ENVIRONMENTAL POLLUTION: IS CRIMINAL LAW A GOOD INSTRUMENT?
A FURTHER EVALUATION

Question 1

1.1. Could you further elaborate on the functions of specialised agencies set up to investigate and identify violation of environmental laws, if these agencies exist in your country.

The Environment and Natural Resources Division of the U.S. Department of Justice ("ENRD") is the agency primarily responsible for enforcing federal environmental laws. The ENRD handles environmental and natural resources litigation on behalf of the United States. The ENRD’s staff attorneys bring cases against those who violate the nation's civil and criminal pollution-control laws. Other staff attorneys defend environmental challenges to government programs and activities and represent the United States in matters concerning the stewardship of the nation's natural resources and public lands. The ENRD is also responsible for the acquisition of real property by eminent domain for the federal government, as well as bringing and defending cases under the wildlife protection laws.

1.2. If not, do you think it would be useful to create these sorts of agencies?

Not applicable.

Question 2

2.1. Could you elaborate on the cooperation between Police, Customs and Prosecution when it comes to violation of environmental laws.

The ENRD routinely cooperates with state and local law enforcement officials in prosecuting pollution and wildlife crimes cases. The ENRD regularly provides faculty for state environmental criminal enforcement training, frequently working with the four regional environmental enforcement associations: the Northeast Environmental Project, the Southeast Environmental Enforcement Network, the Midwest Environmental Enforcement Association, and the Western States Project. Working with U.S. Attorneys’ Offices and state and local law enforcement agencies, the ENRD has promoted the formation of regional environmental crimes task forces. There are now more than 50 such task forces.

2.2. What are the possibilities in your country with regard to:

a. import/export of protected animals?
The United States is a party in the Convention on International Trade in Endangered Species of Wild Fauna and Flora, commonly known as “CITES.” This treaty regulates trade in endangered species of wildlife, plants and their products. International trade in species listed by CITES is illegal unless authorized by permit. Items prohibited by CITES include, but are not limited to, articles made from whale teeth, ivory, tortoise shell, reptile, fur skins, coral, and birds. Permits to import/export CITES/Endangered Species into/from the United States and re-export certificates are issued by the Office of Management Authority of the U.S. Fish and Wildlife Service (FWS).

b. import/export of skins of animals?

Under CITES, most of the world’s wild cats, including tigers and such spotted species as jaguar, leopard, ocelot, margay, and leopard cat, are protected. Importation of skins or items made from, or trimmed with, the fur of these animals is prohibited. Furs from seals, polar bears, and sea otters are also prohibited.

c. import/export of ivory of elephants, rhino, walrus?

Through the African Elephant Conservation Act, passed in 1988 by the U.S. Congress, a moratorium on the import of African elephant ivory was established in 1989. This moratorium, still in place, makes it illegal to import raw African elephant ivory into the U.S. from any country unless certain conditions are met.

Commercial imports of Asian elephant ivory, rhinoceros horn, and walrus ivory are prohibited, with the exception of a small and very strictly defined class of documented antiques.

To export raw fossilized walrus ivory obtained from the wild, a person must complete FSW’s Form 3-200-27 and submit the application to the address located on the form.

d. import/export of other parts of mammals, birds, reptiles?

Certain imports/exports are prohibited entirely, while others are only prohibited under certain circumstances.

Question 3

A number of countries see—speaking in general terms—a decline of nature.

3.1. Is this true for your country?

Yes, in some areas.

3.2. Do you have specific areas where this decline is visible? For instance the deforestation of the tropical rainforests in a number of countries? The decline of water resources? Competition between water resources for recreational use as opposed to agricultural use?

We have competition between agricultural users, recreational users, and the public for water from certain rivers. The Colorado River is an example. See www.savethecolorado.org/river.php.
3.3. In some places, the use of water for agriculture and the building of structures on certain land may threaten the extinction of some small fish, birds or other creatures. In your country, are laws used to protect animal rights over the rights of humans?

Yes, an example is the Endangered Species Act, which was designed to protect threatened species of wildlife from extinction.

