Internacional Master in Sustainable Development and CR

Module: Environmental Protection

ENVIRONMENTAL LIABILITY

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1. BASICS OF LIABILITY

1.1. Responsibility-Liability

Before introducing the subject of environmental liability it is necessary to understand some
basics about liability, and what are we referring to when we use this word.

In Spanish there is just one word: “responsabilidad” and it refers to a broad array of meanings, but in English there is a difference between “responsibility” and “liability”.

Responsibility refers to ideas such as duty or care: if you have responsibility for something or someone or if they are your responsibility, it is your job or duty to deal with them and to take decisions relating to them. Another meaning is, for instance, if you accept responsibility for something that has happened, you agree that you were to blame for it or you caused it. Other example is the term Corporate Social Responsibility, which is closer to the meaning “care” and doesn`t have anything to do with liability.

On the other hand, liability is related to the fact of being legally responsible. That is, if someone is liable for something, such as a debt, he/she is legally responsible for it. Then, you can be responsible for something but not liable for it, e.g. a child could be responsible for some actions but not liable for them.

In this lesson we are going to deal with environmental liability, which will be referring to the fact of being liable for doing something against the environment or that breaches environmental law.

Throughout the text both terms will be used with no distinction. It is also important to point out that usually when referring to environmental liability, legal texts are referring to civil liability. That is, liability that implies compensation. In other words, an obligation of one party to another, usually to compensate financially.

1.2. Types of liability

We can differentiate between 3 types of liability:

Case 1.- You commit an action that breaches the law (national laws, international treaties, European Community legal binding instruments). This may imply the application of a sanction. (e.g. to operate, without a permit, an activity that requires one).

Case 2.- You commit an action that breaches the law, or that doesn’t breach any, and causes damage. This may imply payment or compensation for the damage.

Case 3.- You commit an action that breaches the law and the action is considered a crime. This may imply the application of a sanction and even privation of liberty.

In most cases (mainly in countries with latin law basis or continental countries) the first case is called "administrative liability" (we work here with administrative regimes and administrative sanctions); the second, is called "civil liability", (and we work here with the Civil Code and with any specific environmental law that covers this type of liability); and the third is "criminal liability" (and we work here with the Penal Code and Criminal Laws).

In many countries, responsibility for harm to the environment is not regulated by one single piece of legislation. Differences exist between countries with continental systems and countries with common law systems.

Continental systems have clearly defined enforcement regimes for the protection of the environment: criminal, administrative and civil. In each of these systems enforcement measures exist for breaches of environmental legislation. In Spain, for instance, as the 1978 Constitution states, there are three areas of law under which responsibility for harm to the environment can be allocated: administrative law, private/civil law and criminal law.

In the common law countries, such as Ireland and UK, the situation is different. Both have systems where the protection of the environment is mainly ensured through criminal law. Indeed, the main breaches of environmental law are criminal offences and furthermore, breaches of administrative measures are normally regarded as crimes. Nonetheless, administrative measures could be found in both the UK and Ireland. These measures were named by the experts "administrative tools" or "regulatory measures", because these systems do not provide administrative sanctions as such.

1.3. Liability under Administrative, Civil and Criminal Systems

Administrative enforcement systems

As mentioned before, enforcement measures are intended to ensure compliance with the legislation, either by preventing or by repressing certain behaviour which is not compliant with the legislation, and thus they aim to re-establish legality. These measures have an administrative character when the authority imposing them is an administrative body or when the legislator so decides.

The administrative judicial framework and procedure is the area where more differences have been found among the countries.

Civil enforcement systems

Civil liability is often conceived as a mechanism through which harm caused in the context of legal or illegal activity can be compensated.

Generally speaking, civil liability is aimed at the compensation of a private party for the damages or injuries caused to persons or property, and therefore to protect private interests, whereas criminal and administrative laws seek to protect public inter-

ests. In many cases, this protection of private interests through civil law can include damages caused to the environment, as long as the elements of the environment affected are part of an individual's property. This distinction between private and public interests may become blurred when we talk about compensation for damages caused to the common environment. In fact, the trend opened by different legislation is covering also, environmental damage. That is, damage caused to common environment that implies a public interest.

Criminal enforcement systems

Here the illegal action is considered a crime and the applying rules are different. For example, the procedure and the fact that criminal sanctions can include imprisonment and are registered in the personal record of the person.

The relationship between civil, administrative and criminal procedures

Measures with a compensatory or precautionary nature adopted under civil law do not preclude the application of other administrative or criminal sanctions and measures. In fact, civil proceedings can traditionally run parallel to administrative and criminal ones. The most common situation in continental countries is that the party entitled to claim compensation will bring its civil action to the criminal prosecution and both causes of action will be heard by the criminal court. This possibility does not exist in common law countries.

On the other hand, a same polluter may be forced to face different liability reclamations from different affected parties. For example, the administration may pursue a company for the breach of their emissions licence; the owner of land adjacent to the polluting plant could claim civil liability against the same polluter for damages caused to his property and the polluting activity may have resulted in an environmental crime for which the company officers can be prosecuted.

THE RELATIONSHIP BETWEEN CRIMINAL AND ADMINISTRATIVE SYSTEMS

There are two obvious links between criminal and administrative law. The first is that in many cases committing a crime requires a breach of administrative legislation. The second is that in some countries criminal law is used to enforce administrative measures, in the sense that non-compliance with administrative enforcement measures is regarded as a crime (i.e. UK and Ireland).

Nonetheless, there are many differences between administrative and criminal sanctions:

- The bodies imposing the sanction and the proceedings are different. An administrative sanction will be imposed through an administrative procedure whereas the criminal sanction will be imposed through a criminal procedure (except in common law countries where there is not an specific and differentiate procedure to impose administrative sanctions).

- The persons liable may well differ. For instance, in certain countries legal persons are not liable for criminal cases whereas there is no such obstacle for the

liability of legal persons under administrative law.

- Broadly speaking, administrative and criminal sanctions are quite similar. In fact, the types of sanctions are normally the same with the exception of imprisonment. Nevertheless, one element that is often mentioned to differentiate criminal from administrative measures is that criminal sanctions produce effects by themselves. This means that criminal measures have an impact on the reputation of the person who has been convicted for a criminal offence. As a consequence the criminal sanctions are registered in the personal record of the person.

- The possibility of accumulating criminal and administrative sanctions depends on each country. For instance, accumulation of criminal and administrative sanctions is always possible in Greece, the Netherlands, Portugal and Sweden. On the contrary, accumulation is not possible in Austria, Germany, Spain and Italy. In the countries where accumulation is not possible, the administrative authority, in addition to its general obligation to notify the case to the prosecutor, must suspend the administrative procedure, and only when the criminal procedure has settled that no crime was committed, can it continue the administrative infringement procedure.

2. LIABILITY IN THE INTERNATIONAL ARENA

When referring to international liability there is a broad array of possibilities. Liability may be "international" when there is more than one country involved; when it depends on a fact with an international or transboundary dimension or when there is contravention of international law.

2.1. Difficulties to develop international environmental liability

In general terms, international liability is a difficult matter, but it gets even more difficult to find it in the environmental field. The main difficulties found to develop this kind of liability respond to different aspects:

- Technical and economic difficulties. Damages must be assessed and this is not an easy task. Also, they usually have great economic implications. For instance, black tides. They imply, amongst others, damages for the ecosystem, losses for the hotels, restaurants and fishermen.

- Legal and political difficulties. The great economic implications of this liability has lead the States to block any try to develop international law in this matter. This can be seen in the States's attitude towards liability. Here, we have to talk about 3 different issues: lobby, avoidance of reclamations and changing the arena.

Usually, States are not willing to introduce clauses of liability in international environmental treaties. They lobby against the incorporation of clauses of liability in the Conventions (i.e. London Convention on spills (1972) for the part of States that had been spilling radioactive waste in the sea). Furthermore, they even work for the approval of clauses of non-liability. An interesting case is the 1979 Geneva Convention on Long-range Transboundary Air Pollution which in a foot note established that "The present Convention does not contain a rule on State liability as to damage".

In addition, States maintain a clear tendency to avoid any reclamation through jurisdictional bodies. They have shown a persistent tendency to the auto-exclusion as active or passive subjects of international liability. Ultimately, they prefer the use of specific bodies created by the Conventions or the use of arbitrators or conciliators to the courts.

These two attitudes find an answer in a simple fact: the victim today could be the guilty tomorrow.

Changing the arena. The result of the lobby implies that instead of dealing with matters of liability at an international level, they are dealt on the ground of relations between private subjects. This means using national and international private law. The problem has been transferred from realm of international public law to that of international private law. In this sense, the international conventions have focused only in private or civil law. That means if a damage is caused at the international level it will be dealt by the competent national courts of justice. The call contained in different international documents to develop an International Law in Liability have been unheard and the solution is being limited to the civil law.

The international environmental law, born as a flexible law, was drawn as a law with no sanction. What it has been called “soft liability”.

2.2. Control of compliance with conventions

Apart from these difficulties regarding liability, it is important to clarify another matter. How do States proceed when there is an action that breaches the law? In other words, how States control compliance with what is established in the international conventions? International Conventions do include some mechanisms of control to make sure that what is said in them is done.

Usually, the control of this compliance is established in the same treaty, so the mechanisms to guarantee its application depend on what the States wanted to establish when they drafted and approved the final text. In general terms, and taking into consideration only International Environmental laws, the main techniques of control are:

- Information procedures. That is the obligation to declare or register certain activities (reporting systems). e.g. waste transport.

- “Licensing/permitting” procedures, which establish the need to obtain an authorization. e.g. permit for opening a chemical plant.

- Monitoring, assessment and follow-up procedures.

