THIRD STUDY COMMISSION QUESTIONNAIRE.

Answers for the German Delegation:

November 8 – November 14 2014.
Brazil, Foz do Iguacu

Last year in Yalta, Ukraine (things can change overnight!) we focused in our study commission on the topic: Environmental pollution: is Criminal Law a good instrument?.

In the two meetings we discussed whether there exists in the different countries special legislation concerning the violation of laws regarding the environment in general, including the possibility of restitution, the role of the Public Prosecutor, the question of specialisation. As a result of the discussion it was considered useful – in view of the complexity of the issues at hand - to further evaluate the questionnaire and bring in new elements that could be explored at the meeting in Brazil.

That brings us to the topic chosen for this year’s questionnaire and conference:

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

Question 1.

As a result of the questionnaire of last year;

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

In Germany, we do not have specialized agencies to investigate into violations of environmental law. In some parts of Germany however, specialised police departments do exist.

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

No, as most of the cases do start through “ordinary” police work. Therefore, it is necessary to have police officers trained in environmental crime investigations. This would be necessary even if the later investigations are led by an agency. It would make investigations more difficult if the police officers who have started them would have to hand them over to an agency. The specialized knowledge of the members of the agency, compared to that of specialized police officers, are not worth the problems in coordinating investigations between police forces and the agency.

Question 2.

2.1. Could you elaborate on the cooperation between Police, Customs and Prosecution when it comes to violation of environmental laws.
Nearly all cases start with police (or sometimes customs) investigations. In major cases, the (specialized) local public prosecutor is informed soon after the opening of investigations by the police. Further investigations are then carried out under his/her supervision by the police. The public prosecutor can participate in all the investigation in person, but in most of the cases these are handed over to the police. When the investigations have been closed by the police, the files (in minor cases for the first time) are handed over to the prosecutor. He/she decides if he/she has to order further investigations, takes the case to court or drops it.

2.2. What are the possibilities in your country with regard to:
   a. import/export of protected animals?
   b. import/export of skins of animals?
   c. import/export of ivory of elephants, rhino, walrus?
   d. import/export of other parts of mammals, birds, reptiles?

All international/european regulations concerning the protection of endangered animals - dead or alive - or plants are part of German law. Infringement of import/export bans imposed by these treaties are either criminal or technical offences.

Question 3.

A number of countries see – speaking in general terms - a decline of nature.
3.1. Is this true for your country?
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?
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?
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?

The major issue in German environmental politics is the “climate change” e.g. the greenhouse gas emissions. The “tournaround” in energy politics however is not supported by special criminal offences.

Question 4.

4.1. Do in your country the responsible authorities develop incentives to report pollution on a voluntary basis? No
4.2. If yes, how do they develop these incentives?
4.3. Do you think that there are possibilities left unused? What is your personal idea?
It is a question for local authorities, gouverment bodies and perhaps NGOs to supervise and report pollution. It is very difficult for a private person to get the facts and the law right.
4.4. Could you elaborate on the possibilities to enlarge the possibilities of restitution in stead of punishment?
It is standing practice in German law that restitution has to be taken into account when sentencing. However, if restitution is replacing criminal sanctions at all, this
Decriminalisation of environmental misbehaviour might be regarded as a signal that this is not regarded as a crime.

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.

Yes, by enforcing international standards and treaties.

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?

The activities by NGOs has to be lawfull, so if their activities do criminal harm to other people or infringe property rights, they should be prosecuted. Activities for an NGO as such is no excuse for committing criminal offences.

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. (see the activities of the Sea Shepard). Still 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?

If whale hunting is against international law, Iceland and Norway has to be stopped as well.

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

Yes, if their is leagal basis for the actual case to go for.

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.

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

The duty to recycle material used for industrial production is the basis of the European waste disposal law. Enfringements of the principle - e.g. by unlawfull export of waste or disposal of waste instead of recycling it - can be a crime or a technical crime.

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?

No, it will make the inhabitants of this country happy to be environmental friendly.

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 a corner stone in a world wide system to protect the environment. It can only act effective if all states accept environmental crimes to be prosecuted. If this is - or would be- the case, it can/could help avoiding the most serious misbehavings against the environment. To enforce this system, international treaties should force the signees, as it is established within the Europan Union, to establish crimes against the environment into their national legal system and to prosecute these crimes.

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

Those who are responsible for the enfringements. Otherwise, those who cause the damage would not stop doing so.

Question 9
8.1. Is there any other comment on the subject you would like to make.

Crimes against the environment are one of the most problematic areas of criminal law. It is very difficult to define behaviour as a crime against the environment, as most of the acts declared illegal are legal (and necessary for economical reason) on a lower level. For example: water pollution by one campany is causing only some - acceptable- harm to a river. The pollution by thirty companies producing – each of them- exactly the same waste does dangerous harm. Who should be punished: only the last 10 companies to come and produce the waste, all campanies or none in a turn? Who should be punished when some campanies have a permit to produce, others who had been there from the beginning, not ?

8.2. What are your “outside of the box thinking “ideas?
8.3. Do you feel a personal responsibility to guard the nature in the world for the coming generations.

The presidency of the Third Study Commission looks forward to receive your answers not later than in september 2014. That will give us time to present the answers in a proper way.

On behalf of the commission,
Frans G. Bauduin, President of Study Commission III.
Amsterdam: April 2014.