



HAL
open science

Corporate environmental responsibility and criminology

Lieselot Bisschop

► **To cite this version:**

Lieselot Bisschop. Corporate environmental responsibility and criminology. *Crime, Law and Social Change*, 2009, 53 (4), pp.349-364. <10.1007/s10611-009-9227-8>. <hal-00543003>

HAL Id: hal-00543003

<https://hal.science/hal-00543003v1>

Submitted on 5 Dec 2010

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



HAL Authorization

Corporate environmental responsibility and criminology

Lieselot Bisschop

Published online: 5 December 2009
© Springer Science+Business Media B.V. 2009

Abstract This article addresses corporate environmental responsibility (CER) and aims to present a criminological analysis of it. We studied the opinion of a number of principle actors involved in CER in Europe in order to determine how they perceive it in terms of its definition, aetiology and approaches. For each of these dimensions we relate back to a criminological framework to ascertain how it is positioned in the green criminological debate. We start out by providing information on what corporate environmental responsibility is and how it relates to corporate social responsibility and sustainable development. Then we outline the theoretical framework in accordance with the three central themes for the criminological analysis of CER: definition, aetiology and approaches. We also explain the method that was used (semi-structured interviews). Next, we present the results according to the same threefold structure. Finally we discuss these results in a last part, which is divided in two. First, we look at the challenges that the criminological perspective poses for CER in terms of definition, aetiology and approaches. The second part of the discussion turns the question around and wonders how CER could contribute to greening criminology.

Introduction

“The social responsibility of business is to increase its profits [11].” With this quote, Nobel prize-winning economist Milton Friedman indicated that the free market would take care of everything and that it was needless for business to go beyond the bottom line of making profits. Thirty years later the social responsibilities of

L. Bisschop (✉)
Governing and Policing Security, University College Ghent, Ghent, Belgium
e-mail: lieslot.bisschop@hogent.be

L. Bisschop
Governance of Security, Ghent University, Ghent, Belgium

business still have their supporters and opponents, but nevertheless these responsibilities became pivotal issues on the global agenda of corporations, non-governmental organisations and governments alike. Today, many acknowledge that business has a responsibility which goes beyond profitability and reaches out to profit, people as well as planet: a triple bottom line. This article sheds light on the 'planet bottom line' by addressing corporate environmental responsibility (CER). We studied the opinion of a number of principle actors involved in CER in Europe in order to determine how it is perceived in terms of definition, aetiology and approaches. For each of these dimensions we relate back to a criminological framework to ascertain how it is positioned in the green criminological debate.

Definition of corporate environmental responsibility

Corporate environmental responsibility (CER) is the commitment of business to take the environment into account in decision-making processes and involves environmental commitment and awareness, transparent reporting, measuring and auditing and means going beyond regulatory compliance [26]. Due to its very complex and multidimensional nature, it is hard for any definition to embrace all aspects of CER [49]. CER originated in a broader trend towards a responsibility for business in which various concepts, such as corporate social responsibility and sustainable development, became central issues on the global agendas of business, non-governmental organisations and governments alike. Firstly, CER has a clear connection with corporate (social) responsibility (CSR) because it indicates its environmental dimension.¹ Ever since the seventies the term CSR has been used, but up until today there is no commonly agreed definition of it. The definition entails conceptualisations of CSR ranging from (1) mere regulatory compliance over (2) a responsibility to shareholders, employees, customers and suppliers to (3) a broad-minded perception of CSR as the responsibility of a company as a member of the immediate society and the global community [26]. Quite often a definition of CSR contains a mixture of these three perceptions. CSR can be perceived as the commitment by business to pursue long term goals that reach beyond law and economic requirements. It supposes a willingness to act ahead of regulatory confrontation and suggests that corporations take the quality of life of all their stakeholders² into account. CSR means being a good corporate citizen through decision-making that is not only based on financial or economic factors like profits or return on investment, but also on the social, environmental and other consequences of their activities [20, 26].³ Secondly, sustainable development addresses sustainability in a very broad manner, whereas CSR specifies the corporate dimension of it. CER can be perceived as sustainable development

¹ Sometimes the concepts corporate citizenship and corporate environmental citizenship are used, which are interchangeable with respectively CSR and CER.

² Under this heading a stakeholder is everyone who can be influenced by a corporation's actions or decisions, which includes management, employees, shareholders, customers, suppliers, but also the local community and society at large.

³ Communication COM(2006) 136 of 22 March 2006 on the implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility.

oriented towards the corporate and environmental dimension in particular. Corporate environmental responsibility can be summarized as the responsibility of business towards various stakeholders to take into account the environmental consequences of business activities and the longer-term environmental needs in order to avoid compromising the sustainability of future generations.

A criminological perspective on corporate environmental responsibility

As mentioned earlier, we look at three dimensions in our analysis of CER: definition, aetiology and approaches. In this way we wish to ascertain how it relates to harmful or criminal business activities and thus to a broader criminological perspective. In the following paragraphs, we describe each of these dimensions and in the end refer to the questions we take into account for the criminological analysis of CER.