- Non-compliance procedures. These procedures want to test if the Parties of the Treaty are not complying with it. Many Conventions introduce clauses in this regards. Examples are the Montreal Protocol on Substances that Deplete the Ozone Layer or the Convention on Climate Change.

The Montreal Protocol on Substances that Deplete the Ozone Layer (1987) (to the Vienna Convention on the Protection of the Ozone Layer (1985) establishes that at least, every four years, the Parties shall assess the control measures.

On the other hand, the Convention on Climate Change establishes a subsidiary body for implementation to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention (article 10). Similar clauses are established in other environmental Conventions such as the Berna Convention for the conservation of wild life and natural environment in Europe or the Desertification Convention (1994).

In most cases, once the non-compliance is verify, the way to proceed is already established in the same treaty. For instance, the amendments to the Montreal Protocol adopted in Copenhagen (1992), established a detailed procedure to apply in case of non-compliance, including the intervention of a Committee that if doesn't reach a friendly solution between the Parties, will send a report to the Conference of the Parties to authorise the necessary reaction measures.

2.3. Solution of controversies in the international ground

When States do choose to solve their controversies in the international ground, they must follow the General Principles of International Law: obligation to resolve any controversy through pacific means and freedom in the choosing of the procedure. The Conventions tent to contain the pacific procedures to use in case of controversies.

A good example is the United Nations **Convention** on the Law of the Sea (1982). This legal text establishes that "a State shall be free to choose one or more of the following means for the settlement of disputes concerning the interpretation or application of the Convention:

- The International Tribunal for the Law of the Sea (established in accordance with Annex VI).
- The International Court of Justice.
- An arbitral tribunal constituted in accordance with Annex VII.
- A special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein."

The most common procedures are arbitration, conciliation and the International Court of Justice. When analyzing different environmental conventions there is a lack of uniformity, but also a common pattern: States prefer the use of arbitration over the International Court of Justice.

Arbitration is commonly present in the Conventions. An original and innovative figure was established in the United Nations Convention on the Law of the Sea (1982) (an special arbitral tribunal).

The Conciliation procedure implies the constitution of a Conciliation Commission made up of experts on the field. Those experts or conciliators are normally design in advance. e.g. Convention on Civil Liability for Nuclear Damage (1969, Brussels) or Convention on Civil Liability for Oil Pollution Damages.

The common ground of the three procedures mentioned is that they have been used very rarely. This is due to:

- The predominance of international soft law.
- The preference for compensation systems in the private or civil arena.
- The tendency to avoid the use of international liability between States.

Also very rarely or inexistent is the trial of environmental cases by the different international courts. The International Court of Justice, European Court of Human Rights or the International Criminal Court could end up being very effective tools for the enforcement and compliance of international environmental law.

The International Court of Justice

Basics: It was set up in 1945 under the Charter of the United Nations to be the principal judicial organ of the Organization. Sits at The Hague, in the Netherlands and acts as a world court. The Court is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council

Role: The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

Contentious cases between States

Only States may apply to and appear before the Court. The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

1. by the conclusion between them of a special agreement to submit the dispute to the Court;

2. by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Several hundred treaties or conventions contain a clause to such effect;

3. through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. The declarations of 65 States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute.

The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsel address the Court. The judgment is final and without appeal. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations.

The Court discharges its duties as a full court but, at the request of the parties, it may also establish a special chamber. In July 1993 the Court also established a seven-member Chamber to deal with any environmental case falling within its jurisdiction. The creation of this specialized chamber hasn't had the attraction it was expected. Nevertheless, the judicial practice in environmental related matters has been enriching step by step, with different decisions of the Court. This allows us to have hope in the role of this Court in the future.

What has been done so far?
Since 1946 the Court has delivered more than 100 Judgments on disputes concerning inter alia land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights.

The first ICJ case was in 1949, known as Corfu Channel Case UK vs Albania Here, the Court condemn Albany for not having inform UK about the existence of mines in its territorial sea. In the words of the Court, Albany should have known and inform about the danger under its jurisdiction.

Decisions related in some way with environmental matters face themes like: Maritime Delimitation, nuclear test or fisheries jurisdiction. (ie. Fisheries Jurisdiction (Spain v. Canada) (1995-1998) (the fletan war)

1974 Nuclear Tests Cases (Australia v. France) (New Zealand v. France) These cases that could have been a success and a jurisprudential hit were unfortunately frustrated. It was in 1974, about French nuclear tests in the Pacific. Australia and New Zealand complained because this illegal test were causing damages in their territories. The Court's Judgment didn't enter into the case because France had already assume unilaterally that wont make any more tests. Request for an examination of the situation was brought in 1995. Here the Court's Judgment denied the right to complain because considered that France was going to make test not in the air but underground.

Since the establishment of the Environmental Chamber, some cases aroused, like the case Gabcíkovo-Nagymaros (Hungary/Slovakia) (1994-1997-) relating to the construction and operation of dams on the river Danube for the production of electricity, flood control and improvement of navigation.

Although all these examples, the truth is that judicial actions are not very common, and that we can not expect a great development in this field. Nevertheless, as environmental matter are getting more and more into the political agenda, we can foresee an increase of cases dealt at the international level. In reality, States have prefer informal and more flexible procedures. Procedures more "discreet" that allow an ad hoc solution. Example of this is the cases of the sinking of a sovietic nuclear submarine in 1989 in the Kara Sea. The States option was to solve the problem in the context of the 1972 London Convention on Spills.

Advisory Opinions

The advisory procedure of the Court is open solely to international organizations. The only bodies at present authorized to request advisory opinions of the Court are five organs of the United Nations and 16 specialized agencies of the United Nations family. (UNEP is not entitled to ask the ICJ for an advisory opinion)

In principle the Court's advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies.

Since 1946 the Court has given 25 Advisory Opinions, concerning inter alia the legal consequences of the construction of a wall in the occupied Palestinian territory, admission to United Nations membership, reparation for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and Western Sahara, judgments rendered by international administrative tribunals, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights rapporteurs, and the legality of the threat or use of nuclear weapons.The legality of the threat or use of nuclear weapons was a question asked first by the WHO in 1996, but the Court didn't got into the subject considering that it didn't concern the WHO. Later on, the UN General Assembly arouse the same question and the Court made his opinion, although it was quite evasive.

An International Environmental Court of Justice

There have been some efforts to create an specialized environmental Court within UN. There are also projects to move forward this issue. One example is the project of the "International Court of the Environment Foundation" (ICEF). This is an internationally recognized NGO and was officially registered in Rome as a non profit foundation on 22 May 1992. ICEF's objective is to promote the establishment of an International Court of the Environment as a new, specialized and permanent institution on a global level.

There are also some “international courts” established by lawyers and judges to deal with this matter. Example of this is the International Court of Environmental Arbitration and Conciliation. Established in Mexico D.F. on November 1994, by 28 lawyers from 22 different countries, as a form of Institutionalised Arbitration. The Court facilitates through conciliation and arbitration the settlement of environmental disputes submitted by States, natural or legal persons ("Parties").The functions of the Court are as follows: A) Conciliation B) Arbitration. C) Consultative Opinions. Since 1994 it only has given 4 consultive opinions (3 of them from Spanish organizations and 1 from México).

2.4. Expansive Tendencies

International environmental policy is changing all the time. With the pass of the years, there are more Conventions with different kinds of obligations for the States, companies and people. Environmental policies have realized the importance of liability regimes in order to enforce their provisions. All this is leading to new tendencies like the following:

- It is possible to find several Conventions establishing rules for civil liability. We find this type of clauses of liability mainly in International Treaties related to the Law of the Sea but also we find specific liability regimes for certain hazadous activities such as nuclear energy, the transboundary movement of hazarous wastes or the carriage of oil.

- The possibility of establishing liability for actions that do not breach any law but that cause damage. We are walking towards a system of strict liability.

- The scope of the responsibility for an illegal act is opening to also accept criminal liability and the controversial figure of international environmental crime.

- The extension of the liability to the State for the actions committed by nationals under its jurisdiction. (i.e. if the factory is in my territory and I have authorised it, I (State) should also be liable for the damage cause by it to another State).

3. ENVIRONMENTAL CIVIL LIABILITY

3.1. Basics

The aim of civil environmental liability

First of all it is important to remark that in this chapter we will be referring to environmental liability meaning civil liability or liability under civil systems. Most international and European Union texts refer to it in this sense also.

Liability is often conceived as a mechanism through which harm caused in the context of legal or illegal activity can be compensated. It is, however, not limited to compensation and can also have a preventive function to induce operators to adopt measures to minimise the risks of damage so as to reduce their exposure to financial liabilities.

Environmental liability makes the causer of environmental damage (the polluter) pay for remedying the damage caused. Environmental regulation lays down norms and procedures aimed at preserving the environment. Without liability, failure to comply with existing norms and procedures may merely result in administrative sanctions. Also, without liability systems there won't be any chance to make the causer of environmental damage to pay even if there has not been any breach to legislation.

TRADITIONAL DAMAGE, ENVIRONMENTAL DAMAGE AND ECOLOGICAL DAMAGE

Presume that a coastal area is used for recreational activities like fishing and swimming and that the wetland habitats located in this area, support significant bird and wildlife populations. If, as a consequence of, for instance, an oil spill (e.g. Sea Empress spill) damage is caused to this area, then this may have serious effects. Injuries may be caused to natural resources, such as fish, birds, marine mammals and other wildlife, and the marine ecosystem of the area. The spill may also result in a (temporary) loss of recreational uses for people visiting the area. In addition, the spill may also have an effect on the related industries such as tourism, fisheries and for instance, oyster production. Apart from the property damage and pure economic loss, the question is what kind of damage to the environment is compensatable.

When talking about liability we must differentiate three different terms:

Traditional damage

Liability schemes have traditionally been used to compensate injury to property and persons.

