



LAW CLINIC
HEDG

REPORT ON THE ECOCIDE PROJECT

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7 December 2013

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ABBREVIATIONS

ATCA :	Alien Tort Claims Act
CEO:	Chief-Executive Officer
CPJS-E :	Cour provinciale de justice de Sucumbios en Equateur
DCH-N:	District Court Of The Hague (The Netherlands)
e.g.	Par exemple
EU :	European Union
IACtHR:	Inter-American Court of Human Rights
ICC :	International Criminal Court
ICJ :	International Court of Justice
N/A :	Non applicable
PNG :	Papua New Guinea
TSJ-B :	Tribunal supérieur de justice du Brésil
UNCLOS:	United Nations Convention on the Law Of the Sea
US:	Unites States

INTRODUCTION

Dans le cadre de notre recherche, nous avons noté une divergence de définition. Ce que nous concevons comme « écocide » n'est pas ce que nous avons rencontré dans les sources universitaires : si « écocide » est utilisé pour décrire un crime différent (e.g. crimes commis dans des contextes de conflit armé, crimes en connexion avec le génocide) ou pour protéger une valeur juridique autre que la nature en elle-même (e.g. la jouissance de l'environnement par l'être humain), il peut également arriver qu'un autre terme soit utilisé pour décrire notre conception de l'écocide (e.g. « géocide », « biocide »).

Au sein de la doctrine consultée, l'on retrouve souvent la référence au Statut de Rome : des auteurs comme *Sharp* suggèrent d'interpréter les questions environnementales dans le cadre des crimes internationaux déjà existants au sein du Statut de Rome, d'autres comme *Drumbl*, soutiennent que l'écocide doit être conçu comme un crime autonome.

Il semble important de noter la difficulté rencontrée pour différencier l'écocide d'autres crimes contre l'environnement ainsi que le manque de précision dans la définition des sanctions. Ce manque de précision est la raison pour laquelle nous-mêmes avons des difficultés à établir une telle distinction dans l'état de l'art. Nous constatons, néanmoins, certains avancements. En Amérique latine, le droit interne semble très concerné par les crimes environnementaux et il y a une forte législation à cet effet. Cependant, d'après certains praticiens, le renforcement de ladite législation au niveau international n'a pas un intérêt particulier, l'accent étant plutôt mis sur l'application effective de la législation nationale en vigueur. Dans cette région nous constatons également un fossé entre les pays avec de vastes lois contre les crimes environnementaux (e.g., le Mexique, le Nicaragua, le Guatemala, le Panama) et ceux qui ne le font pas (e.g., certaines îles anglophones).

Nous attirons l'attention sur une faiblesse concernant une bonne partie de la doctrine relative à l'écocide, à savoir, l'absence de précision des éléments du droit international pénal. Ce fait pourrait expliquer les difficultés rencontrées pour définir précisément le crime international envisagé.

D'autres approches semblent s'orienter vers la transformation du droit national par la voie des réformes constitutionnelles (e.g. *Jaria i Manzano*), ou vers l'interprétation élargie des droits civiques et politiques dans l'intention de protéger le droit à l'environnement sain à travers la protection de ses défenseurs (e.g. IACtHR, *Kawas Fernandez v. Honduras*, 2009).

Finalement, nous notons que le droit international demeure largement centré sur la volonté des Etats et que les intérêts de ceux-ci restent profondément anthropocentrés. La reconnaissance de l'écocide pourrait être facilitée dans ce cadre si la première valeur protégée est l'être humain.