First, we focus on the definition and thus the normative grounds, which inevitably relates to the criminalization of environmentally harmful business activities. This holds two dimensions: a corporate one and an environmental one. The former conceptualisation is that of corporate crime, which is often defined as: “illegal acts or omissions, punishable under administrative, civil or criminal law, which are the result of the deliberate decision-making or culpable negligence within a legitimate formal organisation” [27, pp. 74–76]. This legalist definition attributes a pivotal role to the law in defining crime. Others however argue that some acts may not violate the criminal law although in se violent or harmful. Sutherland [42] believes this is especially true for corporate behaviour because their harmful acts are often treated as mere regulatory offences, which have no criminal stigma attached to it. Tombs [44] exemplifies this by pointing to the enormous costs of corporate crimes: physical costs in terms of health and safety, social costs and costs in terms of lacks of trust in corporations and governments. He believes much too often corporate harm is decriminalized, its victimization marginalized and thus not seen as a burden like conventional crimes. When approaching it from an even more critical perspective, a definition of crime is based on independent notions of human rights and thus goes far beyond legal notions of criminal behaviour [35, 28, pp. 78–81]. The latter dimension in the definition refers to environmental crime, which is mostly associated with violations of (criminal) laws which are designed to protect the environment. Once again, the extent to which environmentally harmful acts are regarded as crimes and consequently criminalized, is dependent on the social and cultural environment’s sensitivity to the subject. Some of this behaviour, such as illegal pollution or dumping of waste, is sanctioned through criminal law—and thus considered a crime—while other acts may violate administrative or civil regulations or might not violate any law or regulation, but possess equally harmful potential.⁴ A more comprehensive definition could thus take an ethical stance towards environmental harm: “Something criminal may be unethical, but it does not follow that something not criminal is necessarily ethical [29, p. 8]. Therein environmental crime could be regarded as acts that may or may not violate rules and environmental regulations, that have environmental damage

⁴ This is the case when dangerous pesticides are sold in countries where appropriate regulation is lacking or when waste is transported to countries where dumping is still allowed [47].

outcomes and that originate in human action, whether corporate or individual [24]. A more abstract definition of environmental damage is provided by constitutive criminologists who state that it could be perceived as the power to deny others—human, animal or nature—their ability to make a difference [17]. A first aspect to take into account is thus the definition of CER and how it relates to the two above-mentioned dimensions of corporate environmentally harmful activities.

Besides a look at the definition, we wish to include a vision on the aetiology in our criminological analysis of CER. Even though numerous elements are mentioned as explanatory factors in the etiology of criminality, Van Dijk et al. [48] believe these elements can be narrowed down to three core factors: criminalization, motives and opportunities. As opposed to conventional crime, corporate crime often stays off the political agenda, rendering it not criminal or not illegal, seemingly regardless of its costs. In order to paint a complete picture of corporate crime, it is therefore necessary for the economic, political, social and cultural surroundings of the legal and actual criminalization to be looked upon. Snider [39] refers to “[h]ow the structural realities of the for-profit corporation and the relations of power they generate, shape individual and collective habitus”. This process of criminalization should thus be taken into account, besides elements of motivation and opportunity. We do not intend to present an exhaustive explanation of the causes of corporate environmental crime, but rather to highlight a number of important elements.⁵ Sutherland [43] made a strong claim about the criminogenic nature of corporations, which he believed to be rooted in their rationalistic profit-making nature. Applying rational choice theory to corporate crime in fact seems rather logical given the capitalist corporations’ search for profit and the priority of this profit to all other goals. Nevertheless, the picture is more complex than this claim. Various criminologists [21, 34, 38, 7] argued to look beyond the micro-level of individual executives and focus on meso (organisational) and macro (societal) levels as well. Instead of looking for the rotten apples, we look at the rotting influence of the barrel [13]. The corporation’s compliance or non-compliance with regulation is then a result of certain motivations and opportunities based in the specific organisational structure, culture and strategy. These explanations for corporate environmental crime or harm are rooted in a broader philosophical perspective on the nature of human-environment interaction: a view on the world and on humanity. Many green criminologists have implicitly or explicitly drawn upon three main environmental perspectives: anthropocentrism, biocentrism and ecocentrism⁶ [17, 18]. Anthropocentrism views the non-human environment for its instrumental worth and not for its intrinsic value, decisions about the environment are weighed on their economic outcome and it is therefore sometimes referred to as liberal ecology. Biocentrism has its ideological basis for activity not in self-interest, but in biotic interest. Decisions about the environment rely on righteous management and environmental laws are

⁵ These explanations concern corporate crime in general, but are applied to corporate environmental crime in particular.

⁶ Ethical literature makes a distinction between anthropocentrism, zoo-centrism and ecocentrism/biocentrism. Biocentrism would in fact be referred to as zoo-centrism while the term biocentrism would be used as a synonym for ecocentrism. Content-wise the threefold separation is equal, but criminological literature refers to anthropocentric, biocentric and ecocentric whereas ethics refers to anthropocentrism, zoo-centrism and ecocentrism/biocentrism [8].

informed by the idea of moral equivalence of all species. Ecocentrism tries to find a balance between the conception on nature of anthropocentrism and biocentrism and believes that the solutions for environmental harm lie in the social rather than the biological. Regarding this matter of aetiology, we thus wonder what philosophical roots CER has and to what view on criminalization, motives and opportunities it corresponds according to different stakeholders.

Together with a focus on the definition and the aetiology, we believe a third consideration in providing a criminological analysis of CER, resides in a view on approaches. These approaches for corporate environmentally harmful behaviour are positioned on a continuum between stick and carrot [46, 33]. Rule-based measures aimed at punishing bad behaviour constitute repressive or stick-approaches. Principle-based initiatives aimed at encouraging good behaviour belong to preventive or carrot-approaches. Repression concerns punitive responses to environmental problems caused by corporations and the prosecution of these cases in the criminal justice systems but it also involves administrative or civil measures such as fines or suspensions of licenses. The central responsibility for repressive approaches lies with the regulatory institutions (government) [42]. The focal concern of carrot-approaches is the encouragement of good behaviour instead of the punishment of bad. This concerns the idea of anticipating environmental crime which, in turn, brings us to the idea of prevention. These preventive initiatives aim at enhancing internal and external informal social control (social prevention) [48]. It does not only include preventive initiatives in se but also regards self-regulation of the company or the sector. These approaches embrace various influential elements within corporations and within the broader socio-economic and political context. The question we will try to answer in our criminological analysis of CER is where it is positioned on this continuum between carrot and stick.