In most civil liability regimes environmental damage cannot be compensated in the absence of any personal damage or damage to property. In other words, what is being covered is damage to persons and property, but not damage to the wider environment.

This is known as traditional damage. This includes personal injury, property damage and pure economic loss caused as a consequence of the damage to the environment.

Environmental damage

Damage to the environment means damage to natural resources, damage to its elements. The term natural resources includes living and non-living natural resources like land, habitats, fish, wildlife, biota, air, water, ground water and ecosystems. Whether these resources have a direct commercial value or not is immaterial.

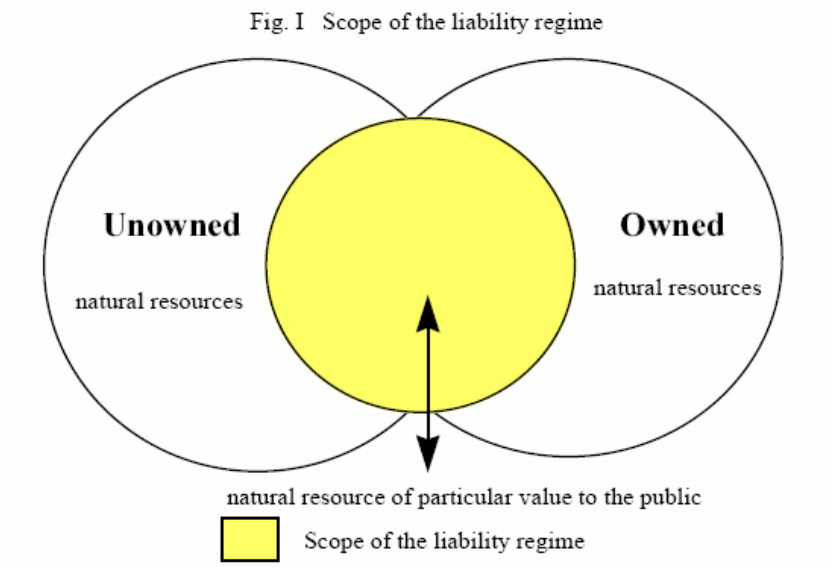
Unfortunately, no uniform definition of environment or environmental damage exists at the moment in either national or international law, or under European Community legislation. Therefore, various approaches are taken.

Sometimes, the term environmental damage is often used to point out that various types of damage, including injury to property, pure economic loss and personal injury, are caused via the environment. The term as such is therefore not very useful because it comprises three aspects: property and economic loss, personal injury and damage to the environment.

In other occasions environmental damage only refers to damage to the environment or to elements of it.

Ecological damage

A third term to take into account is ecological damage. As it has been said, a distinction is to be made between damage to persons and purely private property on the one hand, and environmental damage on the other. Some authors use also the term ecological damage referring to damage to unowned natural resources and natural resources subject to property rights but only insofar as these natural resources (owned as well as unowned) are of particular value to the public.



Ecological damage

ELEMENTS NEEDED FOR LIABILITY TO BE EFFECTIVE

Not all forms of environmental damage can be remedied through liability. For the latter to be effective:

• there needs to be one or more identifiable actors (polluters);
• the damage needs to be concrete and quantifiable; and
• a causal link needs to be established between the damage and the identified polluter(s).

Therefore, liability can be applied, for instance, in cases where damage results from industrial accidents or from gradual pollution caused by hazardous substances or waste coming into the environment from identifiable sources.

However, liability is not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with the activities of certain individual actors. Examples are effects of climate change brought about by CO2 and other emissions, forests dying as a result of acid rain and air pollution caused by traffic.

Strict and fault based liability

The choice between these two types of liability depends on the decision of each country.

Strict liability means that there is no need of any negligence to find someone liable for damage. In other words, there is legal responsibility for damages or injury without a showing of negligence or fault.

A classic example of strict liability is the owner of a tiger rehabilitation centre; no

matter how strong the tiger cages are, if an animal escapes and causes damage and injury, the owner is held liable. Another example is a contractor hiring a demolition subcontractor that lacks proper insurance. If the subcontractor makes a mistake, the contractor is strictly liable for any damage that occurs.

The law imputes strict liability to situations that it considers to be inherently dangerous. It discourages reckless behaviour and needless loss, by forcing potential defendants to take every possible precaution. It also has the effect of simplifying litigation and allowing the victim to become whole more quickly.

On the contrary, fault liability means responsibility for a mistake or an offence, it also means culpability. Fault liability requires the proof of fault (negligence).

Strict liability is being used more and more in case of environmental or ecological damage while fault-based liability applies to an increasingly narrow, though still important, area, mostly concerning traditional damage (harm to persons and property).

3.2. International liability regimes

In the international arena the need for compensating environmental damage has been recognized in different declarations. In this line, the 1972 Declaration of the United Nations Conference on the Human Environment met at Stockholm establishes in its Principle 22 that:

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

This mandate is further developed in the 1992 Rio Declaration on environment and development, that establishes in its Principle 13 that:

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Resulting from these type of declarations, there are a growing number of international conventions and protocols dealing with environmental liability in several fields. There is, for instance, a long-standing body of conventions and protocols concerning damage caused by nuclear activities, as well as in the field of oil pollution at sea. More recent conventions deal with damage caused by maritime transport of hazardous and noxious substances and also by transboundary movements of hazardous wastes. All these conventions are based on a strict but limited liability and the concept of a second tier of compensation. In the case of oil pollution, the second tier is a fund, fed jointly by the contributing oil companies in the importing States, which compensates — also up to a certain limit — liabilities exceeding the shipowner's liability. (For a list of international treaties see Annex IV).

Nuclear activities are covered by several international civil liability conventions.

These conventions, too, are based on strict liability. They mainly deal with traditional damage, but in addition allow governments to cover environmental damage, albeit in a less co-ordinated way.

Oil spills by tankers at sea are covered by the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

This regime channels liability to ship owners who have very few possibilities to exonerate themselves. The ship owner's civil liability is complemented by the International Oil Pollution Compensation Funds (IOPC Fund), which covers damage beyond the limit where the ship owner has to pay. This Fund was reinforced with a supplementary fund adopted in May 2003 under the auspices of the International Maritime Organization, and in force since March 2005. As a result, the total amount available for compensation for each incident in the States which are Members of the Supplementary Fund will be approximately US$1 159 million.

Transboundary movements of hazardous wastes. This issue is dealt in the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal adopted on 1989 (entry into force may 1992). The Convention called the Parties to adopt a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

Following this, the Basel Protocol on Liability and Compensation was adopted at the Fifth Conference of Parties (COP-5) on December 1999. The Protocol talks began in 1993 in response to the concerns of developing countries about their lack of funds and technologies for coping with illegal dumping or accidental spills.

The objective of the Protocol is to provide for a comprehensive regime for liability as well as adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes, including incidents occurring because of illegal traffic in those wastes.

The Protocol addresses who is financially responsible in the event of an incident. Each phase of a transboundary movement, from the point at which the wastes are loaded on the means of transport to their export, international transit, import, and final disposal, is considered.

Other relevant international legal text in this matter is the Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, signed in Lugano in 1993.

The Convention contains a regime for environmental liability that covers all types of damage (both traditional damage, such as personal injury and property damage, and impairment of the environment as such) when caused by a dangerous activity.

The aim of the Convention is to provide adequate compensation for damage resulting from activities dangerous to the environment. The Convention also puts forward

measures for damage prevention and restoration of the environment. The concept of damage covers impairment of the environment, damage caused to persons and property and the cost of preventive measures, e.g. measures taken to prevent or alleviate damage. Damage may be the result of a single action or a chronic process of pollution. It should be noted that the definition of 'environment' in the Convention is widely drafted.

In order to achieve the objective of repairing environmental damage adequately, the Convention introduces a strict liability regime. According to the Convention, the person liable is the operator, e.g. the person exercising control of a dangerous activity at the time the incident occurs or, in the case of permanent waste-disposal sites, at the time the damage becomes known.

The term 'dangerous activity' refers to a professional activity involving dangerous substances, genetically modified organisms or micro-organisms and also covers the operation of waste installations or sites. For a number of definitions, like those of dangerous substances and genetically modified organisms, reference is made to existing definitions in European Community directives.

The Convention gives environmental associations the right to take court action to secure the implementation of preventive or restorative measures.

So far, nine countries have signed the Convention, six of which are Community Member States, namely Greece, Italy, Luxembourg, the Netherlands, Portugal and Finland. The other signatory countries are Cyprus, Iceland and Liechtenstein. There are no ratifications yet. The Convention will enter into force after the third ratification.

3.3. EUROPEAN COMMUNITY REGIME

In all EU Member States, there are national civil liability regimes that cover damage to persons and property. But they only seldom cover damage to the wider environment. Some national public law provisions allow public authorities to pursue polluters in cases of water or soil pollution. But the authorities usually have a wide margin of discretion whether to really act against the polluter. And when damage to the environment is not remedied, the costs associated with it are borne by society as a whole.

This is one of the reasons why at the beginning of the 90`s the European institutions started to walk towards an European Union regime on environmental liability. Today's Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage is the result of that process. Some of the most important documents approved in the past years are:

1993. Green Paper on remedying environmental damage.

In May 1993, the Commission published its Green Paper on remedying environmental damage to open a debate on the issue. Over 100 comments were submitted, from Member States, industry, environment groups and other interested parties, and followed up by continuous consultations. A joint public hearing was held by the Parliament and the Commission in November 1993.

1994-2000. Resolutions, opinions and studies

In April 1994, the European Parliament adopted a resolution calling on the Commission to submit 'a proposal for a directive on civil liability in respect of (future) environmental damage'.