I. Doctrine relative à l'Écocide

A. Articles scientifiques relatifs au crime d'écocide

Source :	Lynn Berat , “Defending the right to a healthy environment: toward a crime of geocide in international law”, <i>Boston university International Law Journal</i> (1993) (pp.327-348)
Concept :	Assessment of the current dramatic ecological situation: “it is imperative that those who flout the right to a healthy environment incur criminal liability for their actions. Therefore, states should begin to move toward a comprehensive international environmental legal dispensation that recognizes the unity of the planet as a single, fragile ecosystem” (p.328) Creation of a crime of “geocide”, “ <i>literally a killing of the earth, the environmental counterpart of genocide</i> ” (p.328) – definition of the crime inspired by the 1948 Convention on the Prevention and Punishment of Genocide (p.342) “ <i>Geocide is the intentional destruction, in whole or in part, of any portion of the global ecosystem, via killing members of a species; causing serious bodily or mental harm to members of the species; inflicting on the species conditions of life that bring about its physical destruction in whole or in part; and imposing measures that prevent births within the group or lead to birth defects</i> ” (p.343)
Valeur protégée :	Right to a healthy environment (p. 328) Future generations (“the imperative for the creation of a crime of geocide arises from the desperate need to halt the destruction of the planet before it becomes incapable of sustaining life” (p.340)) Recognition of the “interdependence of all species in a complex global ecosystem and eschews species chauvinism on the part of humans who generally view human life as superior to all other forms of life” (p.343). Recognition that the term “species” in the definition would probably be used in an anthropocentric manner at first (p. 343, note 86)
Sujet mis en cause :	Physical persons : constitutionally responsible rulers, public officials and private individuals (p.344) Moral persons : corporations (p.344) and states (p.345)
Infractions envisagées :	N/A
Éléments matériels :	(p. 343) killing members of a species; causing serious bodily or mental harm to members of the species; inflicting on the species conditions of life that bring about its physical destruction in whole or in part; imposing measures that prevent births within the group or lead to birth defects (p.343) Liability would apply to associated acts such as conspiracy, attempt and complicity (p.344)
Élément	Intent : standard mens rea of international criminal law (p.343)

psychologique (mens rea)	Knowledge : standard of tort law, that is desire or knowledge with substantial certainty (p.343) Evoke the possibility to include a negligence standard as well (p.343, note 85)
Elément contextuel	Framework : peace time Scope : “destruction, in whole or in part, of any portion of the global ecosystem” (343) Just like genocide, goecide should be reserved for the most heinous abuses of the environment (p.344) Global objective: N/A
Qualification envisagée :	Autonomous international criminal crime, falling under universal jurisdiction (p.343)
Juridiction compétente	Type: criminal Scale: <ul style="list-style-type: none"> - National (prosecution in competent tribunals of the state in which the act was committed (p.343) / universal jurisdiction > national tribunals of any state (p.343)) - International tribunals that might have jurisdiction (p.343)
Type de sanction :	Creation of a permanent international environmental tribunal (p.329) Individual prison terms for perpetrators and environmental community service (p.344) “Reparations should be the appropriate measure of damages as in the case with genocide” (p.344)
Varia :	International environmental instruments providing criminal sanctions (pp.341-342) <ul style="list-style-type: none"> - 1911 Convention for the Preservation of Fur Seals in the North Pacific (+ other protective convention relative to particular species) - 1940 Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere - 1954 International Convention for the Prevention of Pollution of the Sea by Oil & 1973 International Convention for Prevention of Pollution from Ships - 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora <p>International Law Commission’s Draft Code on State Responsibility (1976) Art. 19: a state's "serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment" violates principles that "have become particularly essential rules of general international law" (p.344)</p>
Source	Avi Brisman , “Crime-Environment Relationships and Environmental Justice” 6 <i>Seattle Journal For Social Justice</i> , 2008, pp. 727 ss.
Concept	Brisman concedes that the terms ecocide or eco-war are sometimes employed broadly to describe “state-sanctioned destruction of an ecosystem” (seemingly any adverse impacts caused by humans' industrial, manufacturing, or technological processes), at other times, the terms may be used in the context of military conflicts—either as a result of conflict, as a result of the preparation for conflict, as well as the reason for conflict. The article, however, focuses on the narrower notion of ecocide. (p. 748)

Object of protection	N/A
Actor	State (p. 748)
Conduct	State-sanctioned destruction of an ecosystem in the context of military conflicts (p. 748)
<i>Mens rea</i>	N/A
Other material elements	N/A
Crime classification	N/A
Competent jurisdiction	N/A
Sanction	N/A
Notes	Notes cases of ecocide including: Lebanon which is “still trying to cope with the ‘toxic stains of war’ (the collateral damage), including environmental devastation from the attacks by Israel on the Shiite militant group Hezbollah in the summer of 2006” which sent “15,000 tons of oil into the sea” and the first Gulf War where “Iraqi troops engaged in ecocide by deliberately dumping 400 million gallons of crude oil into the Persian Gulf and by setting fire to Kuwaiti oil fields during their retreat out of Kuwait” (p. 748)
Source	Mike Davis , “The Dead West: Ecocide In Marlboro Country”, <i>New Left Review</i> 1/200, (July-August 1993), p. 1-20.
Concept	The environmental damage left after the Cold War in countries across the world. The author focuses mostly on “the regions that today constitute the Pentagon’s ‘national sacrifice zone’ (the Great Basin of eastern California, Nevada and western Utah) and its ‘plutonium periphery’ (the Columbia–Snake Plateaux, the Wyoming Basin and the Colorado Plateau)” (p.7).
Object of protection	N/A
Actor	N/A
Conduct	N/A
<i>Mens rea</i>	N/A
Other material elements	N/A
Crime classification	N/A
Competent jurisdiction	From what the author is indirectly implying, each country appears to be individually responsible. There is no mention of international law, whether criminal, environmental or general.
Sanction	N/A
Notes	On ecocide: “For Lord Carrington’s ex-advisor Murray Feshbach, and his literary sidekick Al Friendly (ex- <i>Newsweek</i> bureau chief in Moscow), on the other hand, the relationship between ecological cataclysm and the disintegration of the USSR is more than metaphor: ‘When historians finally conduct an autopsy on the Soviet Union and Soviet Communism, they may reach the verdict of death by ecocide’. (p.2)”
Source :	Patrick Foster , “Climate Torts and Ecocide in the Context of Proposals for an International Environmental Court,” <i>Master Thesis</i> , City College of New York

