



## **PROFESSOR ABRAMI'S HEARING AT THE ENVI COMMITTEE**

### **PROPOSAL OF TWO HISTORICAL REFORMS: AN INTERNATIONAL ENVIRONMENTAL CRIMINAL COURT (IECC), AN EUROPEAN ENVIRONMENTAL CRIMINAL COURT (EECC)**

Honourable President, Honourable Members,

I would like to above all thank the President of the ENVI Committee, for having allowed me the honour as Executive President of the International Academy of Environmental Sciences (*Accademia Internazionale di Scienze ambientali* - IAES) to illustrate the contents and reasons for our Court Project in this prestigious setting.

I would also like to thank the Honourable Deputy Members of this Committee, for the attention which they have already dedicated and that, I hope, they will continue to manifest towards our project.

Following the letter of the 13<sup>th</sup> May 2010 sent by me to the ENVI Committee and the subsequent formalised invitation which the President of the ENVI Committee Hon Mr Jo LEINEN transmitted regarding this meeting, I would like to state the following:

#### **I. THE REASONS FOR THE REFORMS**

Problems deriving from the alteration of nature's resources have threatened human health throughout history. Over the centuries the relation between individuals and nature has been one of mutual aggression, where nature's response to man's intentional aggression was to poison the environment.

The recent disaster of the off-shore platform *Deepwater Horizon* is yet one more example of the urgency of an effective intervention to deal with the "environmental problem", and this intervention cannot be postponed. An effective system of monitoring, checking and sanctions can be the way towards an effective enforcement of justice.

In this sense, in people's consciousness there are two main needs:

- A growing need for a coherent and coordinated body of legal regulations, bringing more restrictive limitations in human activities that are inherently dangerous for the ecosystems.



- The adoption of transnational investigations and jurisdictional instruments meant to enforce environmental protection.

Pollutants are, in fact, becoming increasingly damaging, drastically altering environmental resources.

In such a context, some products, as in the case of Sevin, which publicly claimed to be harmless pesticides, were the cause of environmental disasters and human tragedies like Bhopal, leaving over half a million wounded and/or contaminated victims and thousands of deaths

For some time now, scientists have become conscious of the seriousness of the situation and thus began studying, in-depth, the health of the Planet.

Among the many studies, one worthy of mention is NASA's satellite space observation. The data, analyzed in San Francisco, in February 2001, by over 3000 scientists, addressed environmental issues to propose feasible solutions.

On that occasion, an environmental disaster map was presented, a first of its kind: "*The Atlas of Populations and the Environment*". The Atlas, compiled by monitoring, issued an alarming truth: that individuals, in the years between 1600 and 2000, were responsible for environmental disasters, seriously threatening the health of Planet Earth and altering over half of its resources.

Yet such a reality seems to be in marked contrast with the so-called *sustainable development policy*, regarded as a universally valid principle and "formalized" internationally almost thirty years ago:

- it is necessary to recognize the twenty years spanning from 1972-1992 as the period of greatest relevance in which public awareness was heightened to regard "the environmental problem" no longer as "**a local problem**" (at municipal, regional or national level), but as "**a planetary problem**".
- It is necessary to consider the development of the "thirst" for *juridic-scientific* knowledge of preventive and repressive measures within a system of Justice that prescribes **effective, proportionate and dissuasive sanctions**.



- Certainly, it is essential to have a full understanding of such a matter, in the light of the following principles; and these principles must be kept at the forefront of any discussions relating to the introduction of any new trans-national instruments:
- **The Polluter Pays principle;**
- **The Precautionary principle;**
- **The Prevention principle;**
- **The Sustainable Development i.e.** "a development which meets the needs of the present without compromising the ability of future generations to meet their own needs".
- **The principle that environmental damage should be rectified at source.**

And it is also important:

- to adopt norms to guarantee an *effective justice system*, through “*proportionate, effective and dissuasive sanctions*”
- that Member States strengthen sanctions, and that they apply penal sanctions for criminal acts that damage the environment
- **that the national judges carry out** prompt and effective investigations to determine responsibilities, followed by appropriate disciplinary action. This would discourage negligent and deliberate behavior (to see, B7-0044/2009, **Motion for a resolution, 14 September 2009**).

