CHAPTER 4

The Degrees of Harmonisation of Environmental Criminal Law

4.1 Introduction

This chapter starts by examining the fundamental notion of legal harmonisation in interstate relations. This is followed by an analysis of the degrees to which states may pursue harmonisation of (environmental) criminal law, assessing the merits and constrains for states to seek unification, approximation, cooperation or coordination of environmental criminal-law standards. As the experience in the European Union shows, the degrees to which states may pursue approximation of environmental criminal law are constrained by constitutional, legal and political challenges.

4.2 The Notion of Legal Harmonisation

Harmonisation of laws could be defined as a technique or method to bring about the gradual adaptation of national legal systems.1 Convergence means to come together, either in a single unit or to a point in which there is overlap. In linguistic terms, harmonisation can be defined as bringing two things into accordance or agreement with one another.2 The term originates from musical composition where it defines the (aesthetically pleasant) co-existence of notes which are in accordance with one another but are not necessarily the same or even similar.3

As a mechanism of law reform, the notion of harmonisation of laws can be regarded as a concept, method or goal.4 As a concept, the Oxford English

---

3 Ibid.
Dictionary defines harmonisation – or the process of achieving harmony – as the combination or adaptation of parts, elements, or related things, so as to form a consistent and orderly whole.\(^5\) Harmonisation may also be considered a technique or method of law reform used when problems and frictions in legal areas are (rightly or wrongly) blamed on differences between legal systems. This is often the case in the example of inter-state cooperation in criminal matters which is often hindered by differences in national penal systems.

Furthermore, harmonisation pursues specific goals. Indeed, legal harmonisation is not an objective in itself but a means of achieving specific goals.\(^6\) Like the general notion of harmonisation, harmonisation of laws as it relates to inter-jurisdictional and international transactions cannot be justified by itself. Thus international or inter-jurisdictional legal harmonisation requires specific justification as to the desirability of harmonisation and the model upon which it is based.

It has been suggested that a word of caution is needed when globalisation is raised as the justification for harmonising of laws.\(^7\) In particular, there are concerns over legal harmonisation undermining cultural values, customs and traditions. The literature on the harmonisation of European private law has also criticised harmonisation as a technical process devoted to market making for its disregard of the rich and deep historical roots of the national laws subject to its influence.\(^8\) Literature criticises the fact that cultural traditions that permeate national laws are sacrificed for the benefit of the cold calculation of economic gains.

### 4.3  The Degrees of Interstate Harmonisation of Criminal Law

There are four main forms of interstate harmonization: unification, approximation, cooperation and coordination. Unification constitutes the strongest degree of integration and would allow states to cooperate towards the adoption not only of minimum standards, but in fact total harmonization of penal laws. This would imply that states’ powers to adopt more stringent

---

6 Boodman, M. *supra* at 702–703.
7 Andenas, Baasch, Ashcroft above note 2 at 573.