(2011).

Concept :	“This thesis begins with a legal discussion of potential climate change actions in current international fora. This section is an attempt to add a layer of context on what the international legal landscape looks like for environmental actions while presenting one of two broad areas of environmental redress: a civil action. The analysis then moves on to discuss an international cause of action debated and advocated for over the past half century: ecocide. The need for a singular cause of action to fit the particularities of intentional environmental harm inflicted upon peoples is used to present the second broad area of environmental redress necessitated by international affairs: a criminal action. The analysis then moves from necessity to feasibility, beginning with an overview of proposals for an international agreement to create an environmental tribunal adequate to address the needs presented in the preceding sections. This analysis draws on international relations theory in its conclusion that such a tribunal is necessary and potential, dependent on legally cognizable factors working in tandem with considerable advocacy.” (p. 3).
Valeur protégée :	“The need for an IEC seems clear. The feasibility of its genesis is still in question.” (p. 95).
Sujet mis en cause :	Rio Tinto in Namibia (not stated).
Infractions envisagées :	Ecocide Generally, with Emphasis on Climate Change (p. 3).
Éléments matériels :	Ecocide in context of Rome Statute: Discussion of actus reus as “widespread, long-term and severe” (p. 30).
Élément psychologique (mens rea)	Marine Causes of Action: “The lack of a clear legal standard of causation for damage to the marine environment under the United Nations Convention on the Law of the Seas is a significant hurdle to bringing a successful claim to ITLOS.” (p. 34). Review of Most Recent Scholarship: “Drumbl also find the mens rea component problematic since the intent requirement excludes negligence. Those who negligently or carelessly harm the environment are outside the bounds of the Rome Statute's formulation. Drumbl argues for a more objective standard for mental culpability, incorporating a satisfaction of mens rea where ‘there was a reasonable expectation that environmental damage would occur.’” (p. 31).
Élément contextuel	International Legal (p. 3)
Qualification envisagée :	Ecocide as Direct Cause of Action and Potential for International Environmental Court (p. 3).
Juridiction compétente	Global
Type de sanction :	N/A.
Varia :	This is a master thesis in international affairs and summarizes the recent state of scholarship in ecocide.
Source :	Mark-Allan Gray , “The international crime of ecocide”, <i>California Western International Law Journal</i> , Volume 26, Num. 2, pp. 215-271
Concept :	“Ecocide is identified on the basis of the deliberate or negligent violation of key state and human rights and according to the following criteria: (1) serious, and extensive or lasting, ecological damage, (2) international consequences, and (3) waste. Thus defined, the seemingly radical concept of ecocide is in fact derivable from principles

of international law” (p.215)

