <http://www.unicri.it/topics/environmental/conference/Plan%20of%20action.pdf> accessed 5 February 2014.

[49] UNODC, 'UNODC and European Union border management agency sign cooperation agreement' <http://www.unodc.org/unodc/en/frontpage/2012/April/unodc-and-eu-border-management-agency-sign-cooperation-agreement.html> accessed 5 February 2014.

[50] *Ibid*.

[51] *Ibid*.

[52] Convention Establishing a Customs Co-operation Council (adopted 15 December 1950, entered into force 4 November 1952) 157 UNTS 129 (hereinafter "WCO Convention").

decided to adopt the current name, to more clearly reflect its evolution into a truly global intergovernmental institution.[53]

WCO's founding Convention provides that the Council is to establish relations with the UN and other intergovernmental or international organisations.[54]

1.3.2 Work on Environmental Crime

The Secretary General of WCO expressed that the WCO is committed to the fight against transnational environmental crime and that it is "increasingly concerned about the way in which the planet is being degraded through insensitive and often criminal behaviour".[55] In response to its member countries' need, the WCO has developed an environment programme on the control of Multilateral Environmental Agreements (MEAs) related to trade and to combating environmental crime. The WCO makes use of different international fora to raise the awareness of its Members on environmental issues.

Recognising the need for action against transnational illegal trade, WCO launched a Green Customs Initiative (GCI) in 2004. The objective of the Initiative is to increase the capacity of customs and related enforcement bodies to prevent illegal trade in commodities covered by the various MEAs.[56] The WCO in cooperation with its Green Customs partners[57] has also invested heavily in regional capacity building and training activities to enhance the ability of customs officials and other law enforcement officers to detect and prevent the illegal trade in environmentally sensitive goods whilst providing them with the necessary knowledge and expertise to fight environmental crime from a position of strength.[58]

Another WCO initiative is called ENVIRONET and it was launched in 2009 as a global communication tool to fight against environmental crime.[59] It provides a platform for customs officials, law enforcement authorities and international organisations to cooperate with one another and share real-time information in the course of their daily operations.[60]

In 2010, WCO joined five other organisations to form the International Consortium to Combat Wildlife Crime (ICCWC, see above Section 1.2.3. on UNODC's Cooperation with other Organisations). ICCWC organisations contribute to WCO's GCI.[61] In reciprocity, ENVIRONET is one of the tools provided by the WCO as an ICCWC

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[53] World Customs Organisation, 'History' <http://www.wcoomd.org/en/about-us/what-is-the-wco/au_history.aspx> accessed 3 December 2013.

[54] WCO Convention, art. IX(a).

[55] Kunio Mikuriya, WCO Secretary General, 'Message from the World Customs Organisation: World Wildlife Day' (3 March 2014) <http://www.wcoomd.org/en/media/newsroom/2014/march/~/media/WCO/Public/Global/PDF/Media/Newsroom/Press/2014/WCO_Message_World_Wildlife_Day_2014.ashx> accessed 17 February 2014.

[56] Green Customs, 'About Green Customs' <http://www.greencustoms.org/background/> accessed 17 February 2014.

[57] These partnerscomprise the secretariats of the relevant MEAs (Basel, Cartagena, CITES, Montreal, Rotterdam Stockholm), INTERPOL, the Organisation for the Prohibition of Chemical Weapons (OPCW), UNEP and UNODC.

[58] *Ibid*.

[59] WCO, 'ENVIRONET will connect Customs and its enforcement partners worldwide in the fight against environmental crime' (Press release 5 June 2009) <http://www.wcoomd.org/en/media/newsroom/2009/june/environet-fight-against-environmental-crime.aspx> accessed 5 February 2014.

[60] *Ibid*.

[61] Interview with WCO, Environment Program, 24 June 2014 (hereinafter "Interview with WCO").

partner. Thus, GCI, ENVIRONET and the ICCWC operate in support of each other towards a common goal to fight environmental crime.[62]

1.3.3 Cooperation with other Organisations

WCO may make arrangements necessary to facilitate consultation and cooperation with (non-) governmental organisations interested in matters within its competence.[63] A good example of WCO's cooperation with international (governmental) organisations is the one with the World Trade Organisation (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT). In 1997, the WCO and the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the "Basel Convention") signed an MoU to create an administrative base for cooperation and exchange of information. Furthermore, the WCO Council adopted a recommendation calling on its members to strengthen their existing bilateral and multilateral cooperation in combating the illegal trafficking in hazardous waste.[64]

In 2003, together with UNEP,[65] INTERPOL and various MEA Secretariats, WCO cooperated in the framework of the Green Customs Initiative to form a 50-day operation called Operation Demeter involving custom agencies from 64 different countries.[66] Operation Demeter was launched to target the illicit cross-border shipment of hazardous and other waste *en route* from Europe to countries in the Asia/Pacific region and Africa.

Since the introduction of ENVIRONET, positive support has come in from a number of international organisations that have an interest in the environment, including the Secretariats of the Basel Convention, the Rotterdam Convention (on prior informed consent concerning the trade in hazardous chemicals and pesticides), and the Stockholm Convention (on the production and use of persistent organic pollutants), as well as the CITES Secretariat, INTERPOL, the UNODC and the Secretariat for the Convention on Biodiversity.[67]

As mentioned above, WCO forms one of the five (equal) partners in the ICCWC consortium and is represented in the ICCWC Senior Experts Group (SEG).[68] The SEG meets quarterly to discuss ICCWC matters, share and disseminate information, and decide who, according to mandate, experience and capacity, will take the lead on certain activities.[69] The CITES Secretariat is the Chair of the SEG and has dedicated staff capacity (externally funded to support the SEG and the ICCWC more in general.

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[62] *Ibid*.

[63] WCO Convention, art. IX(b).

[64] O'Laoire Russel Associates, *Study on the Role of Customs in Enforcement of European Community Legislation Governing the Protection of the Environment and its Best Practices* (Study commissioned by the EU Commission 31 March 2011) p. 51.

[65] In 2003, the WCO already signed a previous Memorandum of Understanding with UNEP to cooperate in mutual consultation, information exchange, reciprocal representation and technical cooperation.

[66] Environment News Service, 'Green Customs Operation Seizes 30,000 Tons of Illegal HazWaste' <http://www.ens-newswire.com/ens/jul2009/2009-07-17-01.asp> accessed 5 February 2014.

[67] WCO, 'ENVIRONET will connect Customs and its enforcement partners worldwide in the fight against environmental crime' (Press release 5 June 2009) <http://www.wcoomd.org/en/media/newsroom/2009/june/environet-fight-against-environmental-crime.aspx> accessed 5 February 2014.

[68] Interview with WCO.

[69] *Ibid*.

An example of a successful cooperation: all ICCWC partners were involved in delivering a two-day workshop training ahead of Operation COBRA II.[70] They each presented on matters best fitted to their expertise: e.g. INTERPOL Notices, Information and Intelligence Management, Questioning wildlife smugglers, WCO Customs Enforcement Network, CITES Virtual College[71] and Enforcement Authorities Forum[72]. WCO contributed by presenting its Customs Enforcement Network (CEN). The CEN application was initially conceived to assist the customs enforcement community in gathering data and information for intelligence purposes. CEN became operational in 2000 and has since grown to also comprise an array of stand-alone applications helping customs to confront the challenges of the current digital age by providing them with a globally secure communication network based upon the latest technology.

1.3.4 Cooperation with the European Union

The EU's request to join the WCO was approved on 30 June 2007. Full accession will be possible once an amendment to the Convention establishing the CCC, allowing economic and customs unions to join, is ratified by its 172 member states.[73] The European Commission (EC) is a contracting party to several WCO Conventions, and contributes to its work, including by ensuring presence and coordination with the Member States in defining and representing Community positions in the relevant bodies managing these conventions.[74]

In 2009, by means of ENVIRONET, seven WCO Regional Intelligence Liaison Offices, the Secretariat of the Basel Convention and the EU Network for Implementation and Enforcement of Environmental Law (IMPEL),[75] worked together in Operation Demeter.[76]

By implication, WCO, indirectly through ICCWC, has provided coordinated support to the EU by building the capacity of national enforcement agencies to combat wildlife crime and cooperation at the national, regional and international levels.[77] The following are some events that were organised by the ICCWC in the past:

- workshops on controlled deliveries in Shanghai, China;
- seminar for heads of police and Customs on tiger crime in Bangkok, Thailand;
- specialized training for wildlife law enforcement officers from Africa and Asia;
- first international training on rhinoceros DNA sampling;
- events to raise awareness, build cooperation and raise the political profile of wildlife crime, such as the Ministerial Roundtable and the first global meeting of wildlife enforcement networks at the 16th Conference of the Parties to CITES (COP16) in Bangkok, Thailand; and
- side events at the meetings of ICCWC partner governing bodies.

[70] COBRA II was a joint global operation that targeted wildlife criminals. It was represented by law enforcement officers from 28 countries. The operation resulted in more than 400 arrests and over 350 major wildlife seizures.

[71] Launched in 2011, the CITES Virtual College offers training, educational material and expertise to CITES parties and communities. The College provides access to interactive courses that are available in three working languages.

[72] This Forum is a restricted-access area within the CITES website that is open only to registered members. Therein, one will have access to alerts, manuals, handbooks and enforcement-related messages posted by the law enforcement community.

[73] European Commission, 'World Customs Organisation' <http://ec.europa.eu/taxation_customs/common/international_affairs/wco/index_en.htm> accessed 5 February 2014.

[74] *Ibid*.

[75] Note that IMPEL is not a body of the EU, but an independent legal entity comprised on member organisations from EU Member States.

[76] *Ibid*.

[77] Interview with WCO.

1.4 UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

UNEP is a specialised agency of the UN established through the UN Conference on the Human Environment in June 1972 by UN General Assembly Resolution 2997 (XXVII). It has universal membership of all UN member countries.

1.4.1 Mandate and Competences

The original mission of UNEP was to "provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations".[78] In 1997, after the adoption of the Nairobi Declaration, UNEP's mandate was extended making it the world's leading global environmental authority.

Over forty international multilateral environmental treaties have been adopted under the auspices of UNEP. These include the Basel Convention, the CBD (together with IUCN, the International Union for the Conservation of Nature) and CITES. Within UNEP prime responsibility for this work lies with the Division for Environmental Law and Conventions (DELC).

