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# Proposals to apply environmental protection laws under new criminal laws

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***Abstract:***

*Awareness of environmental degradation and waste of natural resources in the early 1970s has led, at the state level, to the European Community and international more and more precise and binding. If, in the European Union, the normative arsenal seems close to exhaustiveness, the question of its effectiveness remains intact.*

*The search for an effective sanction of environmental rules is currently inspiring a double movement: on the part of the European authorities, a reflection on the adaptation of the traditional remedies for criminal sanction and civil liability to the particularism of risk and environmental damage; on the part of the magistrates, a desire to be involved in the implementation of this new branch of law, and international cooperation.*

*Two proposals for directives from the Parliament and the Council bear witness to these new concerns. One tends to criminalize breaches of obligations deriving from Community law which cause or are likely to cause substantial damage to the environment (proposal of 26/06/2001: OJEC No. C-180 E, followed by a Council Framework Decision of 27 January 2003). The other relates to the creation of an environmental liability regime for the prevention and repair of damage (proposal of 23/01/2002, COM 2002 0021COD: JOCE of 25 June 2002). These texts echo two conventions adopted under the auspices of the Council of Europe, one devoted to the responsibility for damage resulting from activities dangerous to the environment (Lugano, 21 June 1993), the other to protection of the environment through criminal law (Strasbourg, 4 November 1998).*

***Keywords:*** *environmental protection, laws, proposals for directives*

## I. Introduction

National judges, for their part, began their dialogue on the role of law in sustainable development at a global symposium held in Johannesburg in August 2002 under the auspices of the United Nations Environment Program (UNEP). The declaration adopted at the summit underscored the decisive role of an independent judiciary, fully aware of the rapid development of environmental law and aware of its responsibilities in this area.

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The Forum of Judges for the Environment, which is taking place today in Luxembourg, on the premises of the European Court of Justice, is at the confluence of these two movements.

Because environmental goods - purity of the air and water, soil safety, biodiversity, beauty of landscapes and sites - are insusceptible of appropriation by private persons and even by States, and because the activities pollutants give rise to diffuse nuisances which do not only harm the present generations but also obey the future, the protection of the environment seems ill-assured by the classic rules of civil liability. While supra-national attempts to adapt these mechanisms are still in their infancy, the strategic role of criminal enforcement is generally recognized.

The proposal for a directive on the protection of the environment through criminal law enumerated the advantages:

"Often, only criminal sanctions have a sufficiently deterrent effect.First, they reflect a disapproval of society qualitatively different from that manifested through administrative sanctions or civil compensation.They transmit a strong message to offenders with a much more dissuasive effect, such as an administrative sanction or other financial penalty may not be dissuasive if the offenders are impecunious or financially very powerful, and the means of public action and education ( as well as mutual assistance at Member State level) are more effective than administrative or civil law and can increase the efficiency of the investigation, and there is an additional guarantee of impartiality of the authorities responsible for the investigation. Investigation, because it is other authorities than the administrative authorities that granted the licenses to n or polluting permits that will be responsible for the criminal investigation ".

While these arguments appear highly relevant, they nevertheless call for two observations. On the one hand, they presuppose a certain model of judicial organization - which is not universal - comprising a public prosecutor's office with guarantees of independence as well as an investigating jurisdiction. On the other hand, they demonstrate with respect to the effectiveness of the criminal sanction a confidence that experience leads to relativize.

French law is not stingy with incriminations. Except in the field of nuclear energy, there is probably no single environmental requirement - transcribed from community or national rules - that carries a penalty. This does not prevent illegal activities from continuing. The administration is generally aware of this, but strives to obtain regularisations. As for the judicial authorities, they do not always realize that they are also concerned.

The statistics published by the Ministry of Justice show that during the year 2002, the French criminal courts as a whole only made 306 final decisions in the field of classified installations (approximately corresponding to the field of implementation of Directive 96/61 on the prevention and integrated reduction of pollution), 27 final decisions in the field of waste (international transfers, transport, treatment, discharges) and 11 in the field of marine pollution.