And it is also important:

- to realize that these aims are fundamental to the institution of a **European Environmental Criminal Court (EECC)**



## II. THE EUROPEAN ENVIRONMENTAL CRIMINAL COURT: THE REASONS FOR THE REFORMS

The reform would achieve important but different goals:

- to reaffirm and put into practice the principles of *effective justice* sustained by the EU principles mentioned above;
- to create a new EU Institution which could guarantee the juridical control of the use and/or abuse of environmental resources, and ensure a coherent European environmental criminal justice system, more suitable to deal with the current situation;
- it would constitute an important contribution of experience and ideas, even for the MPU of which the EU is part. It would assert that the EU recognised and enforced the key proposition that the environment is one of the key themes to be considered;
- it would be in accordance with the strong demand of millions of EU citizens (facing unpunished pollution-related problems) for justice in every case of environmental pollution. (for example the Aurul case, which provoked the last disaster in the Danube basin and which confirmed the fact that real protection of the ecosystem is non-existent)<sup>1</sup>;
- Many marine disasters (for example, the Prestige and Erika cases) have caused huge damage not only to the environment, but also to different types of industries ( marine life, tourism and accommodation);
- it would complete and be in accordance with, and not opposed to, the aims already approved by the EU criminal reform directive 2008/99/EC of the EP and of the European Council 19.11.08 on the protection of the environment through criminal law.

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<sup>1</sup> On January 31st 2000 the pollution caused by a cyanide spill following a dam burst of a tailings pond in the Danube basin has highlighted the following aspects. This area (drainage basin embraces 13 Countries, 160 mil. people, 1/3 of mainland Europe ) has been affected by the dam burst which caused the spill of 100000 cubic meters of toxic mud affecting Romania, Hungary and former Yugoslavia with devastating effects: water, the ecosystems (animals and plants of any sort). The EU in the IV Program of Environmental action acknowledged the last pollution of the Danube basin which confirmed the non existence of real protection of the ecosystem.



This directive is aimed at imposing criminal sanctions in member States in cases where conduct is deemed to constitute severe crimes against the environment.

Such a minimum level of harmonisation would permit the more effective application of environmental law, respecting the objective of preservation of the environment provided for in article 174 of the Treaty that constitutes the European Community. It is to be noted that within the EU there has been for years an awareness of illegal and often unpunished environmental aggression.

In particular the EU is aware of the increase in the number of such crimes and of the fact that this increase has been caused by the absence of harmonised criminal sanctions for such crimes within the member States of the EU.

The Directive 2008/99/EC on the protection of the environment through criminal law tends thus to guarantee a harmonised criminal justice system to deal with the preservation of the environment within all member states of the EU.

The directive is very clear and it affirms:

*“According to Article 174(2) of the Treaty, Community policy on the environment must aim at a high level of protection”*

*“The Community is concerned at the rise in environmental offences and at their effects, which are increasingly extending beyond the borders of the States in which the offences are committed”.*

*“Such offences pose a threat to the environment and therefore call for an appropriate response”.*

*“Experience has shown that the existing systems of penalties have not been sufficient to achieve complete compliance with the laws for the protection of the environment “.*

*“Such compliance can and should be strengthened by the availability of criminal penalties, which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties or a compensation mechanism under civil law In order to achieve effective protection of the environment, there is a particular need for **more dissuasive penalties** for environmentally harmful activities, which typically cause or are likely to cause substantial damage to the air, including the stratosphere, to soil, water, animals or plants, including to the conservation of species”*



### III. INTERNATIONAL ENVIRONMENTAL CRIMINAL COURT: THE REASONS FOR THE REFORM

The purpose of the directive and its necessity can clearly be understood when one considers the obligations on member States to put in place criminal sanctions to deal with conduct such as: the illegal elimination, deposit, transport, export or import of dangerous waste; the trading of illegal substances which reduce the ozone layer (e.g. hydrocarbon, used oils, purification mud, metals or electrical or electronic appliances' waste).