A DETAILED OPINION ON THE GREEN PAPER WAS ISSUED BY THE ECONOMIC AND SOCIAL COMMITTEE (ESC) ON 23 FEBRUARY 1994, WHICH SUPPORTED EC ACTION ON LIABILITY FOR ENVIRONMENTAL DAMAGE, SUGGESTING THAT THIS COULD TAKE THE FORM OF A FRAMEWORK DIRECTIVE.

In 1997 the Commission decided, that a White Paper on environmental liability should be prepared. Four studies had been already conducted for the purpose of the preparation of an European Community policy in this area.

2000. White Paper on Environmental Liability

The European Commission adopted a White Paper on Environmental Liability on 9 February 2000. The objective of the White Paper was to explore how the polluter pays principle, one of the key environmental principles in the EC Treaty, can best be applied to serve the aims of Community environmental policy. The White Paper explored how a Community regime on environmental liability might best be shaped. Having explored different options for Community action, the Commission concludes that the most appropriate option was a Community framework directive on environmental liability.

The White Paper has elicited numerous comments from European Community Institutions, Member States and a wide range of interested parties alike.

2002. Proposal for Directive. Further to this consultation and the conclusion of the ongoing studies, a legislative proposal was finalised and adopted by the Commission on 23rd January 2002.

2004. Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage was approved.

Main features of the Environmental Liability Directive

After this long process, the regime approved is closer to what we call administrative liability that to a civil liability regime. Nevertheless it is studied in this chapter because it is base on environmental damage.

In this regime public authorities are the ones to play the main role. They identify liable polluters, assess whether an operator is liable, and determine which remedial measures they have to take.

The Environmental Liability Directive specifically implements the "polluter pays principle". Its fundamental aim is to hold operators whose activities have caused environmental damage financially liable for remedying this damage. In addition, the Directive holds those whose activities have caused an imminent threat of environmental damage liable to taking preventive actions. Both aspects should result in a higher degree of environmental protection throughout Europe.

For liability to be effective, polluters must be clearly identifiable. This means that potential polluters must know that they can be held financially liable; only this will induce them to be careful.

Environmental damage

The Directive puts in place, for the first time in the EU, a comprehensive liability regime for damage to the environment (not traditional damage). In particular, it introduces a comprehensive regime for damage to valuable elements of biodiversity - protected species and natural habitats - on a scale that no Member State has imposed so far.

The Directive says that “environmental damage” means damage to protected species and natural habitats protected at EU level under the 1992 Habitats and 1979 Birds Directives. In addition, it defines environmental damage as damage to waters covered by the 2000 Water Framework Directive (all water resources in the EU) as well as land contamination that risks harming human health.

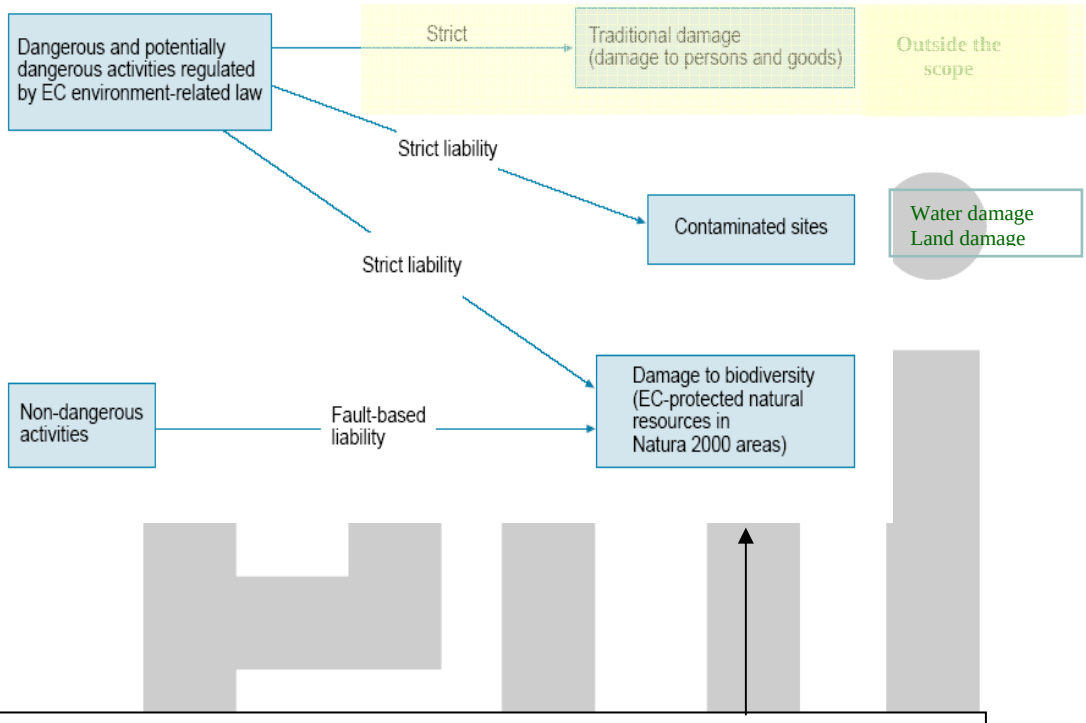
Two liability regimes

The Directive provides for two distinct but complementary liability regimes. The first one applies to operators who professionally conduct risky or potentially risky activities. These activities include, amongst others, industrial and agricultural activities requiring permits under the 1996 Integrated Pollution Prevention and Control Directive, waste management operations, the release of pollutants into water or into the air, the production, storage, use and release of dangerous chemicals, and the transport, use and release of genetically modified organisms (GMOs).

These activities are listed in Annex III of the Directive. Under this regime, an operator can be held liable even if he has not committed any fault, though there are a few cases in which he can be exempted from liability.

The second liability regime applies to all professional activities, including those outside Annex III, but an operator will only be held liable if s/he was at fault or negligent and if s/he has caused damage to protected species and natural habitats protected at EU level under the 1992 Habitats and 1979 Birds Directives.

Scope of the European Community environmental liability regime



Liability for biodiversity damage is something new in Europe. This is why it is important to have a very precise and workable definition of biodiversity. The Directive covers damage to all species and habitats protected under the 1992 Habitats Directive as well as most threatened species and migratory birds protected under the 1979 Birds Directive.

Another important aspect is that duplication with *international* liability legislation that is effective in the EU (for example on nuclear activities and maritime safety) has been avoided, and so have overlaps with the civil liability regimes that exist in Member States. The latter means that so-called "traditional damage" - personal injury and damage to goods and property -, even if it's caused by "risky and potentially risky" activities covered by the Environmental Liability Directive, will be dealt with under national civil liability legislation. The Environmental Liability Directive only deals with damage to the wider environment.

Exemptions from liability

The Directive allows potential polluters to invoke reasonable defences. For instance, environmental damage caused by *force majeure* (such as storms and armed conflicts) will not give rise to liability.

Other defences are potentially available to operators, but their use is subject to several conditions, which all must all be met. For instance, Member States may decide to exempt operators who have caused environmental damage if they demonstrate that the damage was caused by activities or emissions expressly authorised by the competent authorities and if they can also prove that they were not at fault or negli-

gent.

Further, Member States can decide on exemptions from liability if operators demonstrate that their activities or emissions were not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emissions were released or the activity took place.

The Directive doesn`t cover environmental damage caused by society en large

Such pollution - for example air pollution - is called diffuse pollution. The Directive does not cover it because it would be ineffective and practically impossible to hold all those contributing to air pollution liable.

Remedial measures.

The Directive envisages different remedial measures depending on the type of damage: soil can usually be decontaminated. Damage to protected species and natural habitats as well as water might be more complex to restore.

This is why the Directive demands the decontamination of soil, that is land, until it no longer poses any significant risk to human health.

When it comes to damage to protected species and natural habitats as well as water, the competent authorities have room to manoeuvre in deciding which measures the responsible operator has to take, considering the remedial options available to restore the damaged natural resources either on the spot or elsewhere.

When a damaged site itself cannot be restored, another site nearby, which is of equivalent environmental value, has to be enhanced. Similarly, a site located even further away from the damaged site, but which fulfils the same environmental role, could be improved.

When deciding between these options, the authorities have to consider various factors, such as the effect of each option on public health and safety, benefits for the overall environment, costs and implementation time, the likelihood of success, the possibility of future and collateral damage, distance to the damaged site, and social, economic and cultural concerns and other relevant factors specific to the locality. But the remedial measures have to sufficiently make up for the environmental damage.

Are citizens entitled to compensation if they are affected by environmental damage?

The Directive does not envisage compensation to members of the public. Its purpose is to prevent environmental damage from occurring and, if it occurs, to ensure that it is remedied. If environmental damage creates harm to members of the public or affects their goods and property, they can sue under national civil liability laws. That said, the Directive will contribute to protecting of human health through prevention of environmental damage and de-pollution of contaminated sites.

Roles of public authorities, citizens and NGOs

The obligations of the competent authorities are to identify liable polluters and determine which remedial measures they have to take. Operators can be required to disclose to the competent authority the relevant data and information to help establish the facts of a case. At the end of this process, the competent authority should be in a position to reasonably assess whether an operator is liable.

Citizens who are affected by environmental damage (or the imminent threat of it) as well as non-governmental organisation promoting environmental protection will have a right to require the competent authorities to act. To this end, they have to submit to the authorities their observations with some reasonable supporting evidence. The authorities are obliged to respond to the request for action. If the alleged environmental damage has occurred (or is about to occur) and if the polluter is liable under the Directive, the authorities must require the polluter to take action to remedy (or prevent) it.

Should the authorities refuse to act, and should the individual or NGO concerned consider that this refusal is illegal, they can start judicial review proceedings before a court. If they are successful, the court will order the competent authorities to demand action from the polluter.