The situation thus described is undoubtedly fairly general within the Union, so that if the European authorities had given a survey of the 62 directives and regulations annexed to the proposal for a directive to national judges. Protection of the environment through criminal law, they would probably have been very disappointed.

In terms of environmental protection, perhaps even more so than in other areas, it is not enough to punish sentences, we still have to give ourselves the means to apply them. Because this right is very complex (I) and its effectiveness depends on the dynamism of the judicial authorities (II), these means consist in the training and the specialization of the magistrates.

**I - A COMPLEX LAW**

The criminal law of the environment is particularly complex because it is technical and evolutive (A), because it is largely from international or community sources that are not familiar to judges (B), because the responsibilities of the various stakeholders in the same operation are often entangled (C).

**A - A technical and evolving law**

It does not seem possible to reduce the criminal protection of the environment to the creation of a single crime of pollution of the natural environment:

- on the one hand, because such incrimination would not be sufficiently discriminating; it would lead to penalizing all human activities; it would provoke either paralysis or the arbitrariness of the repression, such inconveniences can not be overcome by a condition of "seriousness" of the fault or the damage, which does not seem to satisfy the requirement of predictability of the penal law ;

- on the other hand, it is not sufficient to punish the damage consumed, it must also be possible to simply prohibit certain activities, or subject them to prior authorization, and impose conditions of operation on operators of potentially polluting facilities whose non-compliance is punishable regardless of the finding of injury.

It is therefore inevitable that the criminal law of the environment consists of a catalog of offenses generally expressed in terms of physicochemical thresholds. Not only the incriminations thus defined are difficult to read for lawyers, but they must also constantly adapt to scientific and technical developments:

- awareness of the dangerousness of existing products; - creation of new substances whose risks are still poorly evaluated, - development of new processes for the treatment of nuisances or alternative products to dangerous substances.

Environmental law is a perpetual transitional law, with all that entails difficulty in determining the law applicable over time

**B - A right largely derived from international or community sources**

In more and more areas, the national law confines itself to imposing criminal sanctions on provisions contained in international conventions or in Community legislation, without sometimes even bothering to reproduce the terms.

Thus the French French Environment Code (Article L 218-10) punishes with four years' imprisonment and a fine of 600,000 euros for the captain of a ship "subject to the provisions of the International Convention for the Prevention of Pollution from Ships, done at London on 2 November 1973, as amended by the Protocol of 17 February 1978 and by its amendments duly approved or ratified (...) to commit a crime to the provisions of Rules 9 and 10 of Annex I to the Convention on the prohibition of discharges of oil as defined in Article 2, paragraph 3, of this Convention ".

The combination of Articles L 412-1 and L 415-3 of the same Code, as well as the provisions of a ministerial decree of 30 June 1998, punishes with imprisonment of 6 months and a fine of 9,000 euros. , unauthorized import and export of specimens of animals belonging to species "listed in Annexes A and B of the EC Regulation of 9 December 1996" (Regulation No 338/97, supplemented by Regulation No 939 / 97 of May 26, 1997). These Annexes A and B include, with declassifications and additions respectively, Annexes I, II and III of the Washington Convention on International Trade in Species.threatened with extinction (CITES Convention of 3 March 1973, entered into force on 1 July 1975, ratified by France on 11 May 1978 and introduced into Community law by a regulation of 3 December 1982).

Such legal constructions create major problems for practitioners: - physical access to sources of law, including annexes and additional protocols (the annexes are frequently inaccessible on electronic documentary media), - verification of entry conditions in force of international conventions (ratification by their own State, obtaining a minimum number of signatures) - ambiguities of the terms used, taking into account national legal traditions and the vagaries of translation (as a recent and anecdotal example the notion of "water bodies" used by the Water Framework Directive 2000/60 has puzzled the French administration).