Method

We opted for a qualitative research design. More specifically, in-depth interviews were gathered from a number of principle actors of CER in the EU on the three topics discussed above (definition, aetiology, approaches). The interview methodology was applied and more in particular the semi-structured interview was chosen [19]. This interview was semi-structured so that a framework of questions was prepared but the order of the questions depended on the course of the interview. This allowed for an exploration of the perceptions and interpretations of experiences of a specific phenomenon and resulted in focused though conversational communication. We purposefully selected as observations those principle actors involved in corporate environmental responsibility: the governmental, corporate, employee as well as NGO perspective. This corresponds to the various stakeholders engaged in CER, although we must mention shareholders were not included. For the governmental perspective two Directorates General of the European Commission were contacted. Firstly, the Directorate General for the Environment because they are a core actor for the development of environmental policy and corporate environmental responsibility initiatives on EU level. Secondly, the Directorate General Employment, Social Affairs and Equal Opportunities was contacted because they communicate the EU

position on CSR. For the corporate viewpoint we decided to survey ‘Business Europe’⁷ because they are the representative body for corporations of various sectors in all EU Member States. For the employee perspective, a representative from the International Trade Union Confederation, was contacted. At last, Friends of the Earth Europe and the European Coalition for Corporate Justice were chosen for an insight from NGO perspective because they have both obtained special expertise on the relationship between business, government and the environment. This subset⁸ can be justified from the belief that it best represents the differing perspectives actively contributing to contemporary CER-practice. The unique perspective offered by each party offers a distinct way to conceptualize contemporary CER-practice. However, we surpass a holistic view, and offer a comparative analysis of the how these views differ/agree. The transcripts of the five interviews were processed into a matrix structure. This data matrix served as a guideline for the horizontal and vertical analysis of the interviews. Along the horizontal axis are the different questions (including relevant subsections) and along the vertical axis, the different actors are represented. In first instance, a comparison of the different respondents was presented (horizontal analysis) by which we aimed to investigate to what extent there is a consensus between actors. The subsequent vertical analysis checked whether the responses were internally consistent. In this way we aimed to measure reliability across the different actors by means of the horizontal analysis and within the actors individually in the vertical analysis.⁹

Our data collection was restricted in a number of ways that might impact the interpretation of the results. We discuss these limitations to put our findings in a proper perspective. First and for all, we recognize the limited number of interviewed subjects. These were selected in order to provide a representative overview of the principle actors involved in CER in the EU, but still consisted of a limited subset (for instance the viewpoint of the customer or society itself was unaccounted for) and the results can therefore never be seen as a complete overview of the current CER practice in the EU. Secondly, although we attempted to provide an exhaustive review of relevant literature, there are undoubtedly some perspectives which were not accounted for. In contrast, the overview on criminological perspectives presented here, is thought to be the most relevant subset towards our objectives. Finally, it is

⁷ Business Europe is the European business organisation and represents 39 national business federations from 33 European countries. It was formerly known as UNICE (Union des industries de la communauté européenne). Their mission and priorities include : implementation of reforms for growth and jobs, integration of the European market, efficient governance of the EU, fighting national protectionism, taking advantage of the opportunities of enlargement and reforming the European social systems to make them sustainable. <http://www.businessseurope.eu>

⁸ Interview with a member of the Cabinet Commission for the Environment, European Commission Directorate General Environment, Brussels, 21 May 2007.; Interview with ‘Friends of the Earth Europe’ and ‘European Coalition for Corporate Justice’, Brussels, 22 May 2007.; Interview with a member of directorate D2 European Employment Strategy, CSR and Local Development, European Commission Directorate General Employment, Social Affairs and Equal Opportunities, Brussels, 23 May 2007.; Interview with a member of Business Europe, Brussels, 24 May 2007.; Interview with an employee of the Economy and Social Policy Department, International Trade Union Confederation, telephone, 24 May 2007.

⁹ In presenting our analysis of the interviews, we name institutions, however it is important to stress that even though these respondents are representatives for their organisation, we cannot exclude their personal opinion.

important to keep in mind that the method of analysis was explorative. Although this was a clear choice related to the objective of this study and we tried to triangulate [1] and cross-validate interpretations, this method only allowed for general conclusions and not for specific recommendations that might result from a more rigorous empirical design. Based on the results described below, future research should include more rigorous empirical methods for a well-defined subset of respondents (for instance one specific sector) to increase explanatory power.

Results

Definition

Each of the respondents presented a definition of CER except the representative from the DG Environment. Friends of the Earth Europe (FoE) and the European Coalition for Corporate Justice (ECCJ) defined it as “corporate accountability for the environment”. Business Europe spoke of “responsibility for business in terms of environmental issues”. The DG Employment, Social Affairs and Equal Opportunities (DG ESE) called it the “integration of environmental issues into business”. The International Trade Union Confederation (ITUC) presented the following elaborate definition: “an ethical system in which the management of an enterprise takes into account the impacts of the regular activities of the business on others in ways consistent with welfare of society and sustainable development”. At first glance, these definitions indicate a consensus between the actors. In order to have an accurate idea about the scope of these definitions, we asked a number of sub questions, which revealed the initial consensus to be more complex.

