

1994/15. The role of criminal law in the protection of the environment

The Economic and Social Council,

Recalling 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 Eighth Congress,³³ including the resolution on the role of criminal law in the protection of nature and the environment,³⁴

Recalling also General Assembly resolution 46/152 of 18 December 1991 on the creation of an effective United Nations crime prevention and criminal justice programme, in the annex to which the Assembly called for the strengthening of regional and international cooperation in combating transnational crime,

Recalling its resolution 1993/28 of 27 July 1993, in which it took 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, held at Lauchhammer, Germany, from 25 to 29 April 1992, contained in the annex to that resolution,

³³ See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I.

³⁴ *Ibid.*, sect. C., resolution 2.

Recalling also its resolution 1993/32 of 27 July 1993 on preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which it approved the provisional agenda for the Ninth Congress, which included an item entitled "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation", and endorsed the programme of work for the Ninth Congress, including the holding of six workshops, one of them on the topic "Environmental protection at the national and international levels: potential and limits of criminal justice",

Recalling further the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, in which the Conference recognized, *inter alia*, that illicit dumping of toxic and dangerous substances and wastes potentially constituted a serious threat to the human rights to life and health of everyone,³⁵

Taking note of the recommendations of the regional preparatory meetings for the Ninth Congress relating to the protection of the environment through criminal law,³⁶

Noting with appreciation the work on the topic "Environmental protection at the national and international levels: potential and limits of criminal justice" being undertaken by the United Nations Interregional Crime and Justice Research Institute, in view of the workshop to be held on that topic at the Ninth Congress,

Recalling the report of the International Law Commission on the work of its forty-third session,³⁷ in particular article 26 of the draft Code of Crimes Against the Peace and Security of Mankind on wilful and severe damage to the environment, and article 19, on international crimes and delicts, of the draft articles on State responsibility,

Taking note of the recommendation of the colloquium of the International Association of Penal Law, held at Ottawa in November 1992, to be considered for adoption by the fifteenth International Congress on Penal Law, to be held at Rio de Janeiro, Brazil, in 1994,

Noting with appreciation the work of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna from 7 to 10 December 1993,

Taking note of the report of the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment, Internationally, Domestically and Regionally, held at Portland, Oregon, United States of America, from 19 to 23 March 1994,³⁸ in particular the recommendations on the terms of a possible convention on transnational offences against the environment, the possible draft domestic criminal statute addressing environmental issues, and the recommendations on a possible structure and operation of a regional enforcement regime,

Convinced that the environmental situation in developed countries, as well as in developing countries, is the cause of increasingly serious concern about damage to the environment and its constituent elements, including water, soil, air, atmosphere, and the living species, including plants, animals and humans, and that it requires comprehensive and integrated approaches to the use of countermeasures, as well as preventive measures, at the national, regional and international levels,

1. Takes note of the recommendations concerning the role of criminal law in protecting the environment, made by the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, contained in the annex to the present resolution;

2. Requests that the report of the International Meeting of Experts on the Use of Criminal Sanctions in the Protection of the Environment, Internationally, Domestically and Regionally, be issued under the auspices of the United Nations and included, together with the report of the Ad Hoc Expert Group, in the documentation to be prepared for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

3. Requests the Secretary-General to take into consideration the conclusions of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective and the recommendations of the Ad Hoc Expert Group and of the International Meeting of Experts when developing further activities in the United Nations crime prevention and criminal justice programme;

4. Requests the United Nations Environment Programme and other United Nations organizations and bodies to take into account the present resolution in their deliberations concerning environmental protection, and to coordinate any relevant follow-up activities related to criminal law with the Commission on Crime Prevention and Criminal Justice;

5. Invites Member States and relevant bodies to continue their efforts to protect nature and the environment by developing laws and fostering legal and technical cooperation and, when developing criminal laws related to the protection of the environment, to consider the recommendations contained in the annex to the present resolution.

43rd plenary meeting
25 July 1994

ANNEX

Recommendations concerning the role of criminal law in protecting the environment

Member States should consider adopting the following recommendations concerning the role of criminal law in protecting the environment:

(a) Specific environmental legislation should be further developed on the basis of generally recognized principles, such as the "polluter pays" principle described in principle 16 and the "precautionary approach" described in principle 15 of the Rio Declaration on Environment and Development, adopted by the

³⁵ A/CONF.157/24 (Part I), chap. III, sect. I, para. 11.

³⁶ See A/CONF.169/RPM.1/Rev.1 and Corr.1, A/CONF.169/RPM.2, A/CONF.169/RPM.3 and Corr.1 and A/CONF.169/RPM.4 and 5.

³⁷ See *Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10)*.

³⁸ E/CN.15/1994/CRP.4.