**C - A law that governs complex transactions**

The most formidable model of the entanglement of responsibilities in carrying out activities dangerous to the environment is that of maritime transport. On the occasion of the sinking of the Erika, the office of investigation of sea accidents has counted more than fifteen stakeholders in the management of this ship, independently of third parties such as the classification society or shipyards ( see Ph. Jeanson, Pollution discharges of ships: new repressive provisions: Dr. environ 2001, p.250).

Old industrial sites often also offer criminally inextricable situations. Their soils have been polluted by several successive operators, having exercised in the same place activities of different natures, having left on the spot their own residues of production, or even having received for the finances the hazardous waste of other companies. The last activity usually ends with a bankruptcy. Drums full of unidentified toxic products remain exposed in the open air and abandoned buildings become wild dumps. Such assumptions are very commonplace and are generally resolved by decontamination of the site at the expense of the taxpayer, given the difficulty of finding legally responsible and financially solvent persons.

## II - A LAW WHOSE EFFECTIVENESS DEPENDS ON THE DYNAMISM OF JUDICIAL ACTORS

To ensure effective enforcement of environmental law, judicial actors can not be content with a relatively passive, or at least essentially reactive, role in which they merely receive and process the information sent to them. the arguments presented to them, with all the time necessary for reflection and research. In the area of environmental protection, perhaps even more than elsewhere, judges need to take initiatives because the recording of offenses and the initiation of prosecution pose particular difficulties (A) and because conservatories are very specific and of a strategic nature (B). Lastly, they must, if necessary in a hurry to avoid the paralysis of the repression, assess exceptions of non-conformity of internal rules with Community law (C).

### A - Difficulties in recording offenses and prosecuting

(1) The finding of offenses

The services responsible for investigating common law offenses - police, gendarmerie - are unfamiliar with environmental law and generally do not have the technical expertise and the material means necessary to ascertain the offenses in this area. As for the administrations that control polluting activities, they are often dispersed, do not cooperate willingly among themselves and even less with the police or with the judicial authorities. When they detect offenses, they prefer generally seek amicable solutions or apply administrative measures of restraint. Moreover, their lack of knowledge of the criminal law may lead them to draw up minutes that are tainted by nullity or are difficult to exploit.

Co-ordination of the police services and the various administrations concerned can only be achieved by a judicial authority enjoying a certain degree of independence, powers of direction and a good knowledge of the applicable law.

2) The prosecution

On this point again, only an independent authority, at the exclusive service of the law, can exercise effective and legitimate action.

The administrations, the elected authorities, are, much more than the magistrates, exposed to the blackmail to the dismissal. Their choice of prosecution is also more easily suspected of being patronized, or accused of introducing distortions of competition.

The direct victims of offenses which, under French law, have the power to set in motion public action, are, in terms of damage to the environment, difficult to identify insofar as the protected values are collective, deprived of patrimonial character, or at least insusceptible of individual appropriation. The associations approved by the administration, to which the French legislator grants procedural facilities to act before the criminal courts in reparation for the attacks on their moral interests, tend to become a real substitute public prosecution, because of the disaffection of many prosecutors of the Republic with regard to environmental litigation. Such a situation is not without its critics of the legitimacy of these organizations and the strategies they pursue.

**B - The strategic nature of provisional measures**

The provisional measures decide, in most of the lawsuits, of the utility of the judgment finally rendered. They require not only very reliable legal skills, but also a good knowledge of the different services and organizations that can intervene.

Two examples will illustrate this point.