However, the Directive allows Member States not to apply these procedures in cases where there is only an imminent threat of damage, but no damage has actually occurred.

Citizens and NGOs are not allowed to sue polluters directly

The Directive is based on the premise that public authorities are "the guardian" of the environment as the environment is a public good. The Directive therefore provides for, and regulates, the relationship between public authorities and potential or actual polluters.

In this context, it seemed important to ensure that the public concerned and NGOs can challenge the actions or inactions of the competent authorities. But in light of this safeguard, no compelling need was felt to allow the public to sue the polluter directly.

One additional aspect in this respect is that allowing citizens to sue polluters would have required the EU to harmonise national laws in the field of civil justice, which is a complex and delicate issue.

Insurances

The requirement from operators to take out insurances has been a big issue during the decision-making process in the European Parliament and the Council.

Firstly, it is important to stress that insurances are not the only way to get financial security. There are other forms of financial security, for example bank guarantees, the pooling of funds, financial guarantees given to a subsidiary by the parent company, etc.

Secondly, the problem in the EU is that financial security products purely related to

environmental damage do not exist yet. This is a consequence of the fact that polluters have not been required to remedy environmental damage. Therefore there has been no demand for insurance policies covering it, to stick with this example of a financial security product. At this moment, it is still difficult for insurance companies to develop such products as information on damage incidents and on remediation costs is not yet widely available.

Therefore, the Directive does not require operators to take out financial security products. However, operators will now be exposed to liability and information on damage incidents and costs to remedy the damage will become available. It is to be expected that financial security products will start to emerge. The Directive requires the Commission in 2010 to report on the availability of such products and their costs and conditions. On the basis of this report, the Commission will be in a position to decide whether the Directive should be amended.

There is not a financial limit on the amount that liable polluters will be required to pay to remedy environmental damage

Limiting the amount of damages would reduce the incentives for potential polluters to take due care and prevent damage since they would know that, whatever the consequences of their actions, their financial responsibility would not be greater than the limit.

If the polluter has no money Member States and hence tax payers doesn't have to pay

The Directive does not require Member States to remedy environmental damage if the polluter cannot be identified or is insolvent. The competent authorities will decide themselves whether this so-called "orphan damage" is to be remedied or not. Of course, if the state itself or a state-owned body is the polluter, the State will have to pay, like any other polluter.

The Directive will enter into force in 2007. The Directive will not apply retroactively, which means that operators will not be held responsible for damage they caused before the Directive is applicable in the EU Member States.

3.4. National arenas

Environmental liability has a long history in national law. Over the last 20-30 years, most governments have sought to refine liability rules as an instrument of public policy to deal with harm resulting from environmental incidents.

Since 1995, there have been several new initiatives in this field within the EU Member States, many addressing contaminated land. The trend overall is one of tightening liability standards and clean-up obligations, qualified by increasing attention to details designed to protect certain parties and to improve the regimes' efficiency. Most countries include strict liability for environmental damage and increasing amounts of property damage, some liability for historic damage, limited defences, growing attention to biodiversity damage and a shift towards use-based clean-up objectives, together with attempts to encourage voluntary solutions and avoid unnecessary legal action.

Many countries have a form of classical civil liability based on the fundamental principle that when a person causes damage to another with some degree of fault (usually negligence) that damage should be compensated. These rules are expressed either as part of a civil code or through common law developed through case-law or through enactments formalising common law. The classic civil liability systems in a number of countries have been developed to introduce forms of strict liability for environmental damage where, for example, hazardous activities are being undertaken.

Seven general themes are identified from experience within Member States or the OECD as a whole:

(1) strict liability is firmly established as the basis for all new legislation – fault-based liability is confined to an increasingly narrow, but nonetheless important, area concerning traditional damage;

(2) the details matter;

(3) judicial discretion, unwritten law and general legal principles play an important part in most regimes;

(4) at present, the largest cost burden in this field arises in response to contaminated land;

(5) liability for biodiversity damage remains the least developed aspect, although many countries have begun to take steps to deal with it;

(6) there is a growing amount of litigation and voluntary action on property damage, but personal injury litigation and compensation remains relatively rare, even where strict liability has been introduced; and

(7) there has been a decisive move away from absolute clean-up standards for contaminated land, in favour of more flexible goals linked to future site use.

4. ENVIRONMENTAL CRIME

4.1. Basics

Environmental crimes have been made a subject of crime policy since the late seventies when public opinion in the industrialized world expressed more and more concern about serious threats building up against the natural environment and demanded for effective ways of protecting natural resources and the environment at large.

In general terms it can be said that an environmental crime is a crime against the environment, considering it as a wide range of subjects.

According to the widely accepted definition, a crime is:

1. An act committed or omitted in violation of a law forbidding or commanding it and for which punishment is imposed upon conviction.
2. An unlawful activity.
3. A serious offense, especially one in violation of morality.
4. An unjust, senseless, or disgraceful act or condition.

A crime is an act punishable by law; usually considered an evil act.

Why the need to develop the figure of "environmental crime"?

Environmental violations have serious consequences, that is why those must be established as criminal offences subject to appropriate sanctions.

In many cases, only criminal penalties will provide a sufficiently dissuasive effect. First, the imposition of criminal sanctions demonstrates a social disapproval of a qualitatively different nature compared to administrative sanctions or a compensation mechanism under civil law. It sends a strong signal, with a much greater dissuasive effect, to offenders. For instance, administrative or other financial sanctions may not be dissuasive in cases where the offenders are impecunious or, on the contrary, financially very strong.

Second, the means of criminal prosecution and investigation are more powerful than tools of administrative or civil law and can enhance effectiveness of investigations. Furthermore, there is an additional guarantee of impartiality of investigating authorities, because other authorities than those administrative authorities that have granted exploitation licences or authorisations to pollute will be involved in a criminal investigation.

The role of criminal law in the protection of the environment is highlighted in different international texts. For example, the UN General Assembly's Resolution 45/121 "The role of criminal law in the protection of nature and the environment" (December 1990) where States have been urged to update criminal law in order to create effi-

cient responses to environmental threats.

4.2. INTERNATIONAL ENVIRONMENTAL CRIME

First, it is important to define what is an international crime. An international crime is:

- A CRIME THAT CROSSES INTERNATIONAL BORDERS, AND IS USUALLY COMMITTED BY INTERNATIONAL CRIMINAL GROUPS.
- A CRIME AGAINST HUMANITY.
- A CRIME AGAINST INTERNATIONAL LAW.
- A CRIME CODIFIED IN AN INTERNATIONAL AGREEMENT OR RESOLUTION.

The figure of international crime is widely accepted. Also, the scope of the responsibility for an illegal act is opening to accept the controversial figure of international environmental crime. Nevertheless the lines defining the latter are still being drawn. Some international bodies have tackled the matter but still the figure: "international environmental crime" is non existent.

Perhaps the most ambitious step and, at the same time, the worst failure was the 1998's European Convention on the protection of the environment through criminal law. In 1998, the Council of Europe opened for signature this European Convention. This was significant because it represented the 1st international convention to criminalise acts causing or likely to cause environmental damage. No member state of the Council of Europe signed it.

The Convention describes some unlawful actions that cause or are likely to cause damage. For "unlawful", the Convention means infringing a law, an administrative regulation or a decision taken by a competent authority, aiming at the protection of the environment.

Among others, it is an offence:

the unlawful discharge, emission or introduction of a quantity of substances or ionising
radiation into air, soil or water which causes or is likely to cause their lasting deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants; when committed intentionally or when committed with negligence.

Trying to define the elements of the international environmental crime, the **UN International Law Commission** has given some hints. According to the Commission's opinion, the action should breach international environmental law and fulfill, at least one of these elements:

1. The violation must be serious. So, there is objective gravity.
2. There should be criminal intention. So, there is a subjective gravity. The State or person responsible for the action must have the intention of producing massive damage to the environment.

Generally speaking, where there is movement of goods across boundaries (i.e.

smuggling, etc.) or a transboundary impact to offences, so it is possible to speak of international or transboundary environmental crime (note that we said before that the figure: international environmental crime is non-existent from the legal point of view, but generally speaking, to some authors certain offences are considered as crimes).

Five broad areas of international offences have been recognized by bodies such as the G8, Interpol, EU, UN Environment Programme and the UN Interregional Crime and Justice Research Institute. These are:

- Illegal trade in wildlife in contravention to the 1973 Washington Convention on International Trade in Endangered Species of Fauna and Flora (CITES);

- Illegal trade in ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;

- Dumping and illegal transport of various kinds of hazardous waste in contravention to the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal;

- Illegal, unregulated and unreported (IUU) fishing in contravention to controls imposed by various regional fisheries management organizations (RFMOs);

- Illegal logging and trade in timber when timber is harvested, transported, bought or sold in violation of national laws. (Currently there are no binding international controls on the international timber trade, with the exception of endangered tree species covered by CITES.)

Other environmental offences may share similar characteristics with these five accepted categories. These include:

- Biopiracy and transport of controlled biological or genetically modified material (a possible offence under the 2000 Cartagena Protocol on Biosafety to the Biodiversity Convention);
- Illegal dumping of oil and other wastes in oceans (i.e. offences under the 1973 International Convention on the Prevention of Pollution from Ships (MARPOL) and the 1972 London Convention on Dumping);
- Violations of potential trade restrictions under the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- Trade in chemicals in contravention to the 2001 Stockholm Convention on Persistent Organic Pollutants.
- Fuel smuggling to avoid taxes or future controls on carbon emissions.

Following UN point of view, these offences are always based in the fact of a contravention of international law. Note here that theses offences are sometimes refer to as crimes, using a common law perspective in doing so (for continental countries those contraventions of legal texts could fit best in what is called administrative infringements).