DELC not only contributes to the development of international environmental law, it also serves to promote "the progressive development and implementation of environmental law" through capacity building and supporting the implementation of MEAs by parties.[79]As such, DELC is responsible for enhancing the implementation, compliance and enforcement of environmental law at all levels as mandated by GC Decision GC/SS VII/4 and GC Decision GC25/11.[80]

In February 2001, UNEP issued Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements to advise national governments on the methods of implementation of environmental law in compliance with various MEAs and to enhance international cooperation in combating environmental violations.[81] Later, in 2007, UNEP published a Manual on Compliance with and Enforcement of Multilateral Environmental Agreements with concrete examples to provide countries with more solid guidance than the Guidelines of 2001.[82]

UNEP does not possess any enforcement powers to penalise or impose sanctions on member countries for not complying with the guidelines.[83]It is therefore up to the willingness of member countries to adhere to their commitments, where UNEP functions to facilitate greater cooperation amongst its member countries.

1.4.2 Work on Environmental Crime

The work of UNEP (primarily through DELC) centres on transnational environmental crime,[84] aiming to provide leadership on the following objectives: [85]

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[78] UNEP, 'About UNEP: The Organisation: Mission' <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=43> accessed 15 January 2014.

[79] *Ibid*.

[80] General Council of UNEP, 'Fourth Programme for the Development and Periodic Review of Environmental Law' (2009) UNEP/GC/25/INF/15.

[81] *See* Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (2001) 21/27, <http://www.unep.org/delc/Portals/119/UNEP.Guidelines.on.Compliance.MEA.pdf> accessed 15 January 2014.

[82] UNEP, 'Manual on Compliance with and Enforcement of Multilateral Environmental Agreements' <http://www.unep.org/delc/portals/119/UNEP_Manual.pdf> accessed 15 January 2014.

[83] C. Tinker, *Environmental Planet Management by the United Nations: An Idea Whose Time Has Not Yet Come*, 22 N.Y.U.J. INT'L L. & Pol.793 (1990).

1. a better understanding of the global problems and existing gaps on transnational or cross-border environmental crime;
2. common approaches to more efficiently and effectively tackle the problem of transnational environmental crime from a legal standpoint;
3. strengthening and reinforcing current international and national legal and institutional arrangements and law enforcement mechanisms to combat transnational environmental crime;
4. strengthening and reinforcing national environmental laws to counter environmental crime;
5. fostering and enhancing cross-border cooperation in the field of environmental crime; and
6. strengthening and developing partnerships, coordination and cooperation between stakeholders.

UNEP believes that the key to a long-term solution to fight environmental crime is to raise the awareness of consumers of the seriousness of the crime and to reduce the demand for environmentally harmful goods and services in the affected areas. However, where it concerns transnational organised crime, consumer awareness has to be supplemented by front-line enforcement, especially in the fields of investigations, customs, prosecution and judicial legislation.[86]

1.4.3 Cooperation with other Organisations

UNEP cooperates with intergovernmental organisations such as UNODC, INTERPOL, WCO, CITES and the World Bank on an ad hoc basis.[87]

UNEP and INTERPOL

There is prominent collaboration with INTERPOL, with whom UNEP has been leading Project LEAF (Law Enforcement Assistance for Forests) on illegal logging and other organised forest crimes with financial support from NORAD.[88] In 2012, UNEP and INTERPOL released a joint report entitled *Green Carbon, Black Trade*. Therein, illegal logging is projected to worth between US$30 – 100 billion annually and accounts for between 15 and 30 per cent of the overall global trade.[89] On 6 November 2013 the Sub-Directorate for Environmental Security (NIS) of the INTERPOL General Secretariat and UNEP jointly organised the first international conference on environmental compliance and enforcement at UNEP headquarters in Nairobi, Kenya. Participation was by senior environmental law enforcement officials, non-governmental organisations, academia and the private sector. The conference had three main objectives:

1. to consider issues associated with communication and networking between governments, non-governmental organisations and the private sector;
2. to explore mechanisms to expedite the exchange and maximize the storage of data, information and intelligence for the benefit of the global law enforcement community; and
3. to enhance collaboration surrounding transnational investigations and operational actions.

UNEP and ICCWC

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[84] *See* UNEP, 'DELC: Division of Environment Law and Conventions' <http://www.unep.org/delc/EnvironmentalCrime/tabid/54407/Default.aspx> accessed 19 February 2014.

[85] UNEP, 'DELC'<http://www.unep.org/delc/EnvironmentalCrime/tabid/54407/Default.aspx> accessed 15 January 2014.

[86] Interview with UNEP, Rapid Response Unit, 25 June 2014 (hereinafter "Interview with UNEP").

[87] UNODC, INTERPOL, WCO, CITES and the World Bankwork together through the International Consortium on Combating Wildlife Crime (ICCWC); *See also* UNEP, 'Transnational Environmental Crime - a common crime in need of better enforcement' <http://na.unep.net/geas/getUNEPPageWithArticleIDScript.php?article_id=95> accessed 15 January 2014.

[88] INTERPOL, 'Projects: Project Leaf' <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Leaf> accessed 14 February 2014.

[89] INTERPOL and UNEP, 'Green Carbon, Black Trade: Illegal Logging, Tax and Laundering in the World's Tropical Forests'<http://www.unep.org/pdf/RRAlogging_english_scr.pdf> accessed 15 January 2014.

Although not a formal party to the ICCWC, UNEP has worked in collaboration with the consortium to create a more effective structure to provide support to countries in the field of policing, customs, prosecution and the judiciary.[90]

UNEP and UNODC-WCO

In 2003, UNODC and WCO initiated the Global Container Control Programme (CCP) to minimise the exploitation of maritime containers for the illicit trafficking of drugs and other forms of transnational organised crime activities, including those in the field of the environment. Training activities undertaken as part of the CCP include four training phases. During the second training phase, specialised trainers will conduct more specific trainings on variety of topics, the ones of relevance being environmental crime and trafficking in endangered species.[91] Here, specialised experts with proven operational experience, such as the ones from UNEP, amongst others, will be picked to give advance trainings.

1.4.4 Cooperation with the European Union

Established in April 2001, UNEP's Liaison Office to the EU in Brussels works closely with the EU institutions to increase policy dialogue, strengthen programmatic cooperation and build strategic partnerships that fulfil the shared goals of UNEP and the EU.[92] In 2004 an MoU with the European Commission to strengthen their existing cooperation in the field of the environment, was signed, and in 2011 a joint statement to improve each other's capacities in terms of activities, programmes and projects of environmental concern was issued.[93] UNEP also works with the European Parliament (EP)[94] and the European Economic and Social Committee (EESC)[95] and has MoUs with the Committee of the Regions,[96] the Joint Research Centre,[97] and the European Environment Agency (EEA).[98]

In June 2014, UN Under-Secretary-General and UNEP Executive Director Achim Steiner and EU Commissioner for Environment Janez Potočnik signed a new MoU to reinforce the collaboration between the EC and UNEP in the field of environment and climate change.[99] The agreement - signed *en marge* of the first United Nations

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[90] UNEP, 'Illegal Trade in Wildlife and Timber Products Finances Criminal and Militia Groups, Threatening Security and Sustainable Development' <http://www.unep.org/newscentre/default.aspx?DocumentID=2791&ArticleID=10906&l=en> accessed 11 June 2014.

[91] UNODC, 'The UNODC-WCO Container Control Programme (CCP)' <https://www.unodc.org/unodc/en/drug-trafficking/horizontal-initiatives.html> accessed 15 June 2014.

[92] *See* UN Brussels, 'United Nations Environmental Programme (UNEP)' <http://www.unbrussels.org/agencies/unep.html> accessed 5 February 2014.

[93] *Ibid*.

[94] *See for example*, a 2012 event on Green Jobs in the context of Rio+20 outcomes on the Green Economy organized by the International Labour Organisation (ILO) and UNEP and hosted by Members of Parliament Gerben-Jan Gerbrandy and Elisabeth Schroeder.

[95] UNEP has worked with EESC and its partners in an exchange of views on advancing sustainable development post Rio in May 2013.

[96] UNEP's MoU with the Committee of the Regions seeks to build the capacity of local and regional authorities within the policy decision-making process in the field of sustainable development.

[97] Part of UNEP's collaboration with the Joint Research Centre involves providing scientific and technical support to EU policies for the protection of the European and global environment.

[98] UN Brussels, 'United Nations Environmental Programme (UNEP)' <http://www.unbrussels.org/agencies/unep.html> accessed 5 February 2014.

[99] UNEP, 'The European Commission and UNEP strengthen cooperation in renewed Memorandum of Understanding' <http://unepineurope.org/index.php?option=com_content&view=article&id=146:the-european-

Environment Assembly (UNEA) in Nairobi - lays the foundation for strengthened cooperation between UNEP and the European Commission at global and regional levels. It builds upon the 2004 MoU mentioned above. Like the previous MoU, it does not specifically refer to environmental crime but is nevertheless connected to combating environmental crime as it sets to enable more cooperation in the field of biodiversity and the new mercury convention – the Minamata Convention. As the EU is preparing ratification of the Minamata Convention in 2015 it also wants to review its Mercury Strategy and Regulation[100] to bring the three in line with each other. While neither the Convention nor the Regulation contain criminal provisions, the transposition by the UK for instance does, specifying jail and monetary penalties.

1.5 UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE)

The United Nations Economic Commission for Europe (UNECE) is one of five regional commissions of the UN. It has 56 member countries from within as well as from outside of Europe.[101] The current mission of UNECE is to facilitate greater economic integration and cooperation among its member countries and to promote sustainable development and economic prosperity.[102]

1.5.1 Mandate and Competences

UNECE was established by Resolution 36 (IV) in order to provide the countries of the region devastated by the Second World War with an effective and prompt aid.[103] UNECE's mandate, as defined by its Terms of Reference, is to facilitate measures for strengthening the economic relations of the European countries both among themselves and with other countries. UNECE may make or sponsor studies with the focus of economic and technological problems of member countries and their developments and undertake or sponsor the collection, evaluation and dissemination of such economic, technological and statistical information.[104] During the Cold War UNECE was one of the few fora where West and East Europe could discuss environmental issues of common interest, such as long-range air pollution, see here-under.