1 °) Releases at sea of polluting substances

In accordance with the Montego Convention on the Law of the Sea, French law (Article 5 of the Law of 15 July 1994 on the procedures for the exercise by the State of its powers of control at sea) makes it possible to divert ships civilians, including foreign vessels crossing in waters under French jurisdiction, "at the request of a qualified judicial police authority". In the event of releases of pollutants, the public prosecutor or investigating judge may issue such an order to immobilize in a French port the vessel suspected of being in breach (Environmental Code). , art L 218-30). The lifting of the detention order may be ordered at any time in return for the payment of a security, the amount of which is fixed by the public prosecutor or the investigating judge. The purpose of this bond is to guarantee the legal representation of the persons prosecuted as well as the payment of the damages and the fine. Its maximum amount is not fixed by the texts. The Convention on the Law of the Sea requires that the bond be of a "reasonable" nature, particularly with regard to the amount of the fine incurred.

- the fixing of a deposit is the only way to guarantee the execution of the judgment when the master and / or the owner of the ship are of foreign nationality, and the bond supposes the diversion; - the decision to divert a ship can not be taken lightly while the cost (at the expense of the shipowner: C. envir., art L 218-30) of the detention of a ship such as the Erika is estimated at around 100,000 euros per day (Reflections of the Marine Academy on the Prevention of Marine Disasters: French Maritime Law 2003, p.464, note n ° 9), so that the precautionary measure is in itself a very dissuasive sanction; - the assessment by the judicial authorities of the likelihood of an infringement is extremely delicate given the complexity of its constitutive elements: in the case of (the most common) hydrocarbon releases, the definition adopted by the Marpol Convention associates conditions of building tonnage, distance from the coast and concentration of the effluent, the latter requirement being demonstrable, in application of the Bonn Agreement of 13 September 1983 by aerial photographs showing a water table 'a certain length and color.

There is no need to insist on the specialization required by decisions made in this area.

2 °) Protected animal species

In a completely different way, magistrates must not be caught off guard by the discovery of living exotic animals, protected by the Washington Convention. They must be able to urgently designate an establishment where these animals can receive appropriate care, which is not always easy, especially on weekends.

**C - Exceptions of non-compliance of internal rules with Community law**

If, pursuant to Article 176 of the EC Treaty (former Article 130t), the protective measures adopted pursuant to Article 175 do not preclude the maintenance and establishment by each Member State of enhanced protection

measures these measures must be compatible with the Treaty, especially with respect for competition, the principle of the free movement of goods, the prohibition of discriminatory measures or disproportionate to the objective pursued.

It is notably in the field of waste (considered, as long as it is recoverable, as goods with regard to the principle of free circulation: ECJ 9 July 1992 Commission v. Kingdom of Belgium, No 2/90) that Defense lawyers have systematized the recourse to the exception of irregularity of national law. Most Member States have, in fact, favored the creation of monopolies or oligopolies with a view to efficiency and profitability of the collection and disposal channels.

In order for this defense strategy not to unnecessarily delay the criminal trial, it is important for the CJEU to consider preliminary questions only on provisions it has not already interpreted. This presupposes, on the part of the national magistrates, an in-depth and fully updated knowledge of the Court's case-law, including with regard to proceedings involving other Member States.

On the other hand, in order to avoid the temptation of courts to abuse the doctrine of the indictable offense in order to dispense with preliminary reference, it would be desirable for them to be better informed about the provisions of the Rules of Procedure before the ECJ which allow to request an accelerated response. It would no doubt also be appropriate if the requirement to state reasons for urgency is automatically held to be satisfied when the question emanates from a criminal judge.

Environmental law is a new and multidisciplinary subject in which administrative law, civil law and criminal law coexist. The symposium focused on criminal sanctions as they seem today to be the most appropriate response to environmental damage, first of all in terms of deterrence. The aim of the conference was to note the weaknesses of the criminal law of the environment today to propose evolutions and lines of thought in the perspective of a development of the law. The discussions were in line with the work of the working group on the repression of environmental damage of the specialized committee of the National Committee for Ecological Transition (CNTE) and in the perspective of the creation of the French Agency for the biodiversity.