First, we asked whether they believed CER to be oriented towards corporate environmental crime or towards a broader notion of corporate environmental harm. All respondents immediately connected this crime versus harm discussion to the notion of CER being voluntary or obligatory (cf. approaches). Both NGO’s clung to obligatory regulation and stressed it definitely includes more than crime in se because harmful acts are not necessarily criminalized. The DG ESE on the other hand responded that everything that had to do with legislation was opposite to CER and thus swore by a definition that is outside criminal or judicial reference. Business Europe and DG Environment preferred CER to be voluntary, but both mentioned the importance of a legally binding framework in order to be effective. They thus perceived CER to be principally outside of judicial discussions, but practically touching upon legal shores. The DG Environment clarified CER actually went beyond criminal notions because it also takes economic measures into account. Secondly we asked to specify whether it involved solely deliberate decision-making or also culpable negligence. FoE and ECCJ stressed that CER involved more than deliberate decision making because “business is equally accountable when gas is deliberately flared or when there is a gas pipeline accident, because the polluting and harming outcome is equal”. Business Europe and the DG ESE supported this view by saying that the anticipation of culpable negligence is an inherent part of CER. The answers of the ITUC representative are difficult to compare to the others: he believed it is

not important to distinguish whether CER should be legally binding or voluntary, neither is it important to determine what it entails because there is a need to gain understanding of the core problem before addressing it.

Aetiology

Regarding this matter of aetiology we study the philosophical roots of CER and their view on criminalization, motives and opportunities in relation to CER. The representative of Business Europe emphasized different motivations are simultaneously involved in this matter and distinguishing which one is more important than the other is relative. First, there is the direct profit interest in going green (definitely more than in going social) and thus the business case for CER in terms of public relations and corporate image. Secondly, business is also a member of society and therefore CER refers to an ethical motivation (e.g. corporate citizenship). Thirdly, an important drive is the need to comply with legislation. When interviewing the DG ESE representative, the win-win situation was mentioned when asked about the motivations: on the one hand, this refers to the benefits for the environment and, on the other hand, to the business case for CER. She emphasized that this win-win situation was the objective in the EU policy on CER, which thus aims for a balance between ecological and economic well-being. The representative of the DG Environment equally referred to a range of motivations underlying the CER/CSR argument. First only anthropocentric motives and the intrinsic value of nature were mentioned, but in later answers he referred to corporate image building, and thus to the business case for being green. The ITUC representative countered this win-win argument. He referred to eco-efficiencies which indeed lowered the environmental footprint and made companies more profitable, even in the short term. However, the main gain is in the sustainability of a company and the protection of the brand name rather than in true environmental sustainability (e.g. green washing). He further explained that the business case for CER is more immediate than for CSR, due to environmental performance being quite easily quantifiable. Both NGO's emphasized the main motivation for CER should be the value of nature, and for the broader CSR picture, the value of the social as well. Nevertheless, they reluctantly mentioned a more anthropocentric and economic argument would have to be apparent as well in order to enthruse society.

The two main motivations, economic and ethical, seem to reside on the opposite ends of a continuum. First of all, there is the business case for CER which involves the protection of the corporate image and the sustainability of the company, but also the direct profit interests in 'going green'. This motivation fits within anthropocentrism and more in particular relates to liberal ecology, but is not necessarily limited to an anthropocentric stance because the self-interest of the corporations might be enlightened. This enlightened self-interest brings us to the second motivation to establish CER, which is ethical and concerns the well being of the environment and of society. The perceptions of the principle actors on these motivations diverge: on the one hand there are those who believe it can be a win-win situation (e.g. eco-efficiency) but on the other hand there are disbelievers who criticize this win-win phrasing (e.g. green wash).

Approaches

The question we will try to answer in our criminological analysis of CER is where it is positioned on the continuum between carrot and stick and what elements need to be taken into account when discussing the approaches.

On whether CER approaches were of preventive or repressive nature, our respondents had differing views. Both NGO's were of the opinion that binding minima are needed, but nuanced this by specifying that contemporary good practices already go above the baseline of responsible corporate behaviour and above binding minimum standards. This good behaviour should thus be encouraged and these good practices can motivate others to follow similar routes. Anything above binding minima, needs to be encouraged, but everything below needs to be challenged legally. The Business Europe respondent considered imposing standards was useless. He believed CER or CSR needs to be intrinsic and based on ethical beliefs in order to make sense. ITUC was of the opinion it would need regulation, because not all companies would be enlightened. He emphasized business nowadays has few legal obligations to adhere to anyway. The DG ESE referred to the voluntary nature which was supported by the DG Environment interviewee who said that at the Commission level the choice was made to support the industry initiatives on CER/CSR rather than imposing a framework for it from the central level. The respondent from the DG ESE furthermore said that CER needed to go beyond the law and should be established on voluntary basis. However, when asked about the responsibility for CER, both DG representatives referred to the responsibility for government as well as business to set standards. The DG ESE was of the opinion CER in the EU is about stimulating the good behaviour, although outside the EU it can sometimes be a matter of compliance alone. The DG Environment however believed 'carrot' is included in the process but it also concerns trying to stop companies from harming the environment which means disincentives. The other three respondents also agreed it entails both carrot and stick.

Each of the respondents pointed to the necessity of an integrated and integral approach within the companies. They believed CER, just like corporate governance, represents a core element of a company's strategy, while affecting different elements within a corporation which might provide motives or opportunities for environmental harmful behaviour. They all perceived it important for a corporation's culture, structure as well as strategy to be integrated in corporate environmental responsibility.

Concerning the responsibilities for CER there was considerable consensus in the sense that all respondents perceived it to be a shared responsibility between government and business and recognized NGO's as important actors in CER. However, who is principally responsible differs along the actors. FoE and ECCJ stand alone with their opinion that government is the principle actor. The others attribute the principle responsibility to business. ITUC follows another line of reasoning by emphasizing the need to know what government and business can address adequately before addressing who is responsible.