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commission-and-unep-strengthen-cooperation-in-renewed-memorandum-of-understanding&catid=72:un-environment-assembly> accessed 1 July 2014.

[100] Regulation (EC) No. 1102/2008 of the European Parliament and of the European Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury.

[101] For a list of Member States, *see* UNECE, 'Member States and Member States Representatives' <http://www.unece.org/oes/nutshell/member_States_representatives.html> accessed 25 January 2014; *See also* Terms of Reference and Rules of Procedure of the Economic Commission for Europe (5th edn, 2009 Geneva), E/ECE/778/Rev.5, Annex.

[102] *Ibid*.

[103] UNECE, 'Inception' <http://www.unece.org/oes/history/history.html> accessed 25 January 2014.

[104] Terms of Reference and Rules of Procedure of the Economic Commission for Europe (5th edn., 2009 Geneva), E/ECE/778/Rev.5, preamble.

1.5.2 Work on Environmental Crime

In 1971, UNECE established the Committee on Environmental Policy (CEP). In 2000, the Committee issued a document named Proposals for Kiev Guidelines for Environmental Compliance and Enforcement, part of which was promoting enforcement and combating organised crime and illegal trade in the field of the environment.[105]

UNECE has been conducting Environmental Performance Reviews in order to assess efforts of individual countries and to make recommendations to improve their environmental performance.[106] In addition to this, UNECE has negotiated five environmental treaties,[107] each of which were later amended with additional protocols to help the governing treaty bodies with the implementation of the treaties.

In an interview conducted with UNECE, it was suggested that the use of existing legal and non-legal instruments, including recommendations set out by UNECE are essential to better the fight against environmental crimes.[108] Very importantly, there first has to be a formulation of needs before looking for the applicable international means and/or instruments.[109] Secondly, countries need to find ways of capacity building for countries that request assistance.[110] Thirdly, countries have to find the means to make the systems of fighting environmental crimes more effective through specialised inspectorates, better judicial systems and improved legal systems.[111]

1.5.3 Cooperation with other Organisations

The UNECE was set up in 1947 by the Economic and Social Council (ECOSOC) with the aim to promote European economic integration. It partners with various other organisations, including regional ones, in capacity building. These include regional commissions such as the UN Economic and Social Commissions for Western Asia and Asia Pacific, the World Health Organisation (WHO) and UN programmes such as the United Nations Development Programme (UNDP) and the UN Conference on Trade and Development (UNCTAD).[112]

According to an interview with UNECE's, Environment Division, there is no cooperation with organisations *per se* as the UNECE works through so-called softer means.[113] Here, it works through their many conventions and MEAs – both of which include judicial training.[114] Therefore, UNECE is not directly connected to fighting environmental crime; it deals more with public involvement and access to justice (via Aarhus Convention).

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[105] ECOSOC 'Proposals for Kiev Guidelines for Environmental Compliance and Enforcement' (25-28 September 2000) CEP/2000/12 20 July 2000.

[106] Interview with UNECE, Environment Division, 25 June 2014 (hereinafter "Interview with UNECE"); UNECE, 'Environmental Treaties: Home' <http://www.unece.org/env/treaties/welcome.html> accessed 25 January 2014.

[107] Convention on Long-range Transboundary Air Pollution; Convention on Environmental Impact Assessment in a Transboundary Context; Convention on the Protection and Use of Transboundary Watercourses and International Lakes; Convention on the Transboundary Effects of Industrial Accidents; and Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

[108] Interview with UNECE.

[109] *Ibid*.

[110] *Ibid*.

[111] *Ibid*.

[112] UNECE, 'Partnering with other UN and international organisations' <http://www.unece.org/index.php?id=32410> accessed 18 February 2014.

[113] Interview with UNECE.

[114] *Ibid*.

1.5.4 Cooperation with the European Union

EU cooperation can be found across all of UNECE regulations. Out of the 56 member countries of the UNECE, half of them are represented by the EU Member States. The dominance of EU within UNECE can sometimes lead to a lopsided negotiation process. Environmental policy-making between UNECE and EU may have slowed down since membership of the EU and UNECE overlaps since most of the countries are represented on both sides of the negotiation tables.[115]

Despite this, the UNECE and the EU are linked by means of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).The Convention was introduced by UNECE in 1998 and the EU (then, European Communities) has been a party to it since May 2005. EU Council Decision 2005/370/EC on conclusion of the Aarhus Convention by the EC was adopted on 17 February 2005.[116] Subsequently, additional EU Directives were adopted to ensure the implementation of the Convention's provisions into national law.[117]Besides this, UNECE have also partnered up with its member countries, which include most EU Member States in an Environment for Europe Process whereby a high-level forum is provided for stakeholders to discuss, decide and join forces in addressing environmental priorities.[118] The last meeting of the CEP, who oversees the Process was held last October (2013) in Geneva. It looked at, amongst others, strengthening national implementation and compliance with MEAs.[119]

Under the Organisation for Economic Co-operation and Development (OECD) Greening Economies in the Eastern Neighbourhood (EaP GREEN) Programme, UNECE and a few other international organisations work together to assist EU's Eastern Partnership initiative, which helps countries like Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine in their transition towards green economies. UNECE's main responsibility is to support the implementation of strategic environmental assessments and environmental impact assessments of national development activities.[120] In return, the EU, via the European Commission, finances the programme.

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[115] Tom Delreux, *The EU in Environmental Negotiations in UNECE: An Analysis of its Role in the Aarhus Convention and the SEA Protocol Negotiations* (Blackwell Publishing, Oxford 2009) p. 337.

[116] European Commission, 'The Aarhus Convention: The EU & the Aarhus Convention: in the EU Member States, in the Community Institutions and Bodies' <http://ec.europa.eu/environment/aarhus/legislation.htm> accessed 5 February 2014.

[117] *Ibid*.

[118] UNECE, '"Environment for Europe" Process <http://www.unece.org/env/efe/welcome.html> accessed 18 February 2014.

[119] *See* UNECE, *Towards enhanced cooperation of UNECE's MEAs: Informal guidance* (version 8 March 2013).

[120] OECD, 'EaP GREEN: Programme objectives, expected results and components' <http://www.oecd.org/env/outreach/eapgreen-objectives.htm> accessed 16 March 2014.

2 Regional/European Organisations

2.1 EUROPOL

EUROPOL is the policing agency for the EU with a focus on law enforcement, intelligence collection, analysis and information sharing. Its goal is to assist EU Member States in their fight against serious international crime and terrorism.[121] As a result of the Lisbon Treaty, all EU Member States are automatically members of EUROPOL.

2.1.1 Mandate and Competences

Article K1(9) of the Maastricht Treaty made explicit reference to the creation of a European Police Office.[122] Hence, the Constitution of EUROPOL was drafted under Article K3(2)(c) of the Treaty.[123] The Constitution was agreed in 1995 and, after ratification by all EU Member States then, it came into force on 1 October 1998.[124]

EUROPOL's current mandate explicitly mentions environmental crime (see the Annex of the Council Decision of 6 April 2009 No. 2009/371/JHA), which makes mention of environmental crime.[125]

2.1.2 Work on Environmental Crime

Environmental crime first came to EUROPOL's attention in 2004 when it identified the crime as a "non-traditional" organised crime area that could merit a first quick look.[126] It labelled environmental crime "non-traditional" because the international community at that time (even to this day) debated that not all environmental crimes involve organised crime. A year later in 2005, EUROPOL recognised illegal waste dumping as an emerging organised crime that makes use of the wide legislative vacuum available and the lack of law enforcement.[127] In 2013, following an EU Serious and Organised Crime Threat Assessment (SOCTA), EUROPOL issued its first Threat Assessment on Environmental Crime in the EU.[128]

Upon request from the Member States, two types of environmental crime were selected: illegal waste trafficking and illegal trafficking of endangered species, being the most pressing, but this may be extended to other forms.

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[121] EUROPOL, 'About us' <https://www.europol.europa.eu/content/page/about-us> accessed 25 January 2014.

[122] Treaty on European Union (Maastricht Treaty), art. K1(9).

[123] *Ibid*, art. K3(2)(c).

[124] Council Act 95/C 316/01of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) [1995] *OJ C 316*.

[125] Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) [2009] *OJ L 121/37*.

[126] EUROPOL, *2004 European Union Organized Crime Report* (December 2004) p. 17.

[127] EUROPOL, *2005 EU Organized Crime Report* (November 2005) p. 32.

[128] EUROPOL, *Threat Assessment 2013: Environmental Crime in the EU* (November 2013).

While there are currently no operational projects in EUROPOL on environmental crime,[129] the SOCTA team is keen on overseeing a project when it arises. Meanwhile, it has been working towards this by analysing open-source information and consulting Member States. Once a specific unit dealing with environmental crimes is established, EUROPOL will ensure that its work is linked with organised crime cases. This is also part of the gap analysis EUROPOL is working on.

Launched in 2011 due to requests by Member States, the European Network for Environmental Crime (ENVICRIMENET)[130] is an informal network that connects police officers and other actors in the field of environmental crime with the aim to promote best practices and mutual learning about the extent and nature of environmental crime. Member States report to ENVICRIMENET about the situations in their respective countries, take steps, including legal ones, to implement new and tougher legislation in order to better fight environmental crime.[131]

It is very important that the Standing Committee on Internal Security (COSI) of the EU Council has invited ENVICRIMENET to report on its activities before the end of 2014 and agreed to wait for the results of the 2015 interim SOCTA to decide on further measures, which would reflect some of the following concerns.

EUROPOL recognises the links between transnational organised crime and environmental crime. It is particularly evident within the crime areas of transportation and/or management of waste material, trafficking in endangered species and trafficking in counterfeit pesticides.[132] Unfortunately, many of these environmental crimes are not viewed as particularly serious or as having a transnational element. Depending on the stage at which the criminal activity is interrupted, they are often considered to be minor offences, such as inappropriate transportation of waste.[133] The national authorities who stop the transport may fine the involved parties but do not proceed with further investigations to determine whether this particular criminal activity is part of a bigger chain. In many cases, what may seem like an isolated criminal activity could be part of a bigger picture.