The importance of the criminal law of the environment The Convention on the Protection of the Environment through Criminal Law developed in the Council of Europe in 1998 laid down the principle that environmental damage with consequences must be punishable by appropriate criminal penalties. Since then, other texts have enshrined the same principles, in particular Directive 2008 / 99EC of 19 November 2008 on the protection of the environment through criminal law which transposes at Community level the principles of the Council of Europe Convention. . Undeniably the environment is a social value protected and even erected within the penal code under the fundamental interests of the Nation. Damage to the environment is an attack on society as a whole, beyond the direct victims of the damage, justifying their penalization. Moreover, in the field of investigation, only the criminal trial allows most often, given the means available, to establish the materiality of the facts.

Environmental crime is not a marginal phenomenon, on the contrary. In 2013, 67,211 environmental law offenses were reported by the police and gendarmerie (including 12 criminal acts such as arson and 20,000 crimes). Of these offenses, 19,275 involved fauna or flora, 5,963 to natural areas and 1,513 to aquatic environments.

Despite the importance of these figures, the number of criminal prosecutions remains low. On the other hand, when the attacks are continued until the criminal trial, the sanctions are rarely dissuasive: § In a judgment of October 23, 2012 the Criminal Chamber of the Court of Cassation confirmed the conviction of an accused for the destruction of 3,329 feet of a protected plant species with a € 3,000 suspended fine: one euro per foot destroyed. § In another case judged by the same criminal chamber on 5 June 2007 was confirmed the conviction of an accused to 2 years imprisonment including eighteen months suspended for hunting a considerable number of chamois in several national parks, using prohibited weapons. These two cases illustrate the weakness of the sanctions generally pronounced compared to other fields of the penal law such as the attacks on the goods or the persons or the legislation on the narcotic products. Prison sentences for environmental offenders remain exceptional despite the importance of the disorderly conduct caused by certain criminal behavior.

An exception to this picture is the repression of marine pollution after the wrecks of the Erika (1999) and the Prestige (2002) whose consequences had revolted a part of the public opinion. Indeed, as a result of these disasters were created the French Jurisdictions of the specialized maritime littoral (JULIS) in order to put in place an effective mechanism of repression accompanied by dissuasive sanctions. For example, in a judgment of 25 September 2012, the Criminal Court of Brest, jurisdiction of the maritime littoral competent for the Atlantic facade, sentenced the captain of a ship to the payment of a fine in the amount of 800 000 euros for a voluntary rejection of hydrocarbons off Finistère. The shipowner was forced to pay 95% of the amount of the fine. Important deposits are systematically requested to guarantee the effective payment of these amounts, the amounts of which are today dissuasive. Note that during the sinking of the Erika in 1999, the maximum penalty incurred for the same acts of maritime pollution was 375,000 euros fine. The quantum of the fine was gradually increased to 15 million euros and supplemented by a 10-year prison sentence.

The process of modernization of the criminal law of the environment

For most actors, environmental law is difficult to understand and understand. This is a major problem in a democratic society. Recently, a process of increasing penalties for damage to the environment has begun. In a few years, the rural code and the maritime fishery was created and the forest code recast with for each of them a codification of penal provisions, for some journals and aggravated. Environmental policies have also been harmonized and the officers in charge of Specific judicial controls in this area have been grouped together under the name of "environmental inspectors" (Ordinance No. 2012-34 of 11 January 2012). The quantum of the applicable maximum sentences has also been harmonized for different offenses and the generalized criminal settlement procedure for all environmental offenses. However, this process has not yet succeeded. The Estates General for the Modernization of Environmental Law, which constituted a commitment to the roadmap for the ecological transition resulting from the 1st environmental conference of 14 and 15 September 2012, were held on 25 June 2013 and led to

the need to continue this work of harmonization of environmental policies, and strengthen the repression of environmental damage.

The report of the Interministerial Committee for the Modernization of Public Action (CIMAP) of February 2015 on the evaluation of environmental policies1 concluded that the courts need specialization. The report recommended the appointment of "environmental" magistrates within a single prosecutor's office by department (TGI of the headquarters of the prefecture), to generalize the protocols parquet / administrations and mechanisms of operational cooperation.

