

# INVISIBLE VICTIMS OF ENVIRONMENTAL CRIME

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I will approach the question of victims of environmental crime from the perspective of law enforcement. I have been a professor of environmental crime at the Police Academy of the Netherlands since January 2011. One of my tasks is to raise awareness of environmental crimes in the Dutch police force. However, environmental crimes have certain intrinsic characteristics that make them difficult for the police and the judicial authorities to investigate. One of the main difficulties is the lack of a visible victim, at least in Western industrialized countries that have adopted environmental protection legislation. This presentation focuses on such countries.

Today I will address four problems that the police face in cases of environmental crime, all related to the lack of 'visible' victims. The first problem is that environmental crimes do not drop into the police's lap but in fact require active information-gathering. The second problem is that the damaging effects of environmental crimes require complex investigations, and even then, they are difficult to prove. The third problem is the increasingly international scope of environmental crimes, whereas criminal investigations are still largely a matter of sovereign states. The fourth and final problem is that environmental crimes compete with other illegal activities that the police force and the judicial authorities may perceive as a bigger threat to society, as well as with other interests, particularly economic ones.

To begin with, however I will briefly outline the developments that have led to environmental crimes becoming less visible in Western states, particularly since the 1960s and 1970s, when most countries adopted all sorts of legislation to combat pollution. Of course, the fact that human activity can harm the environment and change living conditions was nothing new. For example, the Dust Bowl in the 1930s in the United States resulted from farming methods applied in those days. It is important to note, however, that environmental damage and pollution were not yet 'framed' in terms of crime, at least not as long as people were not killed outright and pollution did not harm economic interests.

This gradually changed in the 1960s and 1970s, when Western industrialized nations started to enforce statutory standards in order to reduce the level of pollution affecting the habitats of both humans and other species in general. There are a number of explanations for this development. I will mention three.

To begin with, the enormous rise in prosperity after the Second World War and the introduction of all sorts of new products and technologies, for example due to the chemical revolution, increased pollution levels. Luxuries – such as flying to holiday destinations – came within the reach of large parts of the population in the industrialized West. The downside was that people living near airports had to put up with extreme aircraft noise. Overall, the scale of environmental problems thus increased.

Second, the protest generation came of age in the 1960s, and the general population also became less inclined to accept whatever measures the authorities took. Broad-based

interest groups also rose up against environmental pollution. So we see growing popular pressure on government to take action against environmental damage.

Third, the increasing scale of transport and industrial activity caused bigger problems when disaster struck. One example was the wreck of the supertanker Torrey Canyon off the British coast in 1967, which caused massive pollution on the beaches. The effects of large-scale landfill in previous decades also became visible. In the Netherlands, for example, it was discovered in 1979 that an entire housing project in the town of Lekkerkerk had been built on a site where all sorts of chemical waste had been illegally dumped. The case led to an outcry in Parliament, particularly when it became clear that inadequate legislation made it impossible to prosecute and hold the relevant company liable. Consequently, the government had to pay several millions of Euros to have the soil in the entire neighborhood cleaned up. Large-scale disasters and scandals were the third reason governments introduced new legislation.

Generally speaking, tighter rules and regulations have indeed resulted in a decrease in visible pollution in Western countries. I emphasize the word ‘visible’ because the problems have merely shifted elsewhere, primarily to Third World countries and states with less democratic regimes. One example is the dumping in Africa of e-waste generated in Western countries. It is, of course, in many instances ‘our’ waste.

Another interesting development of the past fifteen years is that environmental problems have become somewhat abstract. Global warming, the loss of biodiversity or the island of plastic in the Pacific Ocean are less tangible problems than dead fish floating in a river in your own backyard, to give an example. Consequently, environmental damage has increasingly turned into a political issue. Consider, for example, the fact that all of the Republican candidates for the presidency of the United States in 2012 said that they did not ‘believe’ in global warming; in doing so, they have more or less turned this issue into a religious question rather than a real threat.

Such developments are not without consequences for the police. Less visible crimes are inevitably less of a priority.

Let me now turn to the four specific problems that the police face when it comes to investigating environmental crime. The first is that environmental crimes usually do not have immediate victims, and are therefore difficult to detect. Environmental crimes are not actively reported to the police. I have a few examples.

Is this illegally dumped pile of rubbish environmental crime? Yes, of course it is, and it is also clearly visible to any police officer who happens to pass by. But let me make it a bit more difficult.

Is this smoke coming out of smoke stack environmental crime? Well, it is difficult to tell. You do not know what is causing the smoke, and if you were able to measure it – and there are forensic methods for doing so – you would still need to find out whether the company is allowed to release certain quantities of particular components into the air.