The question about strengths and weaknesses of CER was answered rather differently. In first instance, FoE and ECCJ referred to problems with legislation

which concerned the existence of safe havens¹⁰ and the sectional nature of environmental policy. Secondly, they also mentioned there are a number of corporate good practices of CER, but they warned for green corporate images which only address one particular business activity in a green manner while the rest is left to function as it always has (green-wash). Both NGO's emphasized a need for transparency, raising awareness and research on environmental issues and believed the EU has a leading role to play on a global level because CER and CSR need supranational standards in order to be adequate. Business Europe mentioned the importance of the intrinsic values and the need to improve communication between business and NGO's, but emphasized things were going in the right direction. They believed that, on global level, the EU could be a forerunner in environmental legislation and environmental friendly technologies, but creating legislation for CER or CSR will not have an effect on CER strategies in China, India or other countries. The DG ESE said it was too soon to evaluate any strengths or weaknesses because the EU communication was only from 2006.¹¹ They did mention that the CSR Alliance and the eco-management and audit scheme¹² (EMAS) were both considered as success stories. The respondent from the DG Environment pointed to the problems with the implementation of legislation at the national levels which resulted in many infringements of Community Law regarding the environmental sector. He also made particular reference to green-washing and mentioned that there are a lot of differences in corporate interest: there are heavy polluters who try to lower legislation; there is the eco-technology business who like higher legislation because they get subsidised; there are the progressive industries, the General Electric's and Toyota's, for whom being green is a question of branding; but then there are the small and medium sized enterprises who often do not have the resources to know or comply to their obligations. Finally, he also stated the polemic between NGO's and business was not conducive to CER. The trade union representative took this question as an opportunity to repeat the importance of addressing the core values and investigating the core problem before discussing CER or CSR, because this can only contribute to solving problems and is not a solution on its own. He claimed it was currently too often a dialogue of the dead. He referred to the global economy and the absence of institutions available alike to those available at a national level: "it seems likely that when things go global the rules do not apply." However, he did not believe problems would be solved "by a voluntary optional dependence on the enlightened self-interest of management, because there is no evidence that has ever worked."

¹⁰ IP/07/166 of 9 February 2007 Commission strengthens environmental protection through criminal laws abolishing "safe havens" of environmental crime.; Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law.; Studygroup Meeting NAT 353 on environmental crime, European Economic and Social Committee, 16 May 2007.

¹¹ Note 10117/06 of 9 June 2006 Review of the EU Sustainable Development Strategy (EU SDS) – Renewed Strategy.

¹² Regulation 761/2001 of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS).

Discussion

A criminological perspective as a challenge for CER

In the above we have mentioned that the opinions of the EU stakeholders differentiated on the three core themes. In what follows, we wish to substantiate these results and point to the challenges for CER, arising from the criminological perspective.

In the beginning of this article, we already mentioned that it is very difficult to define CER satisfactory because of its complexity and multidimensional nature. This opinion can be confirmed based on the interviews with the different actors: as CER lies on the crossroads of different interests each respondent offered an important but meanwhile limited perspective on CER. Currently there seems to be no common mindset for CER let alone a common definition or approach. We note that the answers of the stakeholders are situated on a continuum from being beyond every notion of criminality or illegality to reaching out to all notions of environmentally harmful business activities. This latter stance corresponds to a perspective where CER refers to various acts and omissions that cause harm and may be defined punishable under administrative, civil or criminal law. On the other side of the continuum one seems to shy away from criminal or legal connotations to CER. The stakeholders we interviewed had different viewpoints on where the core business of CER resides and also on its future possibilities. Moreover, even within the viewpoint of each stakeholder we notice seeming inconsistencies between what they ideally envision CER to be and what they deem practically achievable. Given this difference in opinion, there is a need to acknowledge the differentiation between the various actors, businesses and levels and address the core problem while taking those differences into account, but without allowing these different viewpoints to paralyze communication. In current CER practice, the communication between NGO's and business is often polarized and consequently paralysed. Changing this will require an open mind from business, NGO's as well as government. Responsibility and sustainability both vary across time and place, but their content needs attuning. As such we believe that rather than being a practice of multi-action, contemporary CER practice should be oriented towards inter-action.

Secondly, an apparent hierarchy in the aetiology for CER was identified. Although all stakeholders agreed on the involvement of ethical motivations, each actor emphasized that an economic motive practically preceded an ethical stance. It seems as though the bottom-line of every CER approach points towards ethical considerations but practical implementation is hindered by economic motives. We wish to stress this is closely related to criminalization processes and to whether or not we look beyond traditional notions of criminality. It might be difficult to include ethical arguments within the rational profit making context of business, but this might prove to be inevitable when other organizational and societal goals than profit are at stake. Nowadays, not all environmentally harmful and unethical corporate activities are legally considered as such and neither are they perceived to be a burden on society to the same extent traditional offenders seem to be [44]. As long as CER is not a concern for different actors (government, companies, NGO's, etc.) as well as a topic of interest in different playing fields (economic, social, political, etc.), it is not likely to be a genuine concern in society.

