1993/28. The role of criminal law in the protection of the environment

The Economic and Social Council,

Recalling its resolution 1992/22 of 30 July 1992, in section VI of which it determined that the work of the Commission on Crime Prevention and Criminal Justice should be guided by three priority themes, one of which included the role of criminal law in the protection of the environment, and in section III of which it invited Member States to establish reliable and effective channels of communication among themselves and with the United Nations crime prevention and criminal justice programme, including the regional institutes affiliated with the United Nations,

Recalling also General Assembly resolution 45/121 of 14 December 1990 on the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Assembly welcomed the instruments and resolutions adopted by the Congress, *inter alia*, the resolution on the role of criminal law in the protection of nature and the environment,[85]

Recalling further General Assembly resolution 46/152 of 18 December 1991, in which the Assembly called for strengthening regional and international cooperation in combating transnational crime,

Noting with appreciation the collaboration of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, and the Max Planck Institute for Foreign and International Criminal Law, in organizing the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, held at Lauchhammer, Germany, from 25 to 29 April 1992,

Noting also with appreciation the ongoing study on environmental crime, sanctioning strategies and sustainable development, undertaken jointly by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology,

1. *Takes note* of the conclusions of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, contained in the annex to the present resolution;

2. *Requests* the Secretary-General to consider the possibility of undertaking activities in the field of environmental crime in the United Nations crime prevention and criminal justice programme, in particular to include environmental crime as an issue for technical cooperation and, for that purpose, to establish, with input from Member States, a roster of experts from all regions in the field of environmental crime;

3. *Requests* the United Nations Interregional Crime and Justice Research Institute and the regional or associate institutes cooperating with the United Nations in the field of crime prevention and criminal justice to assist the Secretary-General in this endeavour by sharing their expertise;

4. *Calls upon* Member States and the bodies concerned to continue their efforts to protect nature and the environment using, in addition to measures provided by administrative law and liability under civil law, measures in the field of national criminal law, and to provide requesting Member States with technical cooperation in the field of environmental crime.

43rd plenary meeting
27 July 1993

ANNEX

Conclusions of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, held at Lauchhammer, Germany, from 25 to 29 April 1992

1. The existing state of the environment is serious and calls for efficient countermeasures throughout Europe at the national, supranational and international levels. The environment as a whole and its component elements must be protected in such a way that:

(*a*) Existing damage will be eliminated or at least reduced (including restoration);

(*b*) Harm will be prevented;

(*c*) Risk will be minimized.

2. There should be enhanced recognition of environmental interests as special or particular legal interests. The necessity of using water, air, the soil and other natural elements to a certain extent, however, precludes a prohibition on every action affecting those environmental interests.

3. Environmental protection requires an integrated approach employing a variety of instruments for influencing conduct and reducing burdens on the environment, ranging from public participation to the use of sanctions. Regulatory environmental administrative law still remains at the heart of state instruments for the protection of the environment. Other methods of environmental protection, for example, economic incentives or the use of civil sanctions, will be important for many aspects of environmental protection. In addition, criminal law should play a flanking and supporting and, where appropriate, independent role.

4. The goal in using the threat of sanctions is not only to back up the enforcement of administrative rules, but also to protect environmental interests as such (qualifying them as penally-protected interests). Here, too, criminal law can have a general and special preventive effect and may, by its moral stigma, heighten environmental awareness.

5. Substantive criminal law can play an autonomous and independent role in cases of serious attacks on the environment, including the endangerment of public health or of life or of serious bodily harm. Above and beyond this, the legislator cannot develop behavioural criteria under criminal law which are more stringent than those under administrative law. In that respect, environmental criminal law is closely linked to and dependent upon administrative law, which limits the effect of the former; nevertheless, this does not provide any reason for it not to be used in this context. That limitation is also dependent upon what differences exist in the approach and the means of the administration and the judiciary in the role which they play in protecting the environment. To reduce the risk of non-uniform application, emphasis should be placed on links with administrative regulations by comparison with links with administrative decisions.

6. Environmental criminal law should encompass all areas of the environment. It is up to the national legislators whether in this respect offences are developed which refer to the environment as a whole or the specific components thereof. The legislator should develop at least a common or similar offence in relation to water, air and soil pollution.