3.4. Do you feel that criminal law could or should be an effective instrument to safeguard nature? Is civil law sufficient? If not, why not?

Only in very rare circumstances. Civil law is usually the best enforcement tool.

**Question 4**

4.1. Do the responsible authorities in your country develop incentives to report pollution on a voluntary basis?

Yes. Certain state governments (such as Illinois and Ohio) encourage citizens to report pollution on a voluntary basis, but we are not aware of any similar federal program.

4.2. If yes, how do they develop these incentives?

Typically, these governments have a pre-prepared “Complaint Form” used by citizens or other actors for reporting pollution. However, to the best of our knowledge, no government provides monetary incentives.

4.3. Do you think that there are possibilities left unused? What is your personal idea?

My personal view is that the extinction of some animal life is not always terrible. Rather, it is part of the natural cycle of life on earth. When the costs to prevent extinction become excessive or the effort negatively affects the quality of life of humans, such prevention practices should be limited or stopped.

4.4. Could you elaborate on the possibilities to enlarge the possibilities of restitution instead of punishment?

This is an issue which involves making public policy. It is therefore beyond the realm of the courts.

**Question 5**

We all know that our world is full of forms of legal pollution (air pollution, water pollution, huge masses of plastic in the oceans).

5.1. Can the Judiciary be more active in their verdicts to urge the politicians to really have interest in solving the existing problems?
No, because it is not the role of the judiciary to make public policy.

5.2. Could organizations as Greenpeace or World Wildlife Fund be more active? Do activists from such environmental organizations as Greenpeace go too far? Should they be punished if their activities harm or endanger people?

   A. No, they are already very active.
   B. Yes, sometimes.
   C. Yes, they are not above the law.

**Question 6**

The International Court of Justice (ICJ) in The Hague (Holland) gave a decision in March this year which forbids Japan to hunt whales in the Southern seas. Iceland and Norway will continue to hunt whales. Will there be more whales for Iceland and Norway to hunt if Japan is forbidden to hunt? Who wins in such a situation?

   A. Yes
   B. Iceland and Norway. The whales lose regardless.

6.1. Do you think that more countries should address the ICJ in order to settle disputes arising with regard to environment?

No, the decisions of the ICJ are not enforceable in many countries.

**Question 7**

What are your ideas about finding a balance between the economic interests and environmental harm that can be a result of an economic activity?

There should be a balance, but that is not the role of the judiciary.

7.1. Do you for instance think that criminal law could have as a form of punishment the obligation to the industry to work on the “cradle to cradle” principle? That means that all the raw materials used to make a product have to be reused at the end of the lifetime of such a product.

This could make many products too expensive.

**Question 8**

8.1. If one country spends large amounts of its wealth on cleaning the air, but other countries continue to pollute the air in the course of economic activity, is the first country foolish since air goes all around the world?
Yes. Air pollution is generally a global issue and national boundaries are largely meaningless. However, the first country may wisely spend some of its wealth to clean the air in order to benefit its citizens living close to the source of the pollution.

8.2. If environmental pollution is truly a world-wide problem rather than a local problem, what kinds of incentives could be created to encourage all countries to resist the tendency to prefer economic activity over environmental constraints? Is the criminal law more or less effective than other incentives?

Criminal law is ineffective. Only economic incentives work. But cross-border economic incentives are difficult to construct and enforce.

8.3. Cleaning and protecting the environment is not free, it is expensive. Who should bear the cost? Why?

Such costs should always be ultimately borne by consumers, not taxpayers. This is fair, because consumers would bear such costs in proportion to their own level of consumption.

Question 9

9.1. Is there any other comment on the subject you would like to make.

It is always better to have the costs and benefits of environmental pollution allocated by a free market rather than by governmental regulation or criminal penalties.

9.2. What are your “outside of the box thinking “ideas?

Technology will ultimately provide solutions to environmental pollution problems. Resources should be allocated to research and development in this area.

9.3. Do you feel a personal responsibility to guard the nature in the world for the coming generations.

Yes, but that is a personal feeling, not my professional goal as a judge.