On January 20, 2015, a working group on the repression of environmental damage was set up within the framework of the specialized commission of the National Council for Ecological Transition (CNTE) for the modernization of environmental law. This group was composed of representatives of civil society (NGOs, professional unions, experts) and specialized administrations (central and decentralized administrations, public institutions) under the chairmanship of Mr. Jean-Philippe Rivaud, magistrate. Its work has made it possible to outline proposals for reforms in the field of incriminations and penalties, judicial organization and criminal procedure.

As a follow-up to this work, the symposium organized by the French Committee of IUCN and its partners enabled the exchange of legal professionals and natural area managers on these proposals with the aim of improving the efficiency and effectiveness of the effectiveness of nature protection standards

Proposed solutions to strengthen the criminal law on nature protection

1. Reforming the French judicial system in environmental matters

1.1 Specialization of a jurisdiction of TGI in the field of the environment For an effective treatment of the environmental litigation, and on the model of the specialized jurisdictions of the littoral, a TGI by department or by region would include a specialized room which would centralize the businesses. 1.2 Create a national prosecutor's office specialized in environmental damage At the same time, an autonomous and specialized prosecutor's office could be created at the national level, with referents or local level. Spain has successfully set up a specialized national prosecutor's office for nearly 10 years, with skills and resources (especially scientific and technical police) to effectively fight against environmental crime. This structure is organized around a national prosecutor's office in Madrid and delegations in each province. 1.3 Organizing a consensus conference in each of the courts of appeal The public prosecutor's office could convene each year as part of a "consensus conference" the various actors involved in the police environment: prosecutors of each of the TGI within its remit, control agents, managers of natural areas, public institutions, local authorities and associations for the protection of the environment. This conference would make it possible, at the level of the territory, to define the priorities of a local penal policy according to the main stakes shared by the participants. This practice exists at the departmental level and seems effective. 1.4 Adapt the existing criminal sanctions to the specificities of the environment 1.4.1 Deepen the procedure of penal transaction The procedure of penal transaction is an alternative to the sanction for a first attack. It assures a quick sanction and

makes it possible to force the author of the damage to the restoration of the places where possible. However, there are certain shortcomings: the criminal transaction being an alternative procedure to prosecution, it is not entered in the criminal record of its author and thus makes it impossible to characterize recidivism. In addition, the civil party is absent, thus sometimes hindering the reparation of the victims, in particular the associations of protection of the environment. This procedure should be improved and adapted to the specificities of environmental issues. 1.4.2 Dedicating the notion of ecological damage in the civil code In the pursuit of parliamentary work and existing case law, it would be necessary to enshrine in the Civil Code the existence of ecologically recognized ecological damage independently of its repercussions. on humans The work of Laurent Neyret and Gilles Martin on a nomenclature of environmental damage2 could be devoted to provide assistance to judges, like the Dinthillac nomenclature on personal injury. Methods of assessing damage to water and nature could be improved to raise awareness of the seriousness of certain offenses, to obtain heavier convictions and systematic reinstatement and, where appropriate, to obtain damages and proportionate interest. Several resources will be mobilized including productions of the EFESE program and the ONCFS price list.

1.2 Give a real place to the victims and the associations of defense of the environment in the penal process In the current context the actors of the civil society regret to face a deficit of information concerning the judicial procedures in connection with the environment and call for a more important place in the decision-making process, particularly as regards the determination of the penal policy of each department. It now seems necessary to involve in the criminal trial all the actors concerned by the protection of the environment, including private actors. However, as it stands, this is impossible given the lack of communication on environmental issues. Associations, for lack of information, find it difficult to take part in the procedures.