There may even be environmental crimes that are completely invisible. An example is the blending of bunker fuel for ships with chemical waste, which is a serious problem in the Netherlands these days.

Finally, environmental crimes may not be ‘framed’ as such. An example is a major fire that occurred in 2011 in a Dutch company that stored and traded all sorts of chemicals. The fire resulted in air, water and soil pollution near the plant. Now is this a disaster? Or should

we see it as an environmental crime because it resulted from systematic noncompliance with the terms set out in the environmental license?

To sum up the first problem: the fact that many environmental crimes are not immediately recognized as such makes it more difficult to tackle them. The most important source for detecting crimes, the eyes and the ears of police officers on the beat, works fine in cases of 'normal' crimes, but is less effective when it comes to environmental crimes. Checking companies and taking samples is often technically complex and in many cases these activities are not the responsibility of the police but of specialized inspection authorities, at least in the Netherlands.

Another source of information may be informers, criminal or otherwise. Here, however, the difficulty is that people with information on environmental crimes are usually not found in the urban underworld, where the police recruit their informers.

This brings me to the second problem, namely how to deliver proof that an environmental crime has victimized human beings or other species. I will try to illustrate the problem by taking the Probo Koala case as an example. I assume that most people know this particular case. The Probo Koala was the name of a ship that was chartered in 2006 by a company named Trafigura. Probo Koala's cargo consisted of low-grade oil, which the crew needed to upgrade at sea by treating it with caustic soda. The process, however, also rendered a substantial amount of toxic waste. The ship docked at the port of Amsterdam intending to dispose of the waste at the reception facility for waste oil. When the slops were unloaded, it became clear that these were different from the waste that results from the normal operation of a sea-going vessel. The reception facility informed Trafigura that treatment of the slops would cost them more money. The company decided to take the waste elsewhere in the hope of finding a cheaper solution.

Meanwhile, people living near the port complained about the smell, and the police were called in to have a look. Workers were busy pumping the slops that had already been transferred ashore back into the ship. Police officers tried to call a halt to this procedure, which was unlawful, but the City of Amsterdam inspectors gave their consent and the procedure continued. The Probo Koala left for the Ivory Coast, where Trafigura had found a company to treat the waste. The treatment, however, consisted of dumping the waste in the countryside. Ivorians who came into contact with the waste allegedly suffered all sorts of physical harm. There were claims that people died after being exposed to the chemical waste. However, Trafigura vehemently denied responsibility for dumping the waste, and it also denied that people had actually suffered after coming into contact with it.

The company that first tried to save some hundred thousand Euros by transporting the waste to the Ivory Coast instead of disposing of it properly in Amsterdam now happily spent millions on 'damage control'. For example, Trafigura hired legal advisors to sue any journalist who held the company responsible for the disaster and it paid 'independent' experts to question whether injuries were caused by the dumped waste.

Despite all of this, in the Netherlands, the company was convicted of failing to inform the port of Amsterdam reception facility of the true nature of the waste. It received the maximum penalty, a one million euro fine. Although Trafigura's annual turnover is 74 billion US dollars, its managers were still very much annoyed by this... But clearly not enough to

take the trouble to change the name of the company, even though its reputation is totally ruined...

For the police, this case shows that perpetrators of environmental crimes are in most cases not 'usual suspects'. Instead, they are mostly the well-respected board members of large companies. Police officers not only have a hard time trying to link environmental crimes to the victims and the damage caused to the environment. They also have to deal with expensive lawyers who use every procedural trick in the book to frustrate the investigation.

This brings me to the third problem that law enforcement faces in the context of environmental crime: the fact that such crimes are often cross-border in nature. Although we live in an era of globalization, criminal investigation is still a matter of national sovereignty, even in the European Union. Whereas the movement of persons, capital and goods has become increasingly globalized over the past few decades, operational cross-border law enforcement cooperation largely depends, even now, on mutual legal assistance or MLA. MLA relies on a well-defined legal and organizational framework consisting of multilateral and bilateral treaties, such as the UN Convention on Transnational Organized Crime, and institutions such as Interpol and Europol to exchange requests based on such conventions. Of course, there are major differences between legal systems around the world and this affects cooperation as well. Institutions such as Interpol try to help and coordinate in such cases. In the European Union, for example, the Envicrimenet initiative helps police officers working in the field of environmental crime build networks, share lessons learned and good practices, and so on. Such networks, however, are limited to non-operational cooperation, and cannot be used in cases requiring mutual legal assistance.