Valeur protégée :	<p>The environment (p.215), the humankind (p.218), future generations (p.226), human rights (p.222)</p> <p>Issue: rights of the future generations (p.224) and of non-human entities (p.225). “Ecocide can be envisioned as not just the breach of a legal duty of care, but the violation of the duty to protect. This construct would serve to protect the environment better than the human rights basis because it would not depend upon acceptance of non-human rights and its identification would focus on the culprit rather than the victim” (p.225)</p>
Sujet mis en cause :	<p>Principle of strict liability</p> <p><u>Physic persons</u> : individuals, more particularly qualified ones (government officials, executives of corporations, highly influential individuals running or investing in the problematic projects) (p.221)</p> <p><u>Moral persons</u> :</p> <ul style="list-style-type: none"> -<u>States</u>: damages directly caused or permitted by their activities, policies or unreasonable failure to regulate activities within their jurisdiction or control. Responsibility for acts and omissions committed on their behalf / authority by government officials, organs or enterprises (pp. 219-220) -<u>Organizations</u> : (only a few with actual international legal personality – p.222)
Infractions envisagées :	<p>Global rain forest destruction</p> <p>Trade in endangered species</p> <p>Nuclear accidents</p> <p>Loss of unique natural assets of a population...</p>
Éléments matériels :	<p>2 alternatives to establish the <u>seriousness of the damage</u> (p.217)</p> <ul style="list-style-type: none"> -vast geographical scale of the harm and number of people or species ultimately affected; -impact on people in terms of social and economic costs > difficulty, unlikelihood or impossibility to reverse the damage <p>3 alternatives to establish the <u>international character</u> of the damage (p.217)</p> <ul style="list-style-type: none"> -threatens significant interests and values of the global community, including life, health and resources vital to both; -citizens of more than one state among the victims or perpetrators -political, social, economic and technological considerations mean the damage can only be halted, reversed or prevented from recurring through international cooperation <p>Need for the damage to be <u>wasteful</u> (p.218): if social benefits are produced through the damage (unlikely), they are outweighed by social costs. Precludes less harmful alternatives</p>
Élément psychologique (mens rea)	<ul style="list-style-type: none"> -Action or omission to act -Intent, recklessness or negligence (p.218) -Knowledge of other alternatives as full element (p.219) -Development of the precautionary principle: the fault can arise from knowledge or failure to realize, where it was reasonable to do so, that the act or omission was wasteful and would produce immediate effects, without appreciation of the ultimate harm to global interests (p.219)
Élément contextuel	<ul style="list-style-type: none"> -Peace context (p.215) -Large scale and international character (p.217)
Qualification envisagée :	<ul style="list-style-type: none"> -Autonomous international crime (“Criminalization of ecocide will occur because it must” (p.270))

	-Violation of Human Rights (pp.222-223) : right to life and right to health, security of the person, protection of the family and property, right to food, adequate standard of living, safe work environment, human dignity, cultural and religious rights, right to equality. Also linked to “third generation” / “solidarity” rights to a healthy environment and to development
Jurisdiction compétente	Not relevant
	Issue of standing : states, individuals, possibly international and non-governmental organizations, particular “next friend” with the ability of having the standing for non-human entities and future generations (pp.227-228)
Type de sanction :	Not relevant
Varia :	<p>Interesting case-laws evoked</p> <p>-<i>Minors Oposa v. Secretary of the Department of Environment and Natural Resources</i> (Supreme Court of Philippines, 1993): intergenerational responsibility and justice. Government obligation to preserve the environment and a corresponding “duty to refrain from impairing” it (p.240)</p> <p>-<i>Dagi v. BHP Minerals Pty Ltd. And Ok Tedi Mining Limited</i> (Supreme Court of Australia, 1994) (p.240)</p>
	<p>Ecocide as already present in international customary law (p.267)</p> <p><i>Art. 19, Draft Articles on State Responsibility</i>: international crime as a serious breach by a state of an obligation essential for the protection of fundamental world interests, including peace and security, human rights and safeguarding and preservation of the human environment.</p> <p><i>Paragraph 3(d)</i>: explicit obligations of “prohibiting massive pollution of the atmosphere and the seas”</p> <p><i>Art. 26, Draft Code of Crimes against Peace and Security of Mankind</i>: international crime of willingly causing a “widespread, long-term and severe” environmental damage.</p> <p><i>Draft resolution and report on the Meeting of the ad hoc group on more effective forms of international cooperation against transnational crime, including environmental crime, Vienna, 1993</i>: recommends an international convention covering the “most serious forms of environmental crimes” (p.268 – p. 6 of the draft).</p>
Source	Christina Heischmidt , “China’s Dumping Ground: Genocide through Nuclear Ecocide in Tibet” 18 <i>Penn State Environmental Law Review</i> (2010), pp. 213 ss.
Concept	Heischmidt argues that China’s use of Tibet for its nuclear production and dumping effectively constitutes genocide of the Tibetan people (p. 213)
Object of protection	Any ethnic, racial, caste, religious, or national or regional group threatened by massive environmental destruction (p. 213)
Actor	State actors (i.e., China) (p. 213)
Conduct	Respect for right to “just and favourable conditions of work” (Art. 23 of UDHR) and right to a standard of living that facilitates general health and well-being (Art. 23 of UDHR) (i.e., violated by nuclear production and dumping and the effect of these activities on the agricultural and livestock vocations of Tibetans through land-grabbing and water contamination (p. 223)
	Respect for the right to cultural survival with respect to the importance of the environment to the particular culture (1972 Stockholm Declaration on the Human Environment in 1972) (i.e., the reliance in Tibetan culture on the environment for survival) (p. 224)