2. Educate the general public about environmental issues and related regulations 2.1 On environmental issues Environmental education is an effective measure to prevent environmental damage. It must be strengthened, particularly in the direction of populations most likely to be the perpetrators of environmental crime. 2.2 On the regulations in force The regulations in force in protected areas (national parks, nature reserves, Natura 2000 sites ...) or protected species remain little known to the public. Awareness of the applicable regulations is a prerequisite for the prevention of damage to the environment. Simple regulations, understandable to all, must always be privileged. It is essential to communicate and raise awareness on the regulation because often this communication conditions its social acceptance. In addition, police operations must be accompanied by media coverage contributing to public awareness and information.

3. Strengthen the capacities of the different actors

3.1 Strengthen the capacity of screening officers in criminal procedure Reports of environmental offenses must provide accurate information for prosecutions to be initiated by public prosecutors. Screening officers must therefore be trained in criminal procedure in order to ensure better communication with prosecutors. In addition,

they must be knowledgeable about different specific areas of the environment such as water, nature, sites and classified facilities ... Regular sessions of continuing education should be sustained and strengthened to maintain a high level of capacity agents in charge of the police of nature. 3.2 Strengthen magistrates' capacity to understand environmental issues Similarly, judges need to be more aware of environmental issues, especially at the level of the territory in which they operate. The National School of Magistracy (ENM) must introduce new initial and ongoing training, in collaboration with the future French Biodiversity Agency (AFB) and the managers of natural areas. The theoretical training could be supplemented by in situ training, in protected areas (natural parks, reserves, ...) thus allowing magistrates to become aware of the issues themselves.

3.2 Strengthening the capacity of environmental protection associations in environmental litigation Environmental protection associations are currently the key actors in bringing the interests of nature to justice. But they do not always have the means to call on specialized lawyers. The training effort must be amplified and the exchanges strengthened, like the legal network of FNE which has demonstrated its effectiveness.

4. Enhance co-operation and co-ordination of the various actors Despite the rationalization effort since the 2012 ordinance, there are still 34 different environmental police. This diversity is an asset given the varied panel of technical and scientific skills required. However, a lack of coordination and cooperation among different police forces limits the effectiveness of the system. Coordination and cooperation between the different police forces and more generally the different actors must be strengthened. 4.1 Between the control agents themselves For more efficiency it is important that the different actors can coordinate and cooperate to carry out controls on different places and thus optimize the territory covered by the controls. The deterrent effect of control will then be more effective. The controls of the ONEMA are carried out in cooperation with another service (National Park, reserves ...) in 22% of the cases. This figure illustrates the importance of coordination.

4.1 Between Screening Officers and Magistrates Public prosecutors need concrete evidence that can only be collected by field officers. The written finding of the offense must be thorough and detailed. Overall, 71% of departments have a Prefect-Parquet-ONEMA-ONCFS MoU that contributes to improving the quality of procedures. National parks are also involved in such protocols in the departments that concern them. These protocols must be generalized.

4.2 Between screening officers and civil society NGOs face a lack of information in litigation procedures related to the environment. This needs to be remedied and there should be a transfer of information, or even an organized follow-up, for the transmission of information on criminal proceedings relating to attacks on nature. The future AFB could be the coordinator, the interlocutor, in this area and ensure the continuous transmission of information. A jurisprudential database (regularly updated and easily accessible to the officials in charge of controls and to public bodies in charge of public environmental policies) should be set up and be used as a reference tool for

all police services in the field of environmental protection. 'environment. The internal databases at the Ministry of Justice (Cassiopée for example) need to be improved in order to allow a real statistical monitoring of environmental crime. The future French Agency for Biodiversity could play a role of "coordinator" of the various nature and management and follow-up policies of the most important disputes. It could be made up of a mobile scientific team capable of supporting the services in need of advanced assistance to appraise an "ecological crime scene" and if necessary make carry out analyzes using elaborate scientific means (DNA, microscopy, etc ...) in collaboration with the specialized units of the police and the gendarmerie.