2.1.3 Cooperation with other Organisations

As organised crime is almost by definition transboundary and international, it is only logical that EUROPOL in its assistance to EU Member States also has to cooperate with external parties, such as non-EU countries and international organisations.

Consequently, the Justice and Home Affairs Council adopted Council Decision of 27 March 2000 (amended by the Council decision of 6 December 2001 and the Council decision of 13 June 2002),[134] which authorises the Director of EUROPOL to enter into negotiations on cooperation agreements with third states and non-EU-related bodies. The nature of the cooperation agreements can vary, ranging from operational cooperation, including the exchange of personal data, to technical or strategic cooperation.[135] Note however that EUROPOL is not supposed to act as a liaison between its Member States and other international organisations. For example, there have been initiatives to use EUROPOL as a liaison, in relation to INTERPOL, but it was decided that this was not a legal

[129] Interview with EUROPOL, Mass Market Fraud and Environmental Crime Unit, 28 May 2014 (hereinafter "Interview with EUROPOL").

[130] Its legal basis can be found in EU Council Resolution 10291/11.

[131] Interview with EUROPOL.

[132] *Ibid*.

[133] *Ibid*.

[134] Council Decision 2000/C 106/01 of 27 March 2000 authorising the Director of Europol to enter into negotiations on agreements with third States and non-EU-related bodies [2000] *OJ C 106/1*.

[135] Europol, 'External Cooperation' https://www.europol.europa.eu/content/page/external-cooperation-31> accessed 25 January 2014.

service EUROPOL can provide.[136] Nevertheless, if Member States work on a case and are in need of the experience of another organisation, EUROPOL can assist and facilitate this cooperation and coordination (e.g. by providing the meeting place).

Cooperation between EUROPOL and other organisations is developed on a needs basis.[137] While all have different mandates, legal capacities, goals and roles, they keep each other updated to avoid overlap and to mutually benefit from each other's work and experience.[138]

EUROPOL and INTERPOL

A cooperation agreement was entered between EUROPOL and INTERPOL on 5 November 2001. This is an operational agreement, which enables the exchange of operational, strategic and technical information.[139]Under this agreement, both parties, with liaison officers stationed at each other's headquarters, agree to share critical criminal intelligence, to avoid duplication of efforts, to promote efficient collaboration, and thus to strengthen the international fight against organised crime and terrorism.

In EUROPOL's 2011 analysis on EU Organised Crime Threat Assessment, important data were revealed about organised crime groups based in the EU involved in trading endangered species of wild fauna and flora. Based on these findings, INTERPOL provided criminal intelligence and recommendations to the law enforcement community within its network.

Since its inception in 2011, ENVICRIMENET has pooled various stakeholders amongst which specialised investigators and prosecutors. INTERPOL has been an active supporter of ENVICRIMENET from the beginning and sends representatives each year to the ENVICRIMENET meetings.

EUROPOL and WCO

In 2013, the Secretary General of WCO met with the EUROPOL Director to discuss further cooperation between the two organisations, based on the Memorandum of Understanding of 2002.[140] They agreed to review areas of joint work, especially in terms of exchanging information and intelligence while taking data protection aspects into consideration. This could eventually serve as a model for intensifying collaboration between customs and police at national level.[141]

EUROPOL and Eurojust

(See Section 2.2.3. on Eurojust's Cooperation with Other Organisations).

2.1.4 Cooperation with Member States

EUROPOL's main task is to provide law enforcement authorities within the EU Member States with operational support. It has set up a network of 145 EUROPOL Liaison Offices within the EU to facilitate the exchange of information and to support investigation activities. The Director of EUROPOL, via the above-mentioned EU Council Decision of 27 March 2000, has the power to enter into negotiations on behalf of the EU with third

[136] Interview with EUROPOL.

[137] *Ibid*.

[138] *Ibid*.

[139] Interview with INTERPOL.

[140] World Customs Organisation, 'Strengthening cooperation with Europol' <http://www.wcoomd.org/en/media/newsroom/2013/november/strengthening-cooperation-with-europol.aspx> accessed 25 January 2014.

[141] *Ibid*.

countries and non-EU organisations. In January 2012, EUROPOL implemented a new policy on serious international and organised crime.

While EUROPOL does not get involved in local organised crime, it can become involved if a crime between two or more Member States occurs. In these transnational cases, EUROPOL will need to be called upon by the Member States first before it can dispense its resources. In the meantime, Member States could already have been using the infrastructure established by EUROPOL to communicate amongst one another without directly contacting EUROPOL.[142] A difficulty with this arrangement is that by the time Member States identify the need to involve EUROPOL (e.g. because of a lack of financial means to investigate illegal wildlife trafficking), they would have been too far into their investigation to request for financial or material assistance from the latter.[143] This also means that it may be too late to set up Joint Investigation Teams (JITs). EUROPOL attaches great importance in getting involved in the early stages of Member States' investigations so as to help steer them in the right direction from the start, based upon the fullest analysis possible. It is always difficult and costly to change course once an investigation is under way.

Often also, Member States, due to lack of knowledge, do not make the link between environmental crime and organised crime. These are issues that EUROPOL is striving to overcome. Member States might need to be more ready to involve EUROPOL in their investigations in the initial stages, especially because of the latter's availability of tools and experience.[144]

EUROPOL seeks to build a strategic platform to ready itself for when environmental cases become operational or when there are increased requests by Member States to work on operational environmental cases.[145]

2.2 EUROJUST

Eurojust is an agency of the EU dealing with judicial co-operation in criminal matters. It was founded on the idea to create "an area of freedom, security and justice" in the EU, based on solidarity and to reinforce the fight against transborder crime by consolidating cooperation among authorities. Eurojust came into operation on 28 February 2002.[146] Today, EUROJUST facilitates cooperation in investigation and prosecution in criminal matters in all 28 EU Member States. (For an overview of the legal aspects of Eurojust as per Articles 82 to 86 TFEU, please refer to University of Catania's WP 2 report on Actors and Institutions at the European Level).

2.2.1 Mandate and Competences

The legal basis establishing Eurojust and its mandate can be found in Article 4 of the Council Decision 2002/187/JHA of 28 February 2002. Chapter 4 of the Lisbon Treaty (Articles 82 to 86 TFEU) mentions Eurojust in its text. Namely, Article 85 stipulates that the mission of Eurojust is "[t]o support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States".[147] These serious crimes include emerging environmental crimes, especially illegal wildlife trade and illegal trafficking of hazardous waste, currently priorities for the EU.

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[142] *Interview with EUROPOL*.

[143] *Ibid*.

[144] *Ibid*.

[145] *Ibid*.

[146] Eurojust, 'History' <http://eurojust.europa.eu/about/background/Pages/History.aspx> accessed 25 January 2014.

[147] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (Lisbon Treaty), art. 86.

2.2.2 Work on Environmental Crime

At the 14th Conference of the Prosecutors General of the Baltic Sea States held in Helsinki in November 2010, it was stated that the use of Joint Investigation Teams and resources from INTERPOL and Eurojust are significant factors in fighting organised crime.[148] Again, organised crime does not necessarily encompass all forms of environmental crime but it is a significant factor in some environmental crimes, especially the illegal wildlife trade.

Eurojust commits its resources to work on environmental cases brought by colleagues from the various Member States.[149] While Eurojust has been involved in several environmental crime cases, such as the Prestige Case, the Bird-Egg Case (see Box 2 below) and the Manure Case,[150] it has acknowledged in its 10th Newsletter that the small number of prosecutions for environmental crime in EU Member States does not reflect the amount of criminal activity on the ground. Therefore, it has been suggested by the Council Conclusions on the Prevention and Combating of the Illegal Trafficking of Waste and the European Network of Prosecutors for the Environment (ENPE) that Eurojust should play an enhanced coordination role in combating illegal trafficking of waste.[151]In response to this need for deeper involvement**,** the College of Eurojust (the 28 EU Member States), following an initiative put forward by the Financial and Economic Crime team,[152] approved a Strategic Project on Environmental Crime in April 2013, which has amongst other goals, the aim to raise awareness of the added value of Eurojust.[153] Amongst the goals of this project include assessment of the status quo, recommending improvements in the use of legal instruments focusing on penalties, illegal trafficking of waste and endangered species and the intensification of efforts to prosecute environmental crimes at the national level.[154]

This Strategic Project has resulted in the publication of the report *Real Crimes, Real Victims, Real Justice* in November 2014, which reveals that organised crime groups are behind environmental crimes, with huge profits in the order of U$30 – 70 billion per year, but with low penalties and few cases referred to Eurojust despite the need for a cross-border approach to achieve convictions.

The report focuses on three areas of environmental crime (waste, water and wildlife) and points to the lack of coordination among authorities on both national and international level, the differences between Member States in implementing EU legislation, the failure to tackle cross-border criminal activities, lack of dedicated police units or prosecutors in some Member States, and (like EUROPOL has stated) the need for early involvement of Eurojust in the coordination of investigations and prosecutions and the setting up of Joint Investigation Teams.[155]

2.2.3 Cooperation with other Organisations

In order to carry out its tasks, Eurojust maintains privileged relations with various organisations including UNODC,[156] INTERPOL,[157] EUROPOL[158] and the three principal EU institutions.[159]

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[148] Council of the Baltic Sea States, *Annual Report: Norwegian Presidency 2010-2011*, p. 72.

[149] Interview with Eurojust.

[150] For details on these cases, *see* Michele Coninxs, 'Eurojust News' (Issue No. 10 – December 2013) <http://eurojust.europa.eu/doclibrary/corporate/newsletter/Eurojust%20News%20Issue%2010%20(December%202012)%20on%20environmental%20crime/EurojustNews_Issue10_2013-12-EN.pdf> accessed 5 February 2014 (hereinafter "Eurojust News").

[151] *Ibid*.

[152] Interview with Eurojust.

[153] Eurojust News.

[154] *Ibid*.

[155] *See* Eurojust, *Strategic Report on Environmental Crime* (November 2014).

[156] Memorandum of Understanding between Eurojust and the UNODC signed 26 February 2010 and entered into force on the same day.