United Nations Conference on Environment and Development,³⁹ giving due and balanced consideration to the need to protect the environment in other parts of the law, and in the context of improving political and social conditions for a responsible environmental policy;

(b) National and supranational authorities should be provided with a wide array of measures, remedies and sanctions, within their constitutional and legal frameworks and consistent with the fundamental principles of criminal law, in order to ensure compliance with environmental protection laws. These should include regulatory and licensing powers, incentives, administrative enforcement mechanisms, and punitive administrative, civil and criminal sanctions for impairing or endangering the environment. They should also include provisions for the forfeiture of profits and proceeds of crime, and of property used or employed in the commission of crime, such as vessels, vehicles, tools, equipment and buildings;

(c) Environmental criminal law should be aimed at promoting all the important components of the environment, including human beings and other living species. It should be directed, in particular, to the regulation, control and, where necessary, the complete prohibition of hazardous activities, including the establishment and operation of hazardous installations and the illegal import, export, movement and disposal of hazardous materials and wastes;

(d) Substantive environmental criminal law should formulate at least certain core criminal offences. These core offences, which could be autonomous and independent of environmental regulatory laws, should include deliberate, reckless or negligent assaults on the environment that cause or create imminent risks of serious damage, harm or injury. In addition, criminal sanctions should be extended to deliberate, reckless or negligent violations of administrative rules where there is a likelihood of serious harm or danger to the environment. In developing such criminal offences, the field guide contained in the annex to the report prepared by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology entitled *Environmental Crime, Sanctioning Strategies and Sustainable Development*⁴⁰ should be taken into consideration;

(e) Subject to relevant international conventions, States should seriously consider enacting legislation prohibiting and sanctioning the export of products that have been banned from domestic use because of their deleterious impact on the environment and human health. Furthermore, Governments might consider the idea of banning the production and import of specific dangerous materials unless sufficient precautionary measures can be taken in respect of their use, treatment or disposal in their countries;

(f) Environmental crimes should cover intentional as well as reckless acts. When serious harm or actual danger of harm has been caused or created, however, negligent conduct should also be a crime if the persons responsible have significantly departed from the care and skill expected of them in the pursuit of their activities. In relatively minor cases, the imposition of fines, including administratively or judicially imposed non-criminal fines, and other non-custodial alternatives should be sufficient;

(g) Support should be given to the extension of the idea of imposing criminal or non-criminal fines or other measures on corporations in jurisdictions in which corporate criminal liability is not currently recognized in the legal systems;

(h) When using criminal law in environmental protection and creating new environmental crimes, consideration should be given

to the need for law enforcement resources. Cooperation and coordination between criminal justice agencies and administrative agencies should be promoted, especially in jurisdictions where prosecutions are undertaken by criminal justice agencies. Furthermore, the judiciary should be sensitized to the seriousness of environmental offences and their consequences. Adequate staffing, special training and equipment should be provided to criminal justice agencies;

(i) In designing environmental law enforcement strategies, the legislator should consider in the framework of the constitution and the basic principles of the legal system, the rights of identifiable victims, victim assistance, facilitation of redress and monetary compensation, by removing legal barriers such as standing to sue, participation in proceedings and actions by citizens, including class action suits and citizen suits;

(j) In accordance with various provisions of Agenda 21, adopted by the United Nations Conference on Environment and Development,⁴¹ such as those contained in chapters 8, 38 and 39 thereof, collaboration with non-governmental organizations in efforts aimed at the prevention of environmental crimes and the effective redress of damage to health and the environment should be encouraged. Examples of such efforts are the ombudsman-like functions and alternative methods for resolving disputes currently being developed by the Earth Council, a non-governmental organization referred to in chapter 38 of Agenda 21;

(k) On the basis of proposals put forward by the International Law Commission and the discussions at the United Nations Conference on Environment and Development, Member States should consider acknowledging the most serious forms of environmental crimes in an international convention;

(l) States should be encouraged to contribute to the codification work of the International Law Commission, in particular in further refining the concept of international crimes and delicts in article 19 of the draft articles on State responsibility and the concept of environmental crimes in article 26 of the draft Code of Crimes against the Peace and Security of Mankind;

(m) Environmental offences should be framed in such a manner as to cover transboundary and transnational situations. On the one hand, the principle of ubiquity should be taken into consideration in the application of the principle of territoriality. On the other hand, the possibilities of prosecution of crimes of an extraterritorial nature might be extended by applying the principle of nationality, the principle of "extradite or prosecute" or, for example in cases of generally acknowledged international crimes, even the principle of universality;

(n) The use of legal instruments of international cooperation, such as those on extradition, mutual legal assistance and/or transfer of proceedings, should be supported and expanded. Environmental crimes of particular gravity or importance should become extraditable offences;

(o) In order to facilitate the prosecution of international crimes, in particular environmental crimes, States should consider the viability of establishing an international criminal court. Regional initiatives for the establishment of an international court for the prosecution of environmental crimes should be welcomed;

(p) States should consider, at least at the regional level, a minimum harmonization of environmental offences as a basis for international cooperation. In this respect, efforts to promote such harmonization, such as those of the Council of Europe and the Central American States, should be supported;

³⁹ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I, Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

⁴⁰ UNICRI 50.

⁴¹ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I, Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II.

(g) International cooperation in the enforcement of environmental laws should be fostered by the provision of technical assistance bilaterally, multilaterally and through relevant international agencies, such as the Commission on Crime Prevention and Criminal Justice, the network of institutes of the United Nations crime prevention and criminal justice programme, and similar regional institutes. Further research in this area, including the nature and extent of polluting activities, sanctioning strategies and the appropriate mix of measures in particular situations, should be encouraged.