Approaches can be found on a continuum from voluntary (carrot) to obligatory (stick) [3]. Throughout the results, it became clear that, in order to address the environmental problems effectively, CER should encompass a mixture of initiatives. Furthermore, rather than straightforward application ideally these initiatives are integrated, within the corporations as well as in society. This will require understanding about the various elements inside and outside organisations; different levels of the phenomenon- micro, meso and macro- and various factors, actors and processes involved need consideration. Voluntary initiatives will be an essential element in obtaining environmental sustainability, but they will not be sufficient because not all will be enlightened. Voluntary business initiatives are not a panacea for all and neither is governmental regulation [31, 23]. In the absence of a credible threat of regulation or taxation, some companies will still be tempted to inflict harm upon the environment [45]. According to Campbell's [5] institutional theory of corporate social responsibility, corporations are likely to behave socially responsible when certain economic conditions¹³ are present, but these are in all probability mediated by a variety of institutional conditions, such as the strength of state regulation or (collective) industrial self-regulation, monitoring of corporations by NGO's or other independent organizations, the presence of institutionalized norms regarding appropriate corporate behaviour, associative behaviour between corporations and organized dialogue amid corporations and their stakeholders. Therefore, ideal solutions (KPMG & UNEP 2006) are probably in a mixture of voluntary or self-regulatory initiatives and mandatory regulations, which embrace advantages and overcomes disadvantages of both.¹⁴ "If acts proscribed by law are not translated into naming, blaming and shaming in the day to day playing field of business, formal social control is left but it is reactive and hugely problematic." [39, p. 49]. It is unlikely to have a culture of compliance unless you have a culture of ethics supporting it. Di Mento (1998, p. 73) phrased it as such: "No enforcement strategy, when considered alone, universally motivates the corporation to behave".

In all of this, the corporations themselves have an important role to play by presenting good and best practices which can serve as an incentive for their competitors. Corporations have a responsibility to prove to society that they are worthy of their trust and should cultivate this by demonstrating that CER is more than a paper programme [37]. We can categorize this as a 'responsibilization' strategy [12], which relates to a basic sociological truth that the most important processes producing order and conformity are mainstream social processes, located within the institutions of civil society and not the uncertain threat of legal sanctions. Examples of this are allowing the industry to regulate itself [2] or co-operating with various stakeholders when establishing control institutions. Possible strategies are

¹³ The relative health of the corporation and the economy, the level of competition.

¹⁴ Advantages of self-regulation lie in its proximity, flexibility and ability to generate a higher level of compliance in which competitors might 'police' each other. Disadvantages are interest conflicts, inadequate sanctions, monitoring and enforcement and the global competition. Advantages of mandatory standards are credibility, legal certainty, standardization, comparability, the disclosure of negative performance and full reports and the avoidance of free-riders. Mandatory standards have the disadvantage of being inflexible, lack incentives for innovation, pose constraints on efficiency and competitiveness and undermine tailored response.

information, self-regulation, incentives, environmental management systems and environmental reporting (e.g. European Pollutant Emission Register¹⁵; European Eco-label¹⁶; Eco-Management and Audit Scheme) [16, 15]. This however assumes a basic degree of trust in organisations and their functioning [45], which is an idea that is countered by many critics of the capitalist system [44]. Although business ethics (CER/CSR) might be considered to be an oxymoron by some, we believe it holds potential in dealing with corporate (environmentally) harmful activities. Nevertheless, we should not deny profitability is key to the functioning of organizations. Being publicly traded, corporations need to live up to expectations of stockholders, causing a potential criminogenic character of their activities.

One of the weaknesses of self-regulation is a lack of control and therefore there is also an important role for governments to play. It is their responsibility to make repressive approaches to corporate environmental crime live up to their full potential and to prove value would be lost in dismissing this approach. This means the governments have a responsibility to overcome the difficulties faced in the criminalization (e.g. crime vs. harm), investigation (e.g. unidentified victims¹⁷), prosecution (e.g. burden of proof) and punishment (cf. corporate liability, limited liability) of these offences [6, 22]. The intergovernmental and supranational level (e.g. EU) has an important role to play in establishing compatible global standards for CER which should go hand in hand with raising awareness. Several respondents mentioned this is likely to work for CER (rather than for CSR) because of the current 'hype' about environmental issues but also because environmental performance is easy to quantify and comes with a clear business case. Global standards are needed to overcome the problems faced today due to differing standards on environmental issues internationally and even within the EU. The European Union realised there was a deficiency in the punishment of environmental offences and tried to answer to this problem by means of creating minimum standards for definitions and sanctions of environmental harm.^{18, 19} However, there is still a long way to go in order to have an effective and efficient sanctioning across the EU.²⁰

¹⁵ Decision 2000/479/EC of 17 July 2000 on the implementation of a European Pollutant Emission Register (EPER) according to Article 15 of Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC)

¹⁶ Regulation 1980/2000 of 17 July 2000 on a revised Community eco-label scheme.

¹⁷ In literature these crimes are often called 'victimless', but the term 'unknown' is preferred over 'victimless', because they are not victimless in se.

¹⁸ Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law.

¹⁹ MEMO 05/437 of 23 November 2005 Commission welcomes Court of Justice judgement recognising the exclusive competence of the Community to adopt criminal law measures to ensure the effectiveness of Community law.

²⁰ Several Member States were reluctant to give the EU a say over such a sensitive issue as criminal sanctions. Nevertheless, the first crucial steps are taken to do away 'safe havens' for environmental crime with the adoption of the Directive on October 24th 2008.

(IP/07/166 of 9 February 2007 Commission strengthens environmental protection through criminal law, abolishing "safe havens" of environmental crime.; European Parliament legislative resolution of 21 May 2008 on the proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law (adopted on October 24th 2008) [http://www.europarl.europa.eu/RegData/seance_pleniere/textes_consolides/2007/0022/EP-PE_TC1-COD\(2007\)0022_EN.pdf](http://www.europarl.europa.eu/RegData/seance_pleniere/textes_consolides/2007/0022/EP-PE_TC1-COD(2007)0022_EN.pdf))

Criminology offered an interesting frame of analysis as a starting point for the analysis of corporate environmental responsibility. We note the perspectives on CER reside on different continuums: (1) from being beyond (excluding) to going beyond (including) all notions of criminality; (2) from being ethical to being profitable; and (3) from voluntary to obligatory. The exact position on the continuums is seemingly dependent on whether it concerns either a practical or a principal stance. To conclude this article we would like to indicate that it is equally important to turn the question around and see how CER can contribute to criminology.