On 27 and 28 November 2013, Eurojust and the ENPE co-hosted a meeting entitled "Towards an enhanced coordination of environmental crime prosecutions across the EU: The role of EUROJUST in The Hague".[160] The meeting brought together for the first time prosecutors specializing in environmental crime from the two bodies as well as representatives from IMPEL, INTERPOL and EUROPOL.[161] The main objectives of the meeting were: (1) to improve the current work and cooperation regarding environmental crime, and (2) to bring additional attention to environmental crime. During the meeting, national prosecutors acknowledged the problems that they face fighting environmental crime in general, and more particularly, the illegal trafficking in waste. Participants also agree that environmental crimes receive less attention and are under-evaluated in relation to "traditional" crimes.

Eurojust and INTERPOL

INTERPOL is one of Eurojust's international partners. Both have cooperated on a number of occasions in the past. On 15 July 2013 a Memorandum of Understanding (MoU) between Eurojust and INTERPOL was concluded. The Council of the European Union approved the draft MoU between Eurojust and INTERPOL on 27 June 2013. Following the signing of the Memorandum Ms. Michèle Coninsx, the President of Eurojust, stated that:

> Eurojust and INTERPOL have cooperated on a number of occasions in the past. This Memorandum of Understanding with INTERPOL will enable us to further develop our cooperation in combating serious cross-border crime. Eurojust has a number of agreements with States and organisations outside the European Union, and combining forces with the world's largest international police organisation, with 190 member countries, will augment our ability to bring to justice those at the heart of international crime.

Mr. Ronald K. Noble, the Secretary General of INTERPOL, added that:

> This Memorandum of understanding with Eurojust is an important step in the development of police and judicial cooperation and will enable INTERPOL to provide even greater assistance to law enforcement on the ground, in Europe and beyond. Judicial support is essential for frontline police to effectively carry out their duties, and this Memorandum of Understanding will also bring a better understanding of INTERPOL's role and activities beyond the exchanging of police information.

The purpose of the MoU is to "establish, define, encourage and improve cooperation between the Parties in the fight against serious crime... in accordance with their respective legal frameworks." The MoU permits the two Parties to "inform each other about developments in fields and projects of mutual interest and exchange observations concerning such activities to enable them to promote effective cooperation." Pursuant to article 4(2) of the MoU, the parties can exchange strategic and technical information. This includes, but is not limited to, "trends and challenges faced relating to serious crime", analysis of "serious crime and new methods, including trends followed in committing serious crimes" and "observations and general findings resulting from Eurojust's activities that support the detection or prevention of serious crime." Technical information relates to means of "strengthening judicial and law enforcement structures and cooperation in the fields covered by this Memorandum of Understanding, including a more structured exchange of technical information and, if considered to be useful, setting up combined analysis." The Parties can also exchange best practices, the goal of

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[157] Memorandum of Understanding between Eurojust and ICPO-INTERPOL signed 15 July 2013.

[158] Agreement between Eurojust and EUROPOL signed 1 October 2009 and entered into force 1 January 2010.

[159] Memorandum of understanding between Eurojust and the European Commission signed 20 July 2012 and entered into force on the same day.

[160] Eurojust, 'Eurojust and ENPE host environmental crime meeting' <http://eurojust.europa.eu/press/News/News/Pages/Eurojust-and-ENPE-host-environmental-crime-meeting-.aspx> accessed 5 February 2014.

[161] *Ibid*.

which is to "encourage and improve cross-border cooperation in the fight against serious crime, particularly when it is organised." The Memorandum also asks the Parties to "combine their efforts to provide expertise and support to Joint Investigation Teams in accordance with their respective legal frameworks." The German national member within Eurojust is the contact point for INTERPOL.[162]

Eurojust and UNODC

In recognition of the need to enhance global cooperation in fighting serious forms of transnational crime, an MoU was signed between Eurojust and UNODC on 26 February 2010. The MoU include plans to share intelligence and provide mutual legal assistance thus allowing both organisations to exchange legal information and best practices, knowledge and experience. [163]It will also serve as a basis for joint efforts in training and seminars and participation in each other's meetings.

Eurojust and EUROPOL

Cooperation with EUROPOL is of great importance, in view of the leads and intelligence it can provide. It is also one of the first institutions that Eurojust will establish contact with when a crime of mutual concern is deposited with Eurojust.[164]

The importance of this cooperation was formalized on 1 October 2009 when an Agreement between Eurojust and EUROPOL was signed. The purpose of this Agreement is:

> To establish and maintain close cooperation between the Parties in order to increase their effectiveness in combating serious forms of international crime which fall in the respective competence of both Parties and to avoid duplication of work. In particular, this will be achieved through the exchange of operational, strategic, and technical information, as well as the coordination of activities. The cooperation will take place with due regard to transparency, complementarity of tasks and coordination of efforts.

Both Eurojust and EUROPOL are supposed to "consult each other regularly" and may "agree on the temporary posting of one or more representatives of one or both of the Parties in the other Party's premises" if so required.

Articles 7 to 10 set out the communication of information by and the right of initiative of both Eurojust and EUROPOL. Processing and transmission of information between the two Parties is regulated by articles 13 to 18. The transmitted information is to be protected and each Party "shall ensure that information received on the basis of this Agreement shall be subject to confidentiality and security standards for the processing of information." Finally, article 22 requests the Parties to report annually to the Council and the Commission about their cooperation.

[162] Interview with Eurojust.

[163] UNODC, 'UNODC signs cooperation agreement with European justice body' <http://www.unodc.org/unodc/en/frontpage/2010/February/unodc-signs-cooperation-agreement-with-european-justice-body.html> accessed 1 June 2014.

[164] Interview with Eurojust.

Joint Investigation Teams (JITs)[165] are another important part of the cooperation between Eurojust and Europol.[166] Pursuant to article 6 of the Agreement, "at the request of one or more Member States, the Parties may together participate in the setting up of a JIT and in its actions in accordance with the legal framework which is in place at that time." On 18 and 19 October 2012 the 8th annual meeting of the National Experts on JITs took place at the premises of EUROPOL, co-organised by Eurojust and EUROPOL with the support of the JITs Network Secretariat. The Network Secretariat was established in 2005 with the purpose of sharing expertise and best practices and promoting the use of JITs among judicial and police practitioners. During the two workshops that took place, the attending experts agreed that a "standard process will help to achieve consistency, save time and allow for conclusions and identification of common obstacles and best practices."

2.2.4 Cooperation with Member States

As an organisation, Eurojust deals primarily with operational cases. There are around 1,500 cases for which Member States requested Eurojust's assistance each year and this number is on the rise.[167] In addition, Eurojust also deals with policy work. For example, Eurojust assists Member States indirectly in policy-making by helping to identify the problems and obstacles in cooperation between the national authorities in the area of criminal law. Eurojust also aims at analysing Member States' needs in order to facilitate better cooperation in the future.

One should note that Eurojust is not a lobby organisation. It serves as a facilitatory platform offering its services, but cannot order Member States to start a prosecution. It can, at most, submit a proposal to prosecute, but the prosecutorial powers ultimately belong with the Member States.

To date, as mentioned, Eurojust has dealt with several cases regarding environmental crime. These cases came from Bulgaria, Hungary, the Netherlands, Portugal, Sweden and Slovenia.[168] Even though environmental crimes can sometimes be linked to other crimes, Member States do not give the former priority as some struggle to allocate the relevant resources to deal with these environmental cases. For instance, in Sweden, there are 20 specialised prosecutors for the environment at any given time whilst in Hungary, the structure to fight environmental crime remains under-developed.[169] As noted in the November 2014 Report, Member States still fail to recognise the cross-border element of environment crime.

In light of the above, Eurojust aims to raise awareness of environmental crime inside and outside the European Union and it wants to be recognised as an important actor in fighting environmental crime. Practitioners should understand that Eurojust can play an important a role as it has done in other serious crime areas. Eurojust could assist national prosecutors and magistrates in the understanding of and knowledge about environmental crime and help them with the difficult and often complex cooperation with their colleagues in other countries on investigations.[170] Via JITs, Eurojust could offer its expertise in forming joint agreements between national authorities from various countries, fund them and associate EUROPOL with them when required due to EUROPOL's specialisation in facilitating police cooperation.

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[165] Between 2010 and 2012, a global amount of €3,410,567 was awarded to JITs for the reimbursement of costs related to travel and accommodation, coordination meetings, participation in investigative measures, missions outside the European Union (e.g. Morocco and the USA), interpretation during meetings, interviews and interrogations, translation of various documents (e.g. wiretaps) and provision of mobile equipment, in particular mobile telephones and laptops. This highlights the potential breadth of assistance that Member States could receive if they make use JITs.

[166] Interview with Eurojust.

[167] *Ibid*.

[168] *Ibid*.

[169] *Ibid*.

[170] *Ibid*.

Box 2: The Bird-Egg Case[171]

This case involved three jurisdictions: Sweden, the UK and Finland. A criminal network was suspected of having illegally traded bird eggs on a large scale. In the UK, a person was charged with several offences (purchasing eggs, selling and offering eggs for sale, and possession of bird eggs in breach of UK national wildlife legislation) and in Sweden an indictment was issued for hunting offences, receiving the proceeds of hunting, and offences against the protection of endangered species. Eurojust played an essential role in this case by setting up, and participating in, a JIT between Finland and Sweden by providing crucial funding. In addition to its coordination role, where it facilitated the communication of sensitive information, Eurojust's funding of the JIT provided clear added value by enabling an external expert, an ornithologist, to be attached to the investigation. More information, including an interview with the national prosecutors of Finland and the UK involved in the case, can be found in Eurojust News Issue No. 10 of December 2013.

2.3 EU – EUROPEAN PARLIAMENT

The European Parliament is the Community institution that represents the peoples of the Member States of the EU. Its president directs its activities and acts as its representative. The plenary sittings are the high point of the EP's work. This is where all the work done by the committees and political groups culminates, with Members of the EP (MEPs) voting on legislation proposed by the European Commission. It is also where MEPs get to debate with other decision makers in the EU.