4.3. ENVIRONMENTAL CRIME IN THE EUROPEAN COMMUNITY

European Community (EC) Environmental law has existed for 30 years. More than 200 directives in the field of environment are today in force. However, there are still many cases of *severe non-observance of Community environmental law*. These trend shows that the sanctions currently established by the Member States are not sufficient to achieve full compliance with Community law.

Environmental law needs to be implemented in an effective way. That is the reason why the European Union (EU) now sees the need to adopt meassures which require the Member States to provide for criminal sanctions because only this type of measures seems adequate, and dissuasive enough, to achieve proper implementation of environmental law.

In the EU arena we have seen recent stepts towards the establishment of this kind of liability.

In 2001 the Commission presented a proposal for a directive on the protection of the environment through criminal law, based on the European Community Treaty provisions concerning environmental policy. But in 2003, Council adopted instead an initiative from Denmark of 2000 for a Framework Decision, an instrument provided for by the European Union Treaty in the field of judicial cooperation in criminal matters.

The Commission challenged the Framework Decision before the European Court of Justice on the grounds that it had been adopted on the wrong legal basis. On 15 September 2005 the European Court of Justice annulled the Framework Decision and confirmed that the Community had the competence to adopt criminal law measures related to the protection of the environment if this is necessary to ensure the efficient implementation of its environmental policy.

What are the major differences between a Framework Decision and a Directive?

Whereas a Framework Decision is adopted only by the Council, the proposed directive will go through both Council and the European Parliament as part of the Community co-decision making process. Furthermore, once a directive is adopted, its implementation by the Member States is controlled by the European Commission and the European Court of Justice, which is not the case with Framework Decisions.

In order to take into account both the Court's judgment and the latest developments in environmental legislation, the Commission decided to withdraw its earlier proposal of 2001 for a Directive and make a new one. The new proposal of 2007 replaces both the one of 2001 and the Council's Framework Decision of 2003.

Commission's P*roposal for a Directive on the protection of the environment through criminal law*

Studies carried out by the Commission have shown large disparities in the definition of environmental crimes in the Member States, and in many Member States levels of sanctions were found to be insufficient. The objective of the proposal adopted by the Commission is to ensure a minimum level of protection of the environment through criminal law, throughout the EU.

The proposal will provide for a minimum standard at Community level for the definition of serious environmental criminal offences, a similar scope of liability for legal persons as well as levels of penalties for particularly serious environmental crimes. This will ensure that serious cases of environmental crime are dealt with in a similar manner in all Member States and that perpetrators cannot take benefit from the existing differences in national legislation.

The Directive will cover a list of serious environmental crimes, the majority of which were also covered by the annulled Framework Decision which had been adopted unanimously in 2003. This list includes the unlawful treatment, transport, export or import of waste, including hazardous waste; the unlawful trade in endangered species; the unlawful trade in or use of ozone-depleting substances and the unlawful operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used.

The majority of the offences are made conditional on whether or not they cause or are likely to cause serious harm to persons or the environment.

For example, illegal discharging of hazardous substances into surface water would be covered if it causes or is likely to cause death or injury to persons or significant damage to the environment. Illegal shipment of waste from the European Union would be covered but only if a significant quantity of waste is involved and if there is a clear intention to make a profit out of it. Smuggling rare animals or plants into the EU in breach of the CITES Regulation would be covered. So would Illegal exports of ozone depleting substances to developing countries.

In August 2006, a ship called the Probo Koala offloaded up to 500 tons of toxic waste in Abidjan, Ivory Coast. The waste was then dumped at several sites around the city. Several people died as a result and hundreds were affected by respiratory problems, nausea, dizziness, vomiting, burns and irritation from the toxic waste. The Probo Koala case would have been covered by the proposed directive, as it was presumably a case of illegal shipment of waste.

If the chemical explosion in Seveso, Italy, in 1976, when people living nearby suffered from skin problems after having been exposed to huge amounts of dioxin, was caused by serious negligence or intentional breach of legislation, then it would also come under the present proposal.

Oil spills are not explicitly excluded from this proposal but they will be covered by a separate proposal for amending Directive 2005/35 on ship source pollution to come out later this year.

Some of the activities listed have been prohibited per se by virtue of the different Community legislative provisions, regardless of whether there is evidence for a concrete harmful impact to the environment in a concrete, individual case.

On the other hand, legal persons can be held liable and that sanctions against legal persons are taken throughout the Community. However, it recognizes that for some Member States it might be difficult to provide for criminal sanctions against legal persons without changing fundamental principles of their national legal systems.

The Directive does not regulate questions of criminal investigations and prosecutions, nor questions of criminal procedure. This is up to the judicial authorities in the Member States.

For which cases does the directive foresee an approximation of sanction levels?

Taking into account the principle of proportionality, the approximation of sanctions foreseen in the Directive is limited to particularly serious cases. The aggravating circumstances for which an approximation of penalties is foreseen are the particularly serious consequences of an offence, such as death or serious injury to a person or substantial damage to the environment, or the fact that the offence is committed in the framework of a criminal organisation. Those circumstances are generally already considered particularly serious in the national criminal laws of Member States and have already been provided for by other EU instruments.

Regarding imprisonment, the proposed approximation on a three-step scale corresponds to the conclusions of the Justice and Home Affairs Council of 25-26 April 2002. The scale is based on the mental element (serious negligence or intent) and the respective aggravating circumstance. It provides for prison sentences of up to at least between 5 and 10 years for the most serious crimes.

The system of fines for legal persons also follows a three-step approach corresponding to the one developed by the Justice and Home Affairs Council for prison sentences. The range of fines for legal persons is similar to the one agreed on by the Council in the Framework Decision 2005/667/JHA on ship-source pollution - from a minimum of at least 300.000-500.000 EUR, 500.000 and 750.000 EUR and 750.000 and 1.500.000 EUR.

4.4. National arenas

European Union countries have tackle the matter with different approaches.

Criminal law appears to be in many cases the *ultima ratio*, only applicable for very serious cases or where administrative law has been not sufficient to ensure compliance and to put an end to the infringement of the environmental legislation. In this last case, criminal law sometimes serves to give practical effect to administrative enforcement measures, in the sense that non-compliance with the administrative measures will be regarded as a crime. This is the case in UK and Ireland but also in Denmark. The application of criminal law as an *ultima ratio* as well as the fact that, in many cases, environmental enforcement in practice consists mostly of negotiations with the operator makes the application of environmental criminal law purely

anecdotal in some countries. This is the case in Finland (where environmental criminal law was developed only in the 1990s), Denmark or Sweden.

Environmental crimes are enshrined in the national criminal codes and/or in specific instruments, dealing with environmental issues. The list of situations that will be regarded as a crime is not very extensive. Even in those countries where enforcement is primarily via criminal law, the two common law countries, the very detailed list of criminal offences can be grouped into two or three types of offences (pollution, offences related to permits and licences and safety reports). The scenario is the same for continental systems where criminal offences can range from two to seven types of environmental crimes. The typical environmental crimes refer to situations related to permits or licences, such as carrying out an activity without a permit or in violation of the permit conditions or illegal traffic; or they refer to the more general offence of impairment of the environment and pollution.

The traditional offences of crimes constructed on the basis of conduct resulting in damage still exist in many countries. However, in most cases the basic environmental crime is a crime of abstract, potential or concrete danger. This means that a conduct will be regarded as a crime as long as it has caused (if it is concrete danger) or may have caused or it is likely to cause (if it is abstract or potential danger) danger to the environment; there is no need for actual damage. In some cases the situation is even more abstract as solely the act (for example dumping hazardous waste) is enough to commit the crime, such as illegal traffic, and therefore there is not even the need to prove that danger has been or could have been caused to the environment by the contested behaviour. Offences of abstract endangerment are found in the Netherlands, Belgium, Austria, Greece, Germany, Italy, Ireland, UK and Spain.

The case of Spain is more complicated as for years the basic environmental crime was considered to require concrete danger. However recent jurisprudence of the Supreme Court has extended the interpretation of the provision to consider that abstract endangerment to the environment is enough for a crime to be committed. Concrete danger is needed in Denmark (the risk of danger has to be very high in order to commit an environmental crime so in practice works as concrete danger) and Sweden. In Finland only situations that resulted in damage to the environment will be regarded as crimes. In the UK, Ireland and France, Luxembourg and Belgium), no danger or risk of harm is needed at all for the attribution of the crime for some offences, although the existence of this potential danger has to be proved. In all countries both wilful and negligent behaviours are admitted.

With reference to criminal liability of legal persons, it is possible in many of the EU members. Examples of countries where it is not are Finland, Spain, Germany and Austria and Portugal. In Italy, although the legislation allows for responsibility of legal persons, environmental crimes are excluded. But even in cases where the legal person is not liable, the managers and directors can be liable for *culpa in custodiendo* and *culpa in eligendo*. Spain has overridden the limitation of criminal liability of legal persons through the establishment of accessory measures that are clearly directed towards a company, such as closure of the establishment. This is also the solution found in other countries such as Austria as an administrative enforcement

measure to hinder further infringements.

Regarding the types of criminal sanctions, in theory, environmental crimes in all countries are sanctioned with similar penalties to traditional crimes, including with fines, prison and community sentences. However, in practice, fines are by far the most commonly used sanction for environmental offences and it is extremely rare for prison sentences to be issued. Sanctions mainly comprise imprisonment and fines. Imprisonment typically ranges between 6 months and 2 years for less important cases and 2 to 5 years for serious cases. In certain circumstances, such as danger to human health or even casualties, imprisonment can reach up to 8 (Portugal) or 10 (Germany) years, but, imprisonment is rarely used.