CER as a challenge for criminology

Even though criminology is concerned with various aspects and dimensions of harm, up until today neither corporate nor environmental crime are majority interests in mainstream criminological thought. We believe looking beyond traditional notions and broadening the scope to harm remains a challenge to the concept of crime and a challenge to criminology [30, 29].

On the one hand, criminology has generally focused on the individual and mostly failed to address the organizational or corporate level [44]. Starting with Sutherland, a number of criminologists have studied corporate crime. Some of them [41, 28] looked for motivations and rationalizations offered at the corporate level (criminogenic corporation), while others [4, 32, 38] expressed a more radical claim about the capitalist system being criminogenic in se. Nevertheless, on the whole criminologists focus on the conventional offender and conventional crime. Therefore, we might say corporate crime remains a challenge to the concept of crime as well as to criminology [29].

On the other hand, criminology has also generally kept rather silent about environmental issues [17]. Despite their significance and harmfulness, environmental crimes have not yet been fully acknowledged as a field of study in criminology [40]. Some studies have touched upon the shores of greening criminology by exploring dimensions of environmental damage, crime and victimization or environmental regulation (e.g. [10, 14, 36]). At times, environmental crime and criminality is thus acknowledged as a dimension of criminology (e.g. [9]), but it is still absent in some exemplary criminological books such as the Oxford Handbook of Criminology [25]. This is in contrast to the attention they have received in international organisations like the UN, EU and many NGO's. The challenge to create a 'green' criminology and to acknowledge crimes against the environment as a field of study in criminology has only been taken up in the last two decades. Green criminology suggests to move beyond acknowledging the existence of these environmental problems and to reach out for solutions and responses [24, 17, 40, 50]. It proposes to reconsider traditional notions of crimes, offences and harmful behaviour and to examine the role that society, corporations and governments play in generating environmental degradation [6]. South [40] believes green criminology is the answer to new needs arising in a society where an environmental agenda is of increasing importance. In order to address the environmental problems of today and tomorrow, we believe criminology should move beyond the traditional knowledge frameworks of defining crime and criminologists ought to examine corporate environmental issues in ways that incorporate the growing complexity and multidimensionality of our society. We believe it is important to apply the existing

knowledge framework of criminology and add new dimensions [40]. Therefore, any criminological analysis of corporate environmentally harmful activities should keep an open and mutually respected dialogue with both ethic rationale and economic motive. Both perspectives should be incorporated in any response to corporate environmental crime/harm related problems—or whatever concept is agreed upon (cf. criminalization)—because ultimately these perceptions about the motivations directly influence what determines an appropriate approach. As such, we recognise the continuous interaction with other fields of interest. We believe this is especially tangible in the discussion on CER, as illustrated above. This will allow a more thorough understanding of all the surroundings and consequently allows to present a broader scope on the studied phenomenon.

Acknowledgements The author wishes to thank the representatives of Directorate General Directorate General for the Environment, Directorate General Employment, Social Affairs and Equal Opportunities, Business Europe, International Trade Union Confederation, Friends of the Earth Europe and European Coalition for Corporate Justice for their cooperation in this research. She also wishes to thank Prof. Paul Ponsaers and the reviewers for providing comments on earlier versions of this article.

References

1. Brady, H., Collier, D., & Seawright, J. (2006). Toward a pluralistic vision of methodology. *Political Analysis*, 14(3), 353–368. doi:10.1093/pan/mpj021.
2. Braithwaite, J., & Fisse, B. (1987). Self-regulation and the control of corporate crime. In C. Shearing & P. Stenning (Eds.), *Private policing* (pp. 221–246). Newbury Park: Sage.
3. Braithwaite, J. (1985). *To punish or the persuade*. Albany: University of New York Press.
4. Box, S. (1983). *Power, crime & mystification*. London: Tavistock.
5. Campbell, J. (2007). Why would corporations behave in socially responsible ways? An institutional theory of corporate social responsibility. *Academy of Management Review*, 32(3), 946–967.
6. Carrabine, E., Iganski, P., Lee, M., Plummer, K., & South, N. (1996). *Criminology: A sociological introduction*. London: Routledge.
7. Clinard, M., & Yeager, P. (1980). *Corporate crime*. New York: Free Press.
8. De Tavernier, J., & Draulans, V. (2002). Sorge für die Umwelt als Quintessenz öffentlicher Güter in einer Dynamik der Globalisierung. In G. Virt (Ed.), *Der Globalisierungsprozess. Facetten einder Dynamik aus ethischer und theologischer Perspektive (Studien zur theologischen Ethik 95)* (pp. 152–178). Freiburg: Herder.
9. Edwards, S., Edwards, T., & Fields, C. (eds). (1996). *Environmental crime and criminality: Theoretical and practical issues*. London: Garland Publishing.
10. Franklin, N. (1990). Environmental pollution control: the limits of criminal law. *Current Issues in Criminal Justice*, 81–94.
11. Friedman, M. (2007). The social responsibility of business is to increase its profits. In J. Ciulla, C. Martin & R. Solomon (Eds.), *Honest work: A business ethics reader* (pp. 241–245). New York: Oxford University Press.
12. Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Oxford: Oxford University Press.
13. Glasbeek, H. (2002). *Wealth by stealth*. Toronto: Between the Lines Press.
14. Gunningham, N., Norberry, J., & McKillop, S. (eds). (1995). *AIC conference proceedings: Environmental crime*. Canberra: Australian Institute of Criminology.
15. Grabosky, P., & Gant, F. (2000). *Improving environmental performance, preventing environmental crime*. Canberra: Australian Institute of Criminology Research and Public Policy Series.
16. Haines, F. (1997). *Corporate regulation: Beyond 'punish or persuade'*. Oxford: Clarendon.
17. Halsey, M. (2004). Against green criminology. *The British Journal of Criminology*, 44(6), 833–853. doi:10.1093/bjc/azh068.
18. Halsey, M., & White, R. (1998). Crime, ecophilosophy and environmental harm. *Theoretical Criminology*, 2(3), 345–371. doi:10.1177/1362480698002003003.