2.3.1 Mandate and Competences

The EP is the only directly-elected body of the EU. There are some 766 MEPs who represent the EU citizens. These MEPs are elected once every five years by voters across the 28 Member States of the EU on behalf of its 500 million citizens. The legal bases for the EP can be found in Articles 223 to 234 and 314 of the Treaty on the Functioning of the European Union. As an institution representing the citizens of Europe, the EP forms the democratic basis of the EU. Together with the Council of the European Union and the European Commission, it exercises the legislative function of the EU. It does not formally possess legislative initiative, which is the function of the Commission, but it can amend and/or reject proposals for new or amended EU law.

2.3.2 Work on Environmental Crime

In January 2014, the EP spoke out against illegal poaching by passing a resolution on illegal wildlife trafficking. This resolution, Resolution on Wildlife Crime, saw 647 MEPs voting in favour, while 14 MEPs voting against. The Resolution calls upon the European Commission to establish an EU action plan against the black market trade in wild animals and their parts.[172]

It follows earlier statements by the Parliament on organised crime, corruption and money laundering, where explicit reference is made to environmental crime, e.g. in its report of 17 May 2013 one of the considerations was:[173]

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[171] Eurojust News.

[172] Environment News Service, 'European Parliament Votes for Wildlife Crime Crackdown' <http://ens-newswire.com/2014/01/16/european-parliament-votes-for-wildlife-crime-crackdown/> accessed 19 February 2014.

[173] European Parliament, *Report on organised crime, corruption and money laundering* (17 May 2013).

> "whereas criminal organisations have developed their infiltration capacity, since they are now operating in, for example, public works, transport, large-scale retailing, waste management, trade in wildlife and natural resources, private security, adult entertainment and many more sectors besides, most of which are subject to political control and decision-making; whereas, consequently, organised crime is increasingly resembling an economic global player with a strong business orientation, enabling it to supply different kinds of illegal – but also, to an increasing extent, legal – goods and services at the same time and impacting upon the European and global economy, at a cost to business of USD 870 billion annually".

The Environment, Public Health and Food Safety (ENVI) Committee is the largest legislative committee in the EP. As ENVI covers such a wide spectrum of issues, it is also one of the most influential committees in the EP. Its work spans from the regulation of toxic chemicals to the preservation of the EU's biodiversity.[174] Recent minutes from ENVI's Coordinator's Meeting indicated that the Committee is actively looking into the application of the EU's Environmental Crime Directive 2008/99/EC under the auspices of DG Environment (DG ENV).[175] The Legal Affairs Committee (JURI) takes the lead in this effort.[176] ENVI is also taking a close look at Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States. The ENVI Coordinators' Meeting in February also addressed the possible revision of this Recommendation, especially since a public consultation has deemed it necessary.

The EP has also been outspoken on the issue of fishing. The Committee responsible for this area is the Committee on Fisheries (PECH). Not surprisingly, PECH keeps a close eye on the on-going reform of the Common Fisheries Policy (CFP) since it is the EP, post Lisbon, who has a say with its co-decision powers. PECH owes it to the EU citizens to keep them informed on the shaping of the political decisions on fisheries.

[174] European Parliament, 'ENVI: Environment, Public Healthy and Food Safety' <http://www.europarl.europa.eu/committees/en/envi/members.html> accessed 16 March 2014.

[175] ENVI, *Minutes from Co-ordinators' Meeting Thursday 20 February 2014*, p. 4.

[176] *Ibid*.

2.4 EU – COUNCIL OF THE EUROPEAN UNION

Not to be confused with the Council of Europe, the Council of the European Union (the Council) is the central legislative and decision-making body in the EU. The Council is comprised of ministers from all EU Member States. The Presidency of the Council rotates amongst all Member States every six months, except for the European Council, consisting of the heads of government, which now has a fixed President – since 1 December 2014 Donald Tusk, former Prime Minister of Poland.

2.4.1 Mandate and Competences

The Council, often together with the EP in the so-called co-decision procedure, adopts EU law. Its law-making powers are however, limited as it can only legislate on the basis of proposals submitted to it by the European Commission, amending or rejecting them. Despite this it can still influence the Commission in that the former can request the latter to submit any proposals it deems fit.

2.4.2 Work on Environmental Crime

The relevant body within the Council that deals with the environment is the Environmental Council. Environment ministers from all Member States meet around four times a year to decide by qualified majority with the EP. More generally, it believes in policies that are based on the precautionary principle, the prevention principle, the proximity principle and the polluter pays principle.[177]

In 2003, the Council adopted a year 2000 initiative from Denmark,[178] calling for a Framework Decision[179] in the field of judicial cooperation in criminal matters. However, this call clashed with a previously presented proposal from the Commission for a directive on the protection of the environment through criminal law. The Commission took to challenging the Council's Framework Decision at the European Court of Justice (ECJ) on the basis that it had been adopted on the wrong legal basis. This resulted in the Framework Decision being revoked.

Subsequently, after lengthy discussions with the Commission, both the Council and the EP agreed on a directive on the protection of the environment through criminal law (Directive 2008/99/EC).

In March 2014, the Environmental Council agreed with the EP to strengthen measures to ensure a more uniform implementation of Regulation (EC) No. 1013/2006 on shipments of waste throughout the EU. Here, it was decided that Member States will have to establish inspection plans specifying objectives and priorities, the geographical area covered and the tasks assigned to each authority involved.[180]

When it comes to environmental crime, obviously the relation between the Environment Council and the Justice and Home Affairs (JHA) Council becomes important. In section 2.1.2 on EUROPOL, mention was already made of the reporting by EUROPOL's network on environmental crime (ENVICRIMENET) to COSI (the Standing Committee on operational cooperation on internal security of the JHA Council), in November 2014.

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[177] Council of the European Union, 'Environment Council' <http://www.consilium.europa.eu/policies/council-configurations/environment.aspx?lang=en> accessed 16 March 2014.

[178] *See* Initiative of the Kingdom of Denmark with a view to adopting a Council framework Decision on combating serious environmental crime, *OJ C 39*.

[179] *See* Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law, *OJ L 29*.

[180] Council of the European Union, 'Council and European Parliament agree on updated rules for shipment of waste' (Press release 12 March 2014) <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/envir/141464.pdf> accessed 16 March 2014.

In its September 2014 report to the Council and the EP COSI announces that after this reporting by ENVICRIMENET, it would also await the 2015 Serious and Organised Crime Threat Assessment (SOCTA) before taking further steps in the field of environmental crime.[181]

So far environmental crime has not been explicitly mentioned under the priorities formulated by the JHA Council in June 2013:[182]

> "Following the discussions in COSI of the SOCTA recommended priorities, the JHA Council adopted at its meeting on 6-7 June 2013 nine EU priorities for the fight against serious and organised crime between 2014 and 201711: illegal immigration, trafficking in human beings, counterfeit goods, excise fraud and Missing Trader Intra Community fraud, synthetic drugs, cocaine and heroin trafficking, cybercrime (on-line and payment card fraud, child sexual exploitation and cyber attacks), firearms and organised property crime."

With the expansion and increase in serious and organised environmental crime and its inherent links with several of the here-mentioned priorities that may change, however.

2.5 EU – EUROPEAN UNION COMMISSION – DIRECTORATE GENERAL ENVIRONMENT

Created in 1973, DG ENV focused on the four priorities identified in the Sixth Environmental Action Programme (2002-2012): climate change; nature and biodiversity; environment, health and quality of life; and natural resources and waste.[183] Now, the Seventh Environmental Action Programme guides EU environment policy until 2020. The three key objectives are:[184]

1. to protect, conserve and enhance the Union's natural capital;
2. to turn the Union into a resource-efficient, green, and competitive low-carbon economy; and
3. to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing.

2.5.1 Mandate and Competences

DG ENV's current mandate includes overseeing more than 200 pieces of environmental legislation in force at the European level.[185] It also takes on an enforcement role and has the power to investigate any complaints made by EU citizens or non-governmental organisations on breaches of EU environmental law and has the power to take any action against any EU Member State if it is of the opinion that EU environmental law has been breached.[186] By means of the European Commission, cases of non-compliance may be brought to the attention of the European Court of Justice (ECJ). On 3 December 2014, both Greece and Italy were ordered by the ECJ to pay

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[181] Council of the European Union, *Draft Report to the European Parliament and national Parliaments on the proceedings of the Standing Committee on operational cooperation on internal security for the period January 2013 – June 2014* (2 September 2014).

[182] *Ibid*.

[183] Susan Wolf and Neil Stanley, *Wolf and Stanley on Environmental Law* (6th edn) (Routledge, New York 2013) (hereinafter "Wolf and Stanley 2013") p. 73.

[184] European Commission, 'Environmental Action Programme to 2020' <http://ec.europa.eu/environment/newprg/> accessed 5 February 2014.

[185] European Commission, 'DG Environment' <http://ec.europa.eu/environment/pubs/pdf/factsheets/dg_environment.pdf> accessed 6 February 2014.

[186] *Ibid*.

fines in tens of millions of euros for ongoing failures to close down illegal landfills in contradiction of the Council Directive 75/442/EEC on waste.[187]

2.5.2 Work on Environmental Crime

In 2014, much attention has been given to wildlife crime. Following several high-level conferences on wildlife trafficking, including the one held in London in February, DG ENV stressed the importance of stepping up current efforts in order for the EU to be an effective actor. DG ENV almost concurrent with the London conference adopted a proposal on the EU approach against wildlife trafficking and as a consequence launched a wide stakeholder consultation. This consultation sought to identify the weaknesses of current enforcement measures within the EU and called for the provision of more support for the EU's international partners. The results of the consultation were published on 26 November 2014.[188]

Former EU Commissioner for Environment, Janez Potočnik, has recognised the link between organised crime – the way criminal networks utilise the internet, the forging of documents, corrupting officials – and environmental crime. He encouraged the EU to explore how "environmental crime can be made a possible new priority in the EU-wide fight against serious and organised crime.[189]

A new EU Internal Security Fund for the period 2014-2020 has been set up to promote, amongst others, EU's fight against environmental crime.[190] Member States' law enforcement authorities could benefit from this new instrument which has received pledges of a total of €3.8 billion.

2.5.3 Cooperation with other Organisations[191]

In order to improve environmental management at the European Commission, DG ENV and four other Commission services and DGs (Office for Infrastructure and Logistics in Brussels, DG Human Resources and Security, DG Informatics and the Secretariat-General) worked together in a pilot project through the implementation of an environmental management system in line with the management instrument developed by the EU Commission, the EU Eco-Management and Audit Scheme (EMAS) regulation.[192] Following the success of this pilot project, it was decided that the EMAS system would be extended to the whole Commission. This started in January 2010.