7. Offences should be differentiated according to their seriousness (with, as a consequence, a different range of sanctions). One factor is the division according to the state of *mens rea* between intentional and reckless or negligent acts. Another emerging possibility is the use of the concept of endangerment in addition to the traditional use of so-called result crimes in continental legislation.

8. It is not sufficient to use criminal law only to combat damage to other violations of environmental entities. Serious infringements of safety regulations, of other operator duties or of the administrator's preventive control interests can vastly increase the risk that hazards or damage will incur. Therefore it is justifiable to invoke criminal law to deal with the inappropriate handling of hazardous substances, goods and plants or the possible impairment of control interests. A distinction may be drawn between offences which require that the act:

(*a*) Create a concrete or actual danger to environmental objects (so-called concrete endangerment offence);

(*b*) Occur in a situation with a likelihood of danger (see the penal provision in the Convention on the Physical Protection of Nuclear Material;[88] so-called potential endangerment offence);

(*c*) Cover a mode of behaviour which is typically dangerous for the environment (e.g., operation without the necessary permit of a plant classified in a list as typically dangerous; violation of an order prohibiting the running of a plant; illegal disposal or export of dangerous waste; so-called abstract endangerment offence).

9. Minor offences (especially non-severe violations of administrative rules) could, without a loss of efficiency, be sanctioned only by fines or, in countries where a distinction exists between criminal and administrative punitive sanctions, be classified as administrative violations (punishable by a non-criminal fine). In that respect the scope of criminal law could even be restricted.

10. In the context of moves towards the introduction of alternative or additional measures under criminal law in general, in comparison with the traditional use of fines and imprisonment, consideration should also be given to the possibility of using other measures (such as restoration of the status quo; imposition of obligations to improve the state of the environment; confiscation of proceeds from crime). The decision on such a variety of measures may be dependent on the use of those instruments by the administration and on their effect.

11. Support should be given to the extension of the idea of imposing (criminal or non-criminal) fines on corporations (or possibly even other measures) in Europe.

12. When using criminal law and creating new offences in the area of environmental protection, consideration should be given to the need for enforcement resources. In countries where prosecution is not undertaken by the administrative agencies themselves, the application (and effect) of environmental criminal law by the prosecuting authority and judiciary is to a great extent dependent on the use of the knowledge and experience of those agencies and upon their cooperation. In order to reduce conflicts of interests and to enhance the possibility of clearing up cases, legal rules or administrative guidelines for reporting offences by administrative agencies should be developed. Cooperation and coordination between the administrative and criminal agencies is essential. Special training and sufficient staffing should be provided. Further studies on improved measures for enforcement of existing environmental protection legislation should be undertaken.

13. The environment must be protected not only at the national but also at the international level. In this respect criminal law for the protection of the environment should also be developed at the international level.

14. Improvements should be made in the options available for prosecuting extraterritorial or transboundary criminal offences. In that respect:

(*a*) It should be possible to take jurisdiction in all countries over offences of a transboundary nature. Positive conflicts of jurisdiction should be solved. The problem of dealing under the criminal law with acts permitted in one State, and which produce harmful effects in another State where such acts are prohibited, should be examined in the light of the development of international and/or supranational law, including the use of bilateral and multilateral conventions or European Community regulations to develop common environmental standards;

(*b*) The extension of extraterritorial jurisdiction or the possible use or expansion of extradition should be considered.

15. European standards of environmental substantive criminal law should be developed. Following the encouragement for the harmonization of regional legislation given by the adoption of the resolution entitled "The role of criminal law in the protection of nature and the environment" by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[85] which was welcomed by the General Assembly at its forty-fifth session, the efforts of the Council of Europe in elaborating a convention and a recommendation on environmental offences should be supported. Such instruments should reflect the basic ideas expressed in paragraphs 6, 8 and 10 above. This will improve international cooperation and reduce the danger of dislocation through the evasion of stricter enforcement in one country by moving to another country.

16. European conventions applicable to international cooperation in the prosecution of offences (e.g., by extradition, mutual assistance, transfer of proceedings) should be adhered to and utilized.