I would like to emphasize a specific problem here, namely that in some cases, cooperation means dealing with states where corruption plays a role within government and law enforcement agencies. One example is the case of Anson Wong, a Malaysian national who was a major trafficker in illegal wildlife. He was nicknamed the 'lizard king' because he dealt in protected lizards, snakes and turtles. A special investigation team from the US Fish and Wildlife Service had Wong arrested in 2001, after a sting operation that took five years, and he was subsequently sentenced to 72 months of imprisonment in the United States. This was still quite a modest penalty, but it would have been much lower had Wong not also been successfully charged with money laundering, conspiracy and fraud. Upon his release, Wong returned to Malaysia and basically continued his business. The authorities even let him start his own zoo, which he used as a front for trading in CITES-protected animals. Of course, Wong was only able to run his business because he was protected by members of the Malaysian government. In 2010, Wong was caught at Penang Airport in possession of 100 protected snakes, which he had in his carry-on luggage. Wong was sentenced once more, but apparently he still had friends in high places, because after 17 months in prison he was released again. Needless to say, outright corruption can severely hamper cross-border investigations, although police officers on both sides usually have the same goals and intentions. The fact that such investigations are often time-consuming, costly and difficult on the one hand, and that the outcome may be uncertain due to corruption issues on the other, often result in investigations ending at the border.

The final problem I would like to address here is that environmental damage and the investigation of environmental crimes often compete with other interests, most notably

economic interests. It is no surprise, for example, that there is less emphasis on the environment in times of crisis than in times of economic prosperity. And in places such as China, there is little concern for the environment even in a situation of continuous economic growth. But of course, had the Chinese regime been democratic and the population able to speak out, situations such as those pictured would probably not have been possible.

Even in Western societies, however, some perpetrators may exert a certain influence on politicians and government authorities such as ministers and mayors. This is of course particularly true when the perpetrators are large companies. In such cases, there is a reasonable chance that the managers are on friendly terms with the authorities. I will give you an example.

In the early 1990s, Neelie Kroes, a Dutch national who is now the European Commissioner for Competition and the vice-president of the Commission, was involved in one of the most notorious cases of environmental crime in the Netherlands, involving a company named Tanker Cleaning Rotterdam or TCR. TCR ran a reception facility for waste oil and chemicals in the port of Rotterdam, but instead of processing these products, the company simply dumped them into the river. Kroes, then the Dutch Minister of Transport, was not only a very close friend of the manager of the company, but she also awarded it a large subsidy to build a processing facility. Although the inspection authorities knew these facts, they hesitated for a long time before taking action because the Netherlands is obliged under the International Convention for the Prevention of Pollution from Ships (MARPOL) to have reception facilities. Closing TCR would have substantially reduced the country's capacity to receive waste oil, and would have rendered it unable to meet this requirement. Although Dutch investigators could not prove outright corruption, it was clearly a case of competing interests, and it took almost eight years before the authorities finally closed TCR.

This is only one example, but there are many more, even in my own country. Competing interests clearly influence the role of the police and the judicial authorities in cases of environmental crime. As long as there are no clear victims, the authorities can decide to let other interests prevail over the environment. Although the police and the judicial authorities are independently responsible for upholding the law, it is obvious that when human and financial resources are scarce, law enforcement agencies can be steered towards specific priorities and away from others.

I will now briefly summarize the main points of my presentation. My main observation is that, at least in Western democratic states that have adopted environmental legislation, environmental crimes have become less visible. Paradoxically, this also poses specific problems within the realm of law enforcement.

The first problem is that the police must actively search for environmental crimes in many cases, and it is more difficult to be proactive than reactive.

Second, environmental crimes usually do not produce immediately visible victims. Instead, in many cases the effects only become clear after a certain amount of time has passed. It is therefore difficult to prove the causal relationship between the crime on the one hand and the environmental damage and the harm inflicted on human victims on the other. As a result, penalties are often minor, and this is naturally not very motivating when launching a complex investigation.

The third problem for the police is that environmental crimes often require cross-border police and judicial cooperation, something that is difficult and time-consuming, even in an era of globalization. In addition, the need for cooperation often means working with countries with weak governments and lax law enforcement. Efforts to cooperate may therefore end in frustration. Once again, because the visible victims usually live in far-off countries, it is easier to limit the investigation to the crimes committed within one's own jurisdiction.

Finally, although law enforcement is supposed to act independently, human and financial resources are always scarce, and investigative priorities therefore need to be set. Environmental crimes not only compete with other crimes that may be perceived as a bigger threat to society, but also with other interests pursued by the authorities, who, in the end, also control the police. With no clear and visible victims, those other interests are allowed to prevail over environmental protection, and environmental crimes are inevitably perceived as less of an investigative priority.