It is submitted that the EECC would form the natural competent Institution, to enforce the necessary the laws that will be approved by the 27 juridical systems of the member States, and to those laws into practice. The tribunal could intervene, as a “twin” Court of the ICC (*rectius*, IECC), in cases in which the national criminal court competent for the matter has failed to intervene. It is further submitted that the new Court, the EECC, would also have the function of harmonising the diverse national laws regarding environmental matters, as well as being responsible for ensuring uniformity in the interpretation of the environmental criminal laws among the 27 member States.

The establishment of an EECC would eventually lead to the establishment of another Court, the IECC, described as follows:

- the EU in the time being can promote any act directed at urging the Review of the Rome Statute, which founded the ICC, to introduce a new criminal offence: namely, environmental disasters which are so heinous that they qualify as a crime against humanity. This would have the desirable effect of enlarging the jurisdiction of the ICC, that would then operate as the IECC.
- The EU with its 27 members makes up almost a quarter of the signatory States to the Rome Statute, forming the basis of the jurisdiction of the International Criminal Court. Through the revision of the Statute new criminal offences can be introduced, and hence, the EU could have an important role in the direction, soliciting for example, through the founding of the EP Resolution,



any initiative aimed at the implementation of the reform of the IECC, the International Environmental Criminal Court.

The urgent need for these new institutions is demonstrated by the historical examples of so many severe environmental disasters where, previously, those responsible have gone unpunished.

For example the criminal trial that followed the Bhopal disaster:

- 30.000 victims;
- insignificant reparation of about 500 euros for each relative of the disaster victims and 100 euros for each intoxicated or poisoned person;
- the person most responsible is still at large;
- insignificant penal sanctions given in 2010, that is 26 years after the disaster, attributed to managers for the crime of intentional murder without consideration for the environment.

The fact that 26 years elapsed before the company was convicted of “substantial criminal irresponsibility”, is a clear example of lack of justice, and a clear violation of the legitimate expectation of the victims and society that there should be an effective criminal sanction for such conduct within an reasonable period of time.

Likewise, in cases of marine pollution, a substantial absence of penal preservation can be noted. In fact, even if different conventions (Montego Bay 1982, Barcellona...) have treated the problem of sea pollution, it must be registered that, if on one side security standards exist, directives, compulsory controls, on the other hand there is no prevision of a third penal judge (hence not a national one) who could eventually sanction the irresponsible behaviour that caused an environmental disaster.

**NOW A “SIMPLE” QUESTION: It’s necessary asks a simple question:**

**Whether, and in what terms, great environmental disasters which destroyed eco-systems and /or human lives can fall under the category of Crimes Against Humanity?”**

- to request the realization of an international criminal jurisdiction for the Environment as foreseen by the Rome Statute, according to Art 121, 122, 123, through the application of a revision procedure;
- to propose, through the amendments above-mentioned, the insertion of new forms of crime into the International Criminal Court Statute. Where, at last, an Intentional



Environmental Disaster can be viewed as a Crime Against Humanity, and therefore apply trans-boundary codified measures to protect ecosystems;

- to amend Art. 7 of the Rome Statute, so that the Statute defines crimes against the humanity as follows:

*“For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (...) or **the other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health**”*

- to extend the definition of “**attacks and other inhumane acts and widespread**”, in particular referring to the material element of the aggressive conduct, which involves both the “territorial” element -between two or more states- and the “temporal” element -that includes the harmful effects to the environment and/or the health of individuals.