4.5. Organized environmental crime

While research on organized crime at large has gained momentum in the last three decades, relatively little attention has been paid to environmental organized crime. This might have to do with the general tendency to separate white collar crime, economic crime and corporate crime on the one hand from organized crime on the other hand.

The UN and the EU have provided with different definitions of organized crime. In general terms, when we talk about "organized crime" we are using a definition that points to a set of fundamental elements such as:

- Profit.
- Market orientation.
- Networking.
- Planning.
- Commercial structures.
- Persistence and involvement in illicit markets.
- Application of violence.

Areas where environmental organized crime tends to develop are:

- illegal commercial trade in endangered species and their products;
- illegal pollution, dumping and storage of waste, including transfrontier shipment of
  hazardous waste;
- illegal commercial trade in ozone depleting substances;
- illegal dumping and shipment of radioactive waste and potentially radioactive material;
- illegal logging and illegal trade in wood and
- illegal fishing.

Where profits are high and risks low, as in many areas of environmental crime, it is clear that a specialism in avoiding controls (i.e. professional environmental criminals) will gradually develop.

Most environmental crimes seems to be committed by loosely organized networks of individuals with some specialist knowledge of the area in which they work who have often been overtaken by regulations. In fact, this lack of a Mr Big may be more damaging for the environment.

Restrictions or bottlenecks at certain points along international commodity chains allow for more classic organized criminal involvement in environmental crimes as, for example, with cross-border smuggling groups which specialize in avoiding border checkpoints. Thereafter, however, the illegal goods pass on to very different distribution channels. For example, Mexican and US organized smuggling gangs may move endangered parrots, ODS, narcotics and weapons together across the Rio Grande.

Italy has an official term “Ecomafia” for this adaptation of organized crime to environmental offences. Research by the Italian environmental NGO Legambiente points to the far higher than average incidence of recorded environmental crime in the traditional Mafia strongholds of Campania, Puglia, Calabria and Sicily. Operation Trash in Sicily in 1999 and 2000 also revealed extensive Cosa Nostra involvement with the export and/or dumping of hazardous waste shipments at sea.

Sometimes we find “organized criminals” who are individuals and companies with no ties with traditional organized crime. For example, the new crime of organization of illicit trafficking in waste, introduced in 2001 in Italy, was charged for the first time ever by the Spoleto Prosecutor’s Office against a local entrepreneur who had set up a network of companies to dispose millions of tons of dangerous waste.

It is possible to distinguish different criminal constituencies among different areas of environmental crime and even within a specific area of environmental crime. Within the wildlife trade, for example, there are clear differences between:

(i) low-volume, low-value tourist cases;
(ii) high-volume, low-value opportunist smuggling;
(iii) high-volume, high-value smuggling by organized criminal networks, and
(iv) low-volume, high-value smuggle to order operations for collectors, fanciers and researcher. To focussing on the primate trade, for example, tourists tend to buy protected species randomly; by contrast, smuggling to order tends to involve high-value animals such as orang-utans or chimpanzees that make good tourist attractions; and professional smugglers tend to concentrate on supplying rhesus monkeys to the lucrative laboratory market.

This so called organized environmental crime or environmental black markets is a recent matter. Just now, police corps, legislators and judicial bodies are starting to figure out the extent and profits of these activities.

There is no single solution to all international environmental crime. Nonetheless, it is hoped that today’s information highlights elements of a more joined-up approach to the policing of the international market-place for environmental goods, and that it will encourage a more dynamic understanding of the shifting web of opportunities and policies to be adjusted to minimize global levels of non-compliance with environmental controls.

ANNEX I.- THE SPANISH CASE

In the following lines there are some flashes of information on the liability regimes established in Spanish law.

Article 45 of the 1978 Spanish Constitution recognizes the right of all people to enjoy the environment and a corresponding obligation to preserve the environment by using our resources sensibly. The constitutional legislator states that those who breach that obligation will be liable to put right any harm caused to the environment, and liable for criminal prosecution and any applicable administrative sanctions. Thus, the 1978 Constitution clearly establishes three potential types of liability for those who harm the environment: civil, criminal and administrative liabilities.

I.1. Administrative liability.

Under article 45.2. of the 1978 Constitution, the Spanish public administration has a duty to pursue persons for environmental responsibilities. This power is developed in national and regional laws which regulate activities which require public authorization.

Administrative sanctions include fines, revocation of permits, licenses or authorizations for contaminative activities.

In October 2007, the Spanish Government approved the law transposing the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (LEY 26/2007, de 23 de octubre, de Responsabilidad Medioambiental).

I.2. CIVIL LIABILITY

The Spanish Civil Code regulates civil extra-contractual liability for harm caused to others in article 1902 and specifically for certain environmental matters in article 1908. Both articles require a casual relationship to be established between the person causing the harm and the harm itself. To bring a claim under these articles, the goods which have been harmed must be private goods, otherwise the administrative courts will be the right forum for bringing a claim.

On its face, article 1902 appears to look for fault or negligence to establish liability. However, the Spanish Supreme Court has repeatedly declare that:

- there is a reversal of the burden of proof as there is a presumption of fault which has to be rebutted by the defendant; and.
- Compliance with the law or permit is not a defence to environmental damage caused to private individuals.

Article 1908.2 deals with environmental damage and allocates liability to owners for damage caused by excessive fumes which are hazardous to people and property. Liability is objective and strict, there is no requirement to prove fault or negligence.

The Spanish Supreme Court has interpreted the term “owner” as the “owner of the land or the company or any person who exploits the site and benefits from the activity causing the nuisance”.

Those who have suffered harm and entitled to bring an action under civil law. This includes private individuals, the administration and in some cases associations and groups in protection of collective interests. However, the rights given to associations and groups are not unlimited. For example, they can not seek damages for harm to the environment, however they may seek restitution. Although they may bring a claim for a breach of environmental law they cannot, unless they are parties affected by the harm, intervene in the process. For example, they may not be able to make certain allegations and may be substituted as claimants by the administration.

The Civil Code provides a one year limitation period in which to bring an action for a civil liability. This period starts from the day the harm is caused. Only in cases of continuous or successive harm, harm which has its final consequences long after the harmful act has ceased or when harm is due to successive harmful acts, does the one year period begin to run from the day when the final or definitive harm to the environment is known.

Regarding liability of companies in Spain, the general rule is that if the polluter is a company, as a legal entity it will be liable for any environmental damage caused. Under Spanish company law, a company’s shareholders are distinct from the company itself and, save for exceptional circumstances, will not be personally liable.

However, there have been cases in which shareholders have been held liable for acts of the company. Judicial prerogative exists to “lift the corporate veil” in order to identify the persons responsible for fraud of abuse of law.

The Spanish Supreme Court has ruled that to lift the corporate veil it is necessary to balance equity, justice and legal security but that justice must prevail. The courts do not take the decision to lift the veil lightly. Indeed, it is done only in exceptional circumstances. Shareholders may be liable for harm caused to the environment by their company:

- Where a company dissolves itself to avoid environmental liability.
- Where a subsidiary has been set up purely to enable the parent company to shelter from environmental liability.
- Where the company has no real independent existence, with shareholders and company being one and the same; and
- If there is a lack of distinction between the assets of the company and those of the shareholders; for example where there is only one shareholder who controls the company himself.

I.3. Environmental crime

Types of offences

Spanish Penal Law distinguishes two types of offences, misdemeanour and crime,

this
qualification depends on the seriousness of the violation. Usually misdemeanours are punished with fines or prison sentences for a weekend, while the penal sanctions for committing a crime are broader. On one side we have sanctions that invoke loss of liberty, which may vary from weekend- until up to 30 years- prison sentences. Then there are sanctions that deprive rights related to the unlawful action, such as the disqualification from the exercise of a specific job or a public service. Moreover the Penal Code foresees pecuniary sanctions to the condemned for a crime, this is at the discretion of the judge.

The proceedings and the competent courts are determined by the type of unlawful action. In case of misdemeanours, the hearing is before the *"Juzgado de Instrucción"*, (the Magistrates' Court) of the district in which the violation has taken place, except some particular cases in which the competence is of the *"Juez de Paz"*, (the Justice of the peace).

Concerning the crime committed, different judicial bodies are charged with its investigation and resolution. This separation complies with the necessity of ensuring the most absolute impartiality of the Court that has to promulgate the sentence. The *"Juzgado de Instruction"*, (Magistrates' Court), of the district in which the crime has taken place, generally carries out the investigation, whereas in the most serious cases the *"Juzgado de Instruction Central"* (Central Court of instruction) is to play this role.

The *"Tribunal del Jurado"* (Juror Court), the *"Juzgado Penal"*, (Court of criminal jurisdiction), or the *"Sala de lo Penal de Audiencia Provincial"*, (Provincial Penal Court), in crescent correspondence with the seriousness of the crime, are the judicial bodies that sentence the offenders.

It is possible to appeal against the sentence at the hierarchical superior court, when a principle of penal law has been violated in the trial or in the investigation. Thus the sentences of the *"Juzgado Penal",* (Court of criminal jurisdiction) can be appealed against at the *"Sala de lo Penal de Audiencia Provincial"* (Penal Chamber of the Provincial Court) and is called *"recurso de apelación"*, (appeal) while the decisions of the latter court can be appealed against "*recurso de casación"* (cassation) at the *"Sala segunda del Corte Supremo",* (Second Chamber of the Supreme Court). If a fundamental right is violated in the proceedings, "*recurso de amparo"* (constitutional protection appeal) to the *"Tribunal Constitucióna*l (Constitutional Court) is open.
In its article 45 the Spanish Constitution raises environmental protection as a fundamental principle of the social and economical policy of the State. The importance of the principle justifies penal enforcement of it. The third part of the aforementioned article wages penal sanctions in for violations against the natural resources and the environment.