## II. CONCLUSION

"It is estimated that about 5% of the population never respect the laws, that 20% respect them in all circumstances and that 75% respect them only when the offenses are effectively prosecuted and the obligations are perceived as non arbitrary (L. Krämer, Remarks on EU Environmental Law, AJDA 1994, 621, citing C. Wasserman, An overview of compliance and strengthening in the United States: philosophy, strategies and management tools, p.7 and in VROM and EPA ed: International Enforcement Workshop, p8, May 1990, Utrecht).

In terms of environmental protection, the objective of effective prosecution is still very distant. An attempt has been made to show that the training and specialization of magistrates are absolutely necessary conditions, if not sufficient, to approach them.

## Reference:

1 These are climate change, biosphere integrity and biochemical flows. See Johan Rockström and others "A Safe Operating Space for Humanity" (2009) 461 Nature 472; and Will Steffen, Katherine Richardson and Johan Rockström "Planetary Boundaries: Guiding Human Development on a Changing Planet" (2015) 347 Science 736.

2 Will Steffan, Paul J Crutzen and John R McNeil "The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?" (2007) 36 Ambio 614; and Will Steffan and others "The Anthropocene: Conceptual and Historical Perspectives" (2011) 369 PTRSA 8.

3 This is a general rather than a universal proposition. Some MEAs provide for "reciprocal" as well as "legislative" obligations. For example, the extent to which developing countries are required to comply with their obligations under the 1992 United Nations Framework Convention on Climate Change is explicitly dependent upon the effective implementation of developed countries' obligations under the Convention in respect of financial resources and technology transfer: United Nations Framework Convention on Climate Change 1771 UNTS 107 (opened for signature 9 May 1992, entered into force 21 March 1994) [UNFCCC], art 4(7). See also Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 162 (opened for signature 11 December 1997, entered into force 16 February 2005) art 11 [Kyoto Protocol]; and

Stockholm Convention on Persistent Organic Pollutants 2256 UNTS 119 (opened for signature 22 May 2001, entered into force 17 May 2004), art 13(4).

4 Vienna Convention on the Law of Treaties 8 ILM 679 (opened for signature 23 May 1969, entered into force 27 January 1980) [VCLT].

5 Draft articles on Responsibility of States for Internationally Wrongful Acts UN Doc A/56/10 (12 December 2001), art 42.

6 This is also a feature of human rights law, for example.

7 B Simma "From Bilateralism to Community Interest in International Law" (1994) 250 Hague Recueil 221 at 238.

8 Barcelona Traction, Light and Power Company Ltd (Belgium v Spain) (Second Phase) [1970] ICJ Rep 3 at 32.

9 J Pauwelyn "A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?" (2003) 14 EJIL 907 at 908. See also Simma, above n 8, at 298–299.

10 See Barcelona Traction, Light and Power Company Ltd, above n 9, at 47; and East Timor (Portugal v Australia) [1995] ICJ Rep 90 at 102. Article 48 of the 2001 Draft Articles, above n 6, provides for the invocation of responsibility by a non-injured state in respect of erga omnes obligations but the rights of noninjured states to intervene are limited to their ability to claim that the wrongful conduct cease and a demand for reparation on behalf of the injured state or "of the beneficiaries of the obligation breached".

11 See for example Antarctic Treaty 5778 UNTS 402 (opened for signature 1 December 1959, entered into force 23 June 1961) art 10.

12 See for example Convention on International Trade in Endangered Species 993 UNTS 243 (opened for signature 3 March 1973, entered into force 1 July 1975) [CITES], arts 2(4), 3(1), 4(1), 5(1) and 10; Cartagena Protocol on Biosafety to the 1992 Convention on Biological Diversity (opened for signature 29 January 2000, entered into force 11 September 2003), art 24; Stockholm Convention on Persistent Organic Pollutants 2256 UNTS 119 (opened for signature 22 May 2001, entered into force 17 May 2004), art 3(2)(b)(iii); and Minamata Convention on Mercury 55(3) ILM 582 (signed 10 October 2013, entered into force 16 August 2017), art 3(6)(b).