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[187] C-196/13, European Commission v. Italian Republic and C-378/13, European Commission v. Hellenic Republic, Opinion of Advocate General Kokott (4 September 2014).

[188] *See* European Commission, 'Summary of Responses to the Stakeholder Consultation on the EU Approach against Wildlife Trafficking' (Commission Staff Working Document 26 November 2014) <http://ec.europa.eu/environment/cites/pdf/responses_consultation_WildlifeTrafficking.pdf> accessed 22 December 2014.

[189] Janez Potočnik, 'Our fight against wildlife trafficking' (Speech during Expert Conference on the EU Approach against Wildlife Trafficking 10 April 2014) <http://europa.eu/rapid/press-release_SPEECH-14-315_en.htm> accessed 21 November 2014.

[190] For more on the Internal Security Fund, *see* European Commission, 'Internal Security Fund – Police' <http://ec.europa.eu/dgs/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-police/index_en.htm> accessed 21 November 2014.

[191] European Commission, 'Technical Platform for Cooperation on the Environment DG Environment and the Committee of the Regions' <http://ec.europa.eu/environment/legal/platform_en.htm> accessed 6 February 2014.

[192] European Commission, 'Environment Directorate-General' <http://ec.europa.eu/dgs/environment/index_en.htm> accessed 14 March 2014; For more on the Regulation, *see* Regulation No. 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation No. 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC, *OJ L 342*.

The other organisation DG ENV works closely with is the Copenhagen-based European Environment Agency (EEA). EEA receives an annual grant every year to develop and oversee the implementation of EU environmental policy and legislation.[193] Part of this involve 'improving and refining the knowledge base through improved information, better management of information systems and the development of appropriate indicators' to help target environmental policy as efficiently and effectively as possible.[194]

In the context of this report the cooperation of DG ENV with IMPEL (The European Union Network for the Implementation and Enforcement of Environmental Law) is of great importance. The general conclusion of a joint conference in 2013 has to be taken to heart:[195]

> "Recognising the implementation gap: The current implementation gap in Europe is undermining the creation of a level playing-field. Difficult situations in European national economies have led to cuts in resources and overburdened persons working in environmental administrations and therefore the quality of the environmental permitting and inspections is comprised. This will (eventually) lead up to inadequate/insufficient implementation of Community environmental legislation and causing risks for human health and environment. Therefore more needs to be done to strengthen implementation and to secure the necessary resources to achieve a better environment in Europe and to avoid the increasing social and economic costs of non-implementation. There needs to be more systematic assessment of the real implementation problems that are being experienced on the ground and practitioners should be involved in identifying and implementing practical approaches and solutions to the problems that are encountered."

DG ENV also represents the European Union in environmental matters at international meetings, including for instance those organised by the CBD and the United Nations Convention on Climate Change. The EU, thanks to the involvement of DG ENV, has been applauded many times for its environmental leadership. It has been an active participant in the drafting and implementation of MEAs and other environmental negotiations.

2.5.4 Cooperation with EU Member States

DG ENV recognises that national judges of the Member States play an important role in the implementation of EU environmental law. For this, it supports the activities of the EU Forum of Judges for the Environment (EUFJE), which was created in Paris in 2008 upon an earlier initiation by UNEP. The Forum's objective is to promote the enforcement of environmental law at the national, European and international levels. Judges who are part of the Forum engage in the exchange of judicial decisions based on the implementation and interpretation of EU environmental legislation. Through the forum they also receive all the necessary trainings in the area of environmental law. In reaction to the formation of the forum, DG Environment, between 2008 to 2012, engaged the European Institute of Public Administration (EIPA) to develop training modules, seminars and workshops on various topics of EU environmental law.[196] It complements the Forum's objectives to create a fora for the exchange of knowledge and experience. The successor to the EIPA is now the Academy of European Law.[197]

Besides the judiciary, DG ENV also meets with other national authorities on a regular basis to discuss and address implementation issues. During these meetings, DG ENV will ask, amongst others, about transposition of

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[193] European Commission, 'Management Plan 2013: DG Environment' <http://ec.europa.eu/dgs/environment/pdf/management_plan_2013.pdf> accessed 14 March 2014.

[194] *Ibid*.

[195] IMPEL, 'IMPEL 2013 Conference Recommendations: Understanding the Implementation Gap, Simpler Legislation and Greater Support for Enforcement Agencies' <http://impel.eu/news/impel-2013-conference-report-published/> accessed 22 December 2014.

[196] European Commission, 'Co-operation with judges' <http://ec.europa.eu/environment/legal/law/judges.htm> accessed 14 March 2014.

[197] *Ibid*.

the specific EU environmental law into domestic law and deadlines.[198]It works closely with Member States to provide as much guidance and platform for exchange of views as possible. This way, DG ENV takes a very proactive stance to ensure, amongst others, that transpositions are timely and complete. Also, DG ENV organises and/or hosts conferences, forums and summits regularly, from one to several per month on variety of topics such as the EIP Water Annual Conference and the World Forests Summit.

DG ENV facilitates meetings and contacts between Member States and other international organisations but it is not in the driving seat for any operational cases. Concrete operations are taken by Member States themselves. For example, for CITES, Member States cooperate with one another without having to resort to assistance from DG ENV.

2.6 EU – EUROPEAN UNION COMMISSION – COMMITTEE ON TRADE IN WILD FAUNA AND FLORA

2.6.1 Mandate and Competences

The Committee on Trade in Wild Fauna and Flora (the Committee) assists the EU Commission in enforcing the provisions of CITES. It joins two other bodies formed by Council Regulation (EC) No. 338/97, namely the Scientific Review Group and the Enforcement Group, in the fight against trade in protected wild fauna and flora. The Committee comprises of representatives from Member State management authorities[199] and is chaired by the Commission itself. The legal basis for the Committee can be found in Article 18 of the Regulation.[200] As per recital 18 of the Regulation, it is said that "a Committee must be set up to permit close and effective cooperation between the Member States and the Commission in [laying down a Community procedure enabling the implementing provisions and amendments to the Annexes of this Regulation to be adopted within a suitable period]".[201]

The Committee adopts a qualified majority vote in proposing a Regulation-related implementing measure to the Commission. If the Committee is not in favour of a positive opinion, the Commission must immediately submit its proposal to the EU Council. One of the Committee's opinions[202] have in the past led to the adoption of Commission Regulation (EC) No. 2551/97 of 15 December 1997 suspending the introduction into the Community of specimens of certain species of wild fauna and flora.[203]

2.6.2 Work on Environmental Crime

In June 2014, the Committee published a guidance document on "Export, re-export and intra-Union trade of rhinoceros horns". The guidance document makes reference to the EU Wildlife Trade Regulation and is meant to

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[198] European Commission, 'Legal Enforcement' <http://ec.europa.eu/environment/legal/law/compliance.htm> accessed 6 February 2014.

[199] For definition of "management authority", *see*Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, *OJ L* 61, art. 2(g).

[200] *See* Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, *OJ L 61*, art. 18.

[201] *Ibid*, preamble.

[202] Commission Regulation (EC) No. 2551/97 of 15 December 1997 suspending the introduction into the Community of specimens of certain species of wild fauna and flora, *OJ L 349*, recital.

[203] *Ibid*.

constitute an expression of how the European Commission services and Member States interpret and intend to implement the Regulation.[204] Although the guidance document is not enforceable, it has been endorsed by the Commission and the respective competent authorities of the Member States. A review of the document is due to take place in 2015.

Just like the views of the Commission, the Committee concurs that organised crime groups are involved in the commission of environmental crimes such as the acquiring and trading of rhino horns. Theft of rhino horns in museums or taxidermist shops have been linked to organised crime groups.[205] The Committee went on to point out that one organised crime group may be linked to the surge of theft by as much as one third. In an attempt to halt the granting of any certificates for rhino horn under Article 8(3) of the Regulation, the Committee calls on Member States to follow a risk-based approach in the handling of intra-EU certificates for rhino horns.[206]

2.6.3 Cooperation with other Organisations

The Committee determines measures to improve the implementation of the EU wildlife trade regulations, including the Convention on Biodiversity and CITES.

2.6.4 Cooperation with EU Member States

Just like the Scientific Review Group and the Enforcement Group, the Committee consists of representatives of the Member States. Meetings held between the three bodies and Member States provide the possibility of exchanging information, knowledge and experience.

2.7 EU – EUROPEAN FISHERIES CONTROL AGENCY

It was not until 2008 that criminal legislation was taken by EU action to combat illegal, unreported and unregulated (IUU) fishing, culminating in Council Regulation (EC) No. 1005/2009 (IUU Regulation) that was introduced to prevent, deter and eliminate IUU fishing by EU flagged vessels. Prior to this, the European Fisheries Control Agency (EFCA),[207] an EU technical and administrative body, was already established in 2005 to organise operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the EU CFP in order to ensure its effective and uniform application.[208] Its mission is to promote the highest common standards for control, inspection and surveillance under the CFP.[209] In line with the EU's 7th Environmental Action Plan (EAP), the EFCA also contributes towards sustainable fisheries by improving compliance with existing conservation and management measures for the benefit of present and future generations.[210]According to reports from the press, from 2010 to date, EFCA made

[204] CTWFF, 'Guidance document: Export, re-export and intra-Union trade of rhinoceros horns' (June 2014) <http://ec.europa.eu/environment/cites/pdf/guidance_rhino_horns.pdf> accessed 21 November 2014.

[205] *Ibid*.

[206] *Ibid*.

[207] Before 1st January 2012, EFCA was known as the Community Fisheries Control Agency (CFCA).

[208] EFCA, 'Welcome' <http://cfca.europa.eu/pages/home/home.htm> accessed 6 February 2014.

[209] EFCA, 'Mission Statement' <http://cfca.europa.eu/pages/home/about_mission.htm> accessed 6 February 2014.

[210] European Union, 'European Fisheries Control Agency' <http://europa.eu/about-eu/agencies/regulatory_agencies_bodies/policy_agencies/efca/index_en.htm> accessed 4 February 2014.

