CHAPTER 3

The Internationalisation of Environmental Criminal Law: Rationales, Basis and Prospects

3.1 Introduction

This chapter assesses the rationales, basis and prospects for the internationalisation of environmental criminal law, discussing the extent to which existing international legal frameworks could be used to prevent and punish environmental crime. It analyses in particular the potential scope for an extension of the current jurisdiction of the International Criminal Court (ICC) over environmental crime; the role of multilateral environmental agreements (MEAs) in leading countries to implement criminal measures for the protection of the environment; as well as the existing international legal frameworks aimed at facilitating interstate cooperation to combat environmental crime.

3.2 Rationales for the Internationalisation of Environmental Criminal Law

It is generally recognized that transnational crime does not recognize national borders and states may pursue, bilaterally or on a regional/multilateral basis, measures to combat crimes as a counterweight to reduced border controls. Hence concerted international action is generally more effective to deal with common security threats, in particular in the case of crimes which are necessarily ‘international’ in nature (such as cybercrimes). Globalization and the consequent loosening of border controls diminishes the ability of nation states to be the sole guardians of values protected by criminal law as the principal means to control criminal activities. These transnational criminal activities weaken the ability of states to maintain security within their own boundaries. The individual failure of nation states to combat crime (in particular transnational crime) calls for forms of police and judicial cooperation in criminal matters between states, as recognized in several international and regional agreements (for example, on extraction and mutual assistance on criminal matters1).

1 See e.g. the 1957 The European Convention on Extradition, ETS 24, 359 UNTS 273; 1959 European Convention on Mutual Assistance in Criminal Matters, ETS 30; 1972 European
The fact that criminals are able to exploit the differences in legislation and legal enforcement techniques in different states to their benefit is a main driver for the harmonisation of both substantive and procedural criminal law. In general, the diversity of national penal systems allows criminals to select the legal system that is regarded as less effective and use them as sanctuaries or safe havens.\(^2\)

Furthermore, harmonisation of criminal legislation could be regarded as a means to facilitate police and judicial cooperation in criminal matters. Classic extradition agreements require double-criminality in both executing and issuing states, so harmonisation of criminal law would facilitate the operation of those agreements because both states would have criminalised similar offences.\(^3\)

So one of the main justifications for legal harmonisation is that the comparability of legal norms is fundamental for an effective transnational crime control.\(^4\)

Yet the harmonisation of criminal legislation could also be regarded as an objective in itself. Indeed, some environmental offences have global or transboundary effects (for example, the illegal trade in endangered species or the illegal trade in ozone-depleting substances). Because of their global or transboundary implications, it is suggested that eco-criminals should be punished with a similar degree of severity wherever these offences are committed or their effects are felt. Moreover, it could be argued that certain animal and plant species and habitats, especially endangered species or ecosystems,