In the Penal Code the part titled "Crimes against the natural resources and the environment", article 325 conceives seriously harming the balance of a natural system as a general crime against the environment. It is general because it defines the violation of any law or provisions that protect the environment as a crime. Article 325 additionally states that the sanctions to be imposed will be of the highest range if

human health is put at risk. The disposition thus automatically upgrades new incoming laws to the penal code.

This adaptability is ground for many appeals to the Constitutional Court, for the violation of the principle *nullum crimen, nulla poena sine praevia lege poenali*, which says that a sanction cannot be imposed if the criminal conduct is not strictly defined. The Court however has confirmed the constitutionality of the article in every single occasion.

Penal Law has a subsidiary role compared to Administrative Law, the latter aiming to prevent crimes through regulations and permissions, the violation of which may lead to administrative sanctions. The philosophy behind this to prevent the committing of crimes, for not having to recur to punishment after their occurrence.

Then we have a small group of articles defining criminal conducts against flora and fauna. Art. 332 for instance punishes anyone who picks, cuts down, collects or deals illegally in any threatened species or subspecies, or destroys or gravely alters their habitat. A fine of 8 to 24 months or imprisonment from 6 months up to 2 years is established to punish violation of article 332.

Natural and legal persons

In Spanish Penal Law the accountable for an offence can only be an individual who acts with malice or fault. In some cases the subjective element is not required, and objective responsibility is contemplated instead. Objective responsibility originates in the mere occurrence of a fact in concurrence with other elements, e.g. belonging to a certain category of workers.

Corporations or legal persons cannot be prosecuted because of their legal form. Penal
sanctions cannot be imposed to anything but to individuals. For this reason the administrator of a corporation or the representative of a legal person is to be personally responsible for crimes. Charges will always be filed upon him.

Average amount of time for criminal environmental proceedings

The duration of the procedure varies considerably depending on the crime committed. A crime against flora and fauna usually takes less time than an ecological crime, due to the different type of investigation required. While crimes against flora and fauna require a simpler kind of investigation and are proven with less evidence, such as witness report and *corpus delicti,* ecological crimes imply a very complicated procedure. First of all, chemical analyses and counter analyses have to be carried out and experts' opinions about the effects of the criminal acts on the environment have to be collected in the investigation stage. Secondly, some aspects of the crime are very hard to prove, for example the origin and the characteristics of polluting substances and the impact of these on the ecosystem. These are all elements which extend the length of the procedure and are in addition very often abused as a strategy by the defence.
Concretely, procedures for ecological crimes typically take five years from the be-

ginning of the action until the final sentence, while the proceedings for crimes against flora and fauna usually take two years.

The existence of administrative sanctions usually delays the procedure. If the infringements may be constitutive of a crime, the Public Administration will halt the administrative proceeding and will forward it to the Public Prosecutor. The penal sanction will preclude the administrative one.

The costs of the procedure

The determination on who pays the litigation costs depends on the final outcome of the trial. If the accused is found guilty, the judge can condemn him to a pecuniary sanction in order to restore at least part of the costs borne by the state. It may include the costs of the private accuser. If the sentence is acquittal, the State will have to pay all the costs. The decision here is at the discretion of the judge.

The costs of criminal proceedings do not provide disincentives to charge people with environmental crimes, because the social costs produced by an environmental crime
unpunished would be much higher.

Unfortunately the high costs of the legal proceeding don not keep back large corporations from committing environmental crimes, because the economical advantage that can come out from this kind of unlawful behaviour is undoubtedly higher.

Who initiates the procedure?

Most of the times the prosecution of ecological crimes begins with an action of the police, that may be conducted directly or because the crime has been reported. The police body competent to investigate this kind of crimes is the Nature Protection Service of the "Guardia Civíl", a national Police body. Autonomous communities have their own police forces, Catalonia for example has "Mossos d'Esquadra". However, none of the aforementioned police forces has exclusive jurisdiction in this matter, from time to time environmental proceedings are also opened by municipal police or forest guards. Sometimes the prosecution may be the result of the activity of government's inspectors, whose task is verifying the compliance with administrative regulations.

The Public Prosecutor reports the crime to the *"Jurado de Instrucción"*, who is the competent authority to instruct the investigation. If the *"Jurado de Instrucción"* believes that the fact constitute a crime, the Public Prosecutor can formulate the accusation to open the trial.

The offended party can have a role in the proceeding as "private accuser" while any person with a interest in the case can promote the "popular accusation". In concrete, this second action allows ecological organizations or naturalists NGO's to participate

in the proceeding and to sustain a criminal accusation even against the opinion of the Prosecutor's office.

The competent judge

Administrative judges can preside environmental proceedings if the facts do not constitute a crime but simply violate administrative laws. The competent judge is the judge in the jurisdiction of whom the criminal fact has taken place. Depending on the seriousness of the crime the judge will be the *"Jurado de Instrucción"* or the *"Juzgado Penal"* or the *"Sala de lo Penal de Audiencia Provincial".* The proceeding is exactly the same of any other crime, this is why it is possible to bargain the sanction shorting the trial with the plea of guilty.

The outcome of the criminal procedure

Most of the times ecological crimes and crimes against flora and fauna end up in acquittal, especially because it's extremely hard to prove that the behaviour of the accused has exposed the ecological balance to danger.

Environment penal law is not being an effective mean to fight the attacks against the natural resources, it has not preventive influence on the crime because it is not able to punish it properly. The question is that a good to be protected by law, has first of all to be valued by the society; there must be a demand of protection which is something that doesn't exist in Spanish society yet.

ANNEX II.- RECOMMENDED READINGS

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ANNEX III.- LEGAL TEXTS

General

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CRIMINAL LIABILITY

INTERNATIONAL

Convention on the protection of the environment through criminal law. Council of Europe. Strasbourg, 4.XI.1998

EUROPEAN UNION

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

Commission Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law COM (2001) 139, adopted by the Commission on 13 March 2001.

CIVIL LIABILITY

INTERNATIONAL

I. ENVIRONMENTAL DAMAGE IN GENERAL

Lugano Convention of June 21, 1993 on Civil Liability for Damage Resulting from Activities Dangerous to the Environment

II. OIL POLLUTION

CLC (International Convention of November 27, 1992 on Civil Liability for Oil Pollution Damage + amendment)
Fund Convention (International Convention of November 27, 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage + amendment)

Bunker Oil Convention (International Convention of March 23, 2001 on Civil Liability for Bunker Oil Pollution Damage)
Convention of May 1, 1977 on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources

III. MARINE ENVIRONMENT - OTHERS

LLMC (Convention of November 19, 1976 on Limitation of Liability for Maritime Claims and Protocol of May 2, 1996 to amend the Convention on Limitation of Liability for Maritime Claims)
Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 (London, 2 May 1996)

IV. TRANSPORT OF DANGEROUS GOODS (BY SEA / ON LAND)

HNS (International Convention of May 3, 1996 on Liability and Compensation in connection with Carriage of Hazardous and Noxious Substances by Sea)

CRTD (Convention of October 10, 1989 on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels)

V. TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES

Basel Liability Protocol (Protocol of December 10, 1999 on Liability and Compensation for Damage Resulting from Transboundary Movements to the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal)

VI. INTERNATIONAL WATERCOURSES

Draft Helsinki Liability Protocol (Draft Protocol on Liability and Compensation for Damage resulting from the Transboundary Effects of Industrial Accidents on Transboundary Water)

VII. NUCLEAR RISKS

Paris Convention (Paris Convention of July 29, 1960 on Third Party Liability in the Field of Nuclear Energy)
Brussels Convention (Convention of January 31, 1963 Supplementary to the Paris Convention on Third Party Liability in the Field of Nuclear Energy)

Vienna Convention (Convention of May 21, 1963 on Civil Liability for Nuclear Damage)

Vienna Convention of September 12, 1997 on Supplementary Compensation for Nuclear Damage

NUCLEAR (Convention of December 17, 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material)

VIII. ANTARCTICA

Wellington Convention / CRAMRA (Convention of June 2, 1988 on the Regulation of Antarctic Resource Activities)
Protocol on Environmental Protection to the Antarctic Treaty (1991)

IX. SPACE

Space Liability Convention (Convention of March 29, 1972 on International Liability for Damage Caused by Space Objects)

X. INTERNATIONAL LAW COMMISSION

ILC Draft on Prevention of transboundary harm from hazardous activities, November 2001

EUROPEAN UNION

Commission Green Paper in 1993 (COM(93) 47 final)

White Paper on Environmental Liability on 9 February 2000 (COM(2000) 66 final

Directive 2004/35/CE of the European Parliament and of the Council, of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. OJEC 143, 30/04/2004.

ANNEX IV. WEB PAGES

European Commission's Website: D-G Environment: Environmental Liability: http://europa.eu.int/comm/environment/liability/index.htm

Council of Europe, Convention on Civil Liability for damage resulting from activities dangerous to the environment, Lugano 21 June 1993, European Treaty Series 150; 32 I.L.M. 1228 (1993); and on the Web: http://conventions.coe.int/

Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous wastes and their Disposal, UNEP/CHW.1/WG.1/9/2, Internet: http://www.unep.ch/basel/

International Convention on Civil Liability for Oil Pollution Damage, Brussels 29 november 1969, 9 I.L.M. 45 (1970); as amended by the Protocol of 1984 and the Protocol of 1992, (The 1992 Liability Convention, CLC), see the Environmental Treaties and reseource Indicators (ENTRI), http://sedac.ciesin.org/entri/ or UN Treaty Series database, http://untreaty.un.org

International Court of Justice: http://www.icj-cij.org/

International Criminal Court: http://www.icc-cpi.int/

European Court of Human Rights: http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/

The International Oil Pollution Compensation Funds (IOPC Funds) http://www.iopcfund.org/