19. Herzog, T. (1996). *Research methods in the social sciences*. New York: Harper Collins College Publishers.
20. Holme, R., & Watts, P. (2000). *Corporate social responsibility: Making good business sense*. Geneva: World Business Council for Sustainable Development.
21. Huisman, W. (2001). *Tussen winst en moraal: Achtergronden van regelnaleving en regelovertreding door ondernemingen*. Den Haag: Boom Juridische Uitgevers.
22. Huisman, W., & Niemeijer, E. (1999). Organisatiecriminaliteit. Naar een aanpak op basis van inzicht. *Justitiële Verkenningen*, 2, 8–34.
23. Jenkins, R. (2001). *Corporate codes of conduct: self-regulation in a global economy*. Geneva: United Nations Research Institute for Social Development.
24. Lynch, M., & Stresky, P. (2003). The meaning of green: contrasting criminological perspectives. *Theoretical Criminology*, 7(2), 217–238. doi:10.1177/1362480603007002414.
25. Maguire, M., Morgan, R., & Reiner, R. (2002). *The Oxford handbook of criminology*. New York: Oxford University Press.
26. Mazurkiewicz, P. (2004). *Corporate environmental responsibility: Is a common CSR framework possible?* Paper presented at the May 2004 IAIA Conference, Vancouver. Available via <http://siteresources.worldbank.org/EXTDEVCOMMENG/Resources/csrframework.pdf> Cited 24 December 2006.
27. McLaughlin, E., & Muncie, J. (2006). *The sage dictionary of criminology* (2nd ed.). London: Sage.
28. Merton, R. (1938). Social structure and anomie. *American Sociological Review*, 3, 672–682. doi:10.2307/2084686.
29. Minkes, J., & Minkes, L. (eds). (2008). *Corporate and white-collar crime*. London: Sage.
30. Nelken, D. (2007). White-collar and corporate crime. In M. Maguire, R. Morgan & R. Reiner (Eds.), *Oxford handbook of criminology*. Oxford: Oxford University Press.
31. Paton, B. (1999). *Voluntary environmental initiatives and sustainable industry*, California: Department of Environmental Studies.
32. Pearce, F. (1976). *Crimes of the powerful*. London: Pluto Press.
33. Ponsaers, P., & Hoogenboom, B. (2004). Het moeilijke spel van wortel en stok—Organisatiecriminaliteit en handhaving-strategieën van bijzondere inspectie- en opsporingsdiensten. *Tijdschrift voor Criminologie*, 46(2), 165–181.
34. Punch, M. (1996). *Dirty business. Exploring corporate misconduct, analysis and cases*. London: Sage.
35. Schwendinger, H., & Schwendinger, J. (1975). Defenders of order or guardians of human rights? In I. Taylor, P. Walton & J. Young (Eds.), *Critical criminology* (pp. 113–146). London: Routledge.
36. Seis, M. (1996). A native American criminology of environmental crime. In S. Edwards, T. Edwards & C. Fields (Eds.), *Environmental crime and criminality: Theoretical and practical issues* (pp. 121–146). London: Garland.
37. Shover, N. (2008). Zelfregulering door ondernemingen. Ontwikkeling, beoordeling en bange voorgevoelens. *Tijdschrift voor Criminologie*, 50(2), 169–181.
38. Slapper, G., & Tombs, S. (1999). *Corporate crime*. Essex: Pearson Education Limited.
39. Snider, L. (2008). Corporate Economic Crimes. In J. Minkes & L. Minkes (Eds.), *Corporate and white-collar crime* (pp. 39–60). London: Sage.
40. South, S. (1998). A green field for criminology: a proposal for a perspective. *Theoretical Criminology*, 2(2), 211–233. doi:10.1177/1362480698002002004.
41. Sutherland, E. (1940). White collar criminality. *American Sociological Review*, 5(1), 1–12. doi:10.2307/2083937.
42. Sutherland, E. (1961). *White collar crime*. New York: Holt, Rinehart and Winston.
43. Sutherland, E. (1983). *White collar crime: The uncut version*. New Haven: Yale University Press.
44. Tombs, S. (2008). Corporations and health and safety. In J. Minkes & L. Minkes (Eds.), *Corporate and white-collar crime* (pp. 18–38). London: Sage.
45. Van De Bunt, H., & Huisman, W. (1999). Het kan ook anders: overwegingen bij de keuze tussen klassiek of alternatief reguleren op milieuterrein. *Justitiële Verkenningen*, 28(2), 29–43.
46. Van De Bunt, H., & Huisman, W. (2004). Organisatiecriminaliteit. *Tijdschrift voor Criminologie*, 46(2), 106–120.
47. Van Den Anker, M. (1999). *Wie betaalt, bepaalt. Over intermediaire organisaties, milieucriminaliteit, organisatiecriminaliteit and integriteit in het complexe milieuveld*. Den Haag: Elsevier bedrijfsinformatie.
48. Van Dijk, J., Sagel-Grande, H., & Toornvliet, L. (1996). *Actuele criminologie*. Lelystad: Koninklijke Vermande.
49. Vogel, D. (2005). *The market for virtue: The potential and limits of corporate social responsibility*. Washington D.C: Brookings Institution.
50. White, R. (2003). Environmental issues and the criminological imagination. *Theoretical Criminology*, 7(4), 483–506. doi:10.1177/13624806030074005.