Noting that, as stated in Art. 7, crimes against humanity, has acquired a broader meaning and is no longer necessarily associated to armed conflicts.

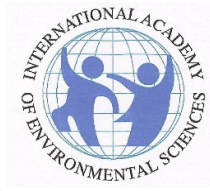
#### **IV. THE POLLUTION CONTINUES: A WARNING AND THE NECESSITY OF CONTROL SYSTEMS FOR THE FUTURE**

Alaska, March 24, 1989 (Oiltanker Exxon Valdez) – USA, Gulf of Mexico, April 20, 2010 (disaster due to the sinking of the off-shore oil platform *Deepwater Horizon*): the two largest environmental disasters of American history. Today it’s even possible to verify directly on the Internet<sup>2</sup>, and it’s to be considered a sad opportunity, how environmental aggression represents a continuous fact, which cannot be stopped anymore by mankind, not even in the most technological advanced country.

<sup>2</sup>

[http://www.huffingtonpost.com/2010/05/20/live-gulf-oil-spill-video-feed\\_n\\_583682.html](http://www.huffingtonpost.com/2010/05/20/live-gulf-oil-spill-video-feed_n_583682.html)

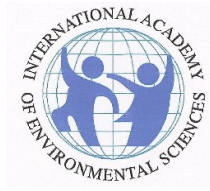




## **V. THE PROPOSAL. INTRODUCING REFORMS: AN INTERDISCIPLINARY SCIENTIFIC AND REGULATORY COMMITTEE OF EXPERTS WITH SPECIFIC TASKS**

Having examined the circumstances that require the adoption of our proposals, we need now to proceed with specific initiatives to support a European Parliament Resolution. The resolution should propel formally and substantially for the creation of a new Communitarian Institution on one side, and to prepare, accumulate and make available for the EU Member States who signed in Rome for ICC of the adequate documentation to help them to fully recognize the intentional environmental disaster as a crime against Humanity:

- V.1 Enlarge the current competence of International Criminal Court, with the provision, in either the Treaty of Rome revision process or the alternative statutory procedure, of a new specific crime: Intentional Environmental Disaster.
- V.2 Prepare the European Criminal Court for Environment statute as a “twin court” of IECC;
- V.3 In order to achieve the above goals and objectives, the creation by ENVI Committee of a Scientific and Judiciary Commission is required; the Commission member should be experts and act as consultants with the following tasks:
  - a) elaborate the Statute of the European Environmental Criminal Court (the European Environmental Criminal Court by law), with details specification of area and legal instrument of prevention and repression of environmental infractions and any other provision required by its effective and efficient functioning;
  - b) rank different environmental emergencies within EU and UPM Member States, with specific attention also to health related issues, scientific and technological matters and either anthropological and cultural aspects;
  - c) clearly and unequivocally specify the concepts which are thought necessary to judge the severe environmental pollution matters and the evaluation of damage to people and the ecosystem, comprehending the said concepts relative to “intentional environmental disaster”, classified as crime against humanity;
  - d) indicate the forms and instruments of prevention and control of environmental disasters, as well as forms of environmental cleanup.



## CONCLUSIONS

In light of the observations made here and the arguments developed above, the International Academy of Environmental Sciences hopes that this Committee welcomes our proposals, thus declaring its willingness to make its own human, professional and structural resources available, correlated to the realisation of two important reforms.

With regards to the latter, IAES makes available the Villa Herion on the Giudecca and the Office in Sant'Elena (at the ex -Convent *dei Servi di Maria*) in Venice, properties which the City of Venice has given in concession for the implementation of the Court Project; a project which is supported and encouraged by the City Administration.

We hope that the ENVI Committee will see fit to write a page in history with regards to the prevention and repression of environmental disasters which man has already condemned in his conscious before yet condemning them in the law.

Venice, 7<sup>th</sup> July 2010

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