230 controls to combat illegal fishing in all Member States.[211]The Directorate General for Maritime Affairs and Fisheries reported that up to €185.2 million have been spent in technology during this period and about 12,000 boats have been equipped to fight IUU fishing.[212]

2.7.1 Mandate and Competences

The EFCA finds its legal basis in Council Regulation No. 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation No. 2847/93 establishing a control system applicable to the CFP.

2.7.2 Work on Environmental Crime

Over the period of 2007 – 2011, more than 28,000 inspections were conducted by the EFCA, with approximately 75% of these done on shore and 25% done at sea.[213] Of this number, at least 1,400 possible non-compliance cases were detected. Depending on where the violation occurred, these cases are normally dealt with by the national authorities. There are many authorities at different governmental levels responsible for fisheries inspection. Whilst some Member States may have prosecutors specialised in fisheries cases, some may not, rendering a big gap between Member States in the penalties imposed. As such, ensuring the harmonisation of and monitoring compliance with the IUU Regulation can be an arduous task. A study conducted in January 2014 concluded that the EFCA may be "best placed to enhance MS cooperation on inspection and strengthen harmonisation".[214] In other words, the EFCA could be seen as a "controller of controllers".

2.7.3 Cooperation with other Organisations

The EFCA performs tasks relating to the international obligations of the EU and its Member States. As per Article 4 of Council Regulation No. 768/2005,[215] the EFCA, at the request of the Commission, shall assist Member States in their relations with third countries and international regional fisheries organisations of which the EU is a member.[216]For instance, the EFCA adopted a multiannual Work Programme for years 2014-2018, which include plans for the Agency to assist the EU to cooperate with third countries and international organisations in dealing with fisheries.[217]The Agency may also cooperate with the competent authorities of third

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[211] Stop Illegal Fishing, 'Huge investment to fight illegal fishing' (News article 4 February 2014) <http://www.stopillegalfishing.com/news_article.php?ID=1002#sthash.vkpNSloN.dpuf> accessed 4 February 2014.

[212] Analia Murias, 'Huge investment to fight illegal fishing'<http://www.fis.com/fis/worldnews/worldnews.asp?monthyear=&day=4&id=66225&l=e&special=&ndb=1%20target> accessed 4 February 2014.

[213] DG for Internal Policies, 'The Common Fisheries Policy-Infringement Procedures and Imposed Sanctions throughout the European Union' (January 2014) <http://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH_NT%282014%29514003_EN.pdf> accessed 21 November 2014.

[214] *Ibid*.

[215] Council Regulation No. 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation No. 2847/93 establishing a control system applicable to the common fisheries policy, *OJ L 128*.

[216] Europa, 'Community Fisheries Control Agency' <http://europa.eu/legislation_summaries/maritime_affairs_and_fisheries/fisheries_resources_and_environment/l66019_en.htm> accessed 4 February 2014.

[217] EFCA, *Decision No. 13-II-8 of the Administrative Board of the European Fisheries Control Agency of 15 October 2013 concerning the adoption of the Multiannual work programme for years 2014-2018 and the Annual work programme for year 2014 and the Final Budget of the European Fisheries Control Agency for year 2014*, p. 11.

countries in the framework of regional international organisations or bilateral fisheries agreements.[218] It may also perform tasks on behalf of the Member States in connection with international fisheries agreements.[219]

Additionally, the EFCA coordinates activities on land and in Community and international waters. This is primarily done through joint deployment plans (JDPs). A JPD is a medium through which the EFCA organises the deployment of Member State-gathered national human and material means of control and inspection. In international waters, the EFCA has been entrusted by the Commission with inspection activities, through carrying out JDPs both at sea and at landing, which are delivering the international obligations of the EU.[220]

2.7.4 Cooperation with EU Member States

The EFCA establishes operational cooperation between EU Member States, and assists them and the EU Commission.[221] It organises and coordinates cooperation between national control and inspection activities and trains national inspectors and trainers, to ensure that CFP rules are respected and applied effectively and consistently.[222] In its report on the Work Programme for years 2014-2018, several workshops have been planned for 2014 including those on the implementation of the IUU regulation.[223] Essentially, one of its tasks include helping Member States fight IUU fishing by ensuring uniform and effective application of the rules of the IUU Regulation.

Its mission lists out the various links between the EFCA and EU Member States:

- coordinate control and inspection by Member States;
- coordinate the deployment of the national means of control and inspection pooled by Member States;
- assist Member States in reporting information on fishing activities and control and inspection activities to the Commission and interested parties;
- assist Member States to fulfil their tasks and obligations under the rules of the CFP;
- assist Member States and the Commission in harmonizing the application of the CFP throughout the Union, in particular the specific control and inspection programmes, programmes for the control of IUU fishing and international control and inspection programmes;
- contribute to the work of Member States and the Commission on research into and development of control and inspection techniques; and
- contribute to the training of inspectors and the exchange of experience between Member States; and coordinate the combating of illegal, unreported and unregulated fishing.

In 2012 EFCA, together with the Member States concerned (Spain, France, Italy, Greece, Portugal, Malta and Cyprus) and the European Commission, coordinated for the fifth time a JDP to monitor all aspects of the bluefin tuna fishery and ensure the implementation of the rules.[224]

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[218] *Ibid*.

[219] *Ibid*.

[220] EFCA, 'Operational Coordination' <http://efca.europa.eu/pages/home/activities_operational2010.htm> accessed 4 February 2014.

[221] European Union, 'European Fisheries Control Agency' <http://europa.eu/about-eu/agencies/regulatory_agencies_bodies/policy_agencies/efca/index_en.htm> accessed 4 February 2014.

[222] Europa, 'Community Fisheries Control Agency' <http://europa.eu/legislation_summaries/maritime_affairs_and_fisheries/fisheries_resources_and_environment/l66019_en.htm> accessed 4 February 2014.

[223] EFCA, *Multiannual Work Programme 2014-2018 and Work Programme 2014*, p. 13.

[224] EFCA, 'Bluefin tuna: Provisional results about the 2012 JDP and Seminar in VIGO' (Press Release 18 October 2011) <http://efca.europa.eu/pages/home/press_releases/pressrelease290612_en.htm> accessed 4 February 2014.

Conclusions

1. The above-mentioned international and European actors and institutions have been featured for their relevance in the fight against environmental crime by the European Union. The list is non-exhaustive and for a full "taxonomy", other organisations could be added, especially in the light of two developments: a) the growing monitoring capacity (e.g. use of remote sensing/satellite imagery in enforcement) coupled with the increasing scientific insights in the nature of harm to the environment and wildlife, seen to be more serious and of longer duration than before, and b) the further recognition how environmental crime is inherently linked to other forms of especially serious and organised crime. As for the former, institutions from, for example, the public health and forensic sector could be added, and in relation to the second development, one can think of specialised agencies in the fields of corruption, money laundering and cybercrime.
2. It is therefore good to note that several of the organisations described here do already explicitly make that connection between environmental crime and these other forms of crime and do not treat environmental issues in isolation. The work of INTERPOL, EUROPOL (ENVICRIMENET), the World Customs Organisation and the strategic environmental crime project of Eurojust, amongst others, makes these linkages.
3. Almost all 'actors and institutions' in this report are 'cooperatives' of Member States who historically and traditionally have considered the fight against crime as part of their national sovereign competence and often attach different weights to environmental issues, including the conservation of biological diversity. As most of environmental crime is cross-border, cooperation between states is essential, but this cannot be enforced by the actors and institutions, including the secretariats of the Multilateral Environmental Agreements (MEAs) listed in this report. The onus for compliance and enforcement of international environmental law when it comes to the application of criminal law, lies with the Member States, also as Parties to the MEAs. The closest international organisations can get to playing an enforcement role lies within specially created units like INTERPOL's Environmental Compliance and Enforcement Committee (ECEC) and UNEP's Division of Environmental Law and Conventions (DELC), where the latters' functions are limited to "enhancing" the implementation, compliance and enforcement of environmental laws by the UN member countries. Ways of doing this are developing of new and innovative detection and monitoring technologies, gathering and sharing of intelligence, sharing of best practices, training of police and customs officials, prosecutors and judges and promoting networks, such as ENPE (the European Network of Prosecutors for the Environment), EUFJE (the EU Forum of Judges for the Environment) and EUROPOL's ENVICRIMENET.
4. The obvious conclusion is that the collectivity of international organisations and Member States is faced with serious coordination challenges *vis-à-vis* the Organised Crime Groups operating in the field of environmental crime, which are ahead in cross-border concentration of activities and the use of international technologies such as the internet. If indeed transboundary crimes against the environment are on the rise, the support activities for Member States described in this report might prove to be inadequate *per se* and investigations and prosecutions by international bodies (e.g. introducing a European Public Prosecutor) might have to be considered. The fragmentation due to the differences in mandates of the organisations and the primacy of the Member States in the field of criminal law is a serious handicap.
5. Similarly, all organisations listed here have - it could not be otherwise - in their mandates as primary objective to uphold the rule of law and to act accordingly, while of course the perpetrators of environmental crime are intentiously violating the law, giving them considerably more degrees of freedom of action. Also, it takes time to define certain activities that harm the environment as criminal and to make them part of formal and operational criminal law. Sometimes, when it comes to the environment, the situation can be described as "lawful, but awful".
6. It is important to highlight here the role of DG ENV as the entity within the EU to propose, harmonise and implement EU environmental legislation, also by stimulating the application of criminal law. While it can bring infringements of EU environmental rules to the European Court of Justice, concrete environmental crime cases remain within the competence of the Member States, who have to ensure that

"effective, proportionate and dissuasive sanctions" have to be applied, without these sanctions being specified. In the case of fisheries, however, the EU has established a kind of "meta sanction" in the form of a point system for serious infringements, affecting the licencing of fishing vessels to be applied by all national authorities. This might serve as a precedent to bring about more harmonisation in the substance of sanctions, thus taking away the option of perpetration in the country with the weakest sanction regime.

7. Finally, the deliberations in COSI, the Standing Body for Internal Security of the Justice and Home Affairs Council of the EU in 2015, following the EU Serious and Organised Threat Assessment (SOCTA) of 2015 as prepared by EUROPOL, will be of great relevance for the status of environmental crime within and the fight against it by the EU.

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