“Illicit dumping of toxic and dangerous substances potentially constitutes a serious threat to human rights, life and health of everyone” and the restricting toxic dumping of waste (Vienna Declaration of the World Conference on Human Rights of 1993) (pp. 225-26)

Mens rea N/A
Other material elements N/A
Crime classification N/A
Competent jurisdiction N/A
Sanction N/A
Notes N/A

Source **Mishkat Al Moumin**, “Mesopotamian Marshlands: An Ecocide Case” 20 *Georgial International Law Review* (2008), pp. 499 ss.

Concept Moumin discusses the destruction of Mesopotamian marshlands by Saddam Hussein's regime with the intent to kill the Marsh Arabs as an example of a particularly severe form of environmental injustice and as a case of ecocide which she defines as deliberate action to kill a group of people based on their race, religion, or culture by destroying the ecosystem on which they depend (p. 499)

It is important to highlight the parallels between environmental injustice and ecocide. In both cases, the people are powerless; they are not represented in the decision-making process, and they cannot stop the damage to their ecosystem. Yet the two concepts are also distinctly different. Environmental injustice involves taking an indirect action that puts people of a certain race, religion, or culture at higher risk by polluting their environment. Ecocide is about taking a direct action to kill a group of a certain race, religion, or culture by destroying their ecosystem completely. Ecocide involves the intent to kill the people of certain race, religion, or culture, whereas the concept of environmental injustice does not involve an intent to kill. (p. 506)

Object of protection Groups based on race, religion, or culture threatened by destruction of the ecosystem on which they depend (p. 499)

The Marsh Arabs were an indigenous community of perhaps 500,000 Arabs, mostly of Shiite ethnicity, that inhabited the Mesopotamian marshlands. The Marsh Arab culture was heavily based on the marshland ecosystem: Marsh Arabs built their houses from reeds; they used canoes to move; and fishing provided their main source of income. Because of their adaptation to marshland dwelling, Marsh Arabs never developed farming practices or large urban communities. (p. 499)

Actor N/A

Conduct Action to kill a group of people based on their race, religion, or culture by destroying the ecosystem on which they depend (p. 499)

Saddam Hussein's regime completed the drainage channel known as the “Third River” project in 1992. This project involved constructing a 172 km long channel. After the project was finished, villages were burned, along with their plant,

animal, and human inhabitants. Water was poisoned to kill all the fish and other water animals. Over 40,000 of the Marsh Arabs were forced to cross into Iran, and well over 100,000 became internally displaced. By 2000, over 90% of the area had dried out into salt pans and suffered severe ecosystem damage, accelerated by the construction of extensive drainage works. Based on the rapid rate of decline, the marshlands were considered likely to disappear completely by the mid-2000s. (p. 500)

The Marsh Arabs were forced to flee either to Iraqi cities, or across the Iraq/Iran border. . . . Much of the indigenous wildlife also suffered greatly from the environmental havoc created by the loss of the wetlands. The destruction of the Marshlands has placed an estimated forty species of waterfowl at risk of extinction and caused serious reductions in their populations. Some mammals and fish species endemic to the Marshlands are now considered extinct. . . . In addition to the harms caused to the fauna of the Marshlands, the loss of water has caused fundamental changes to the land itself. The drying of the marshes has left behind “salt encrusted” desert, essentially creating a wasteland that cannot be developed or used for farming. (pp. 508-09)

From an ecocide perspective, draining the Marshlands deprived indigenous people of their homes and livelihood, damaged the ecosystem, and destroyed the Marsh Arab culture. Saddam deliberately destroyed the ecosystem with the intent to kill people because of their belonging to a certain religious division. Saddam's actions can be described both as a human rights violation and an Ecocide. (p. 509)

Mens rea

Deliberate action (p. 499)

Saddam's regime wanted to kill the Marsh Arabs in order to make sure that opponents of his regime could not use the Marsh Arab's knowledge of marshland navigation (p. 499-500)

Iraqi authorities targeted the Marsh Arabs because of their Shiite ethnicity, and also because their home often provided refuge for political opposition in Iraq. (p. 507)

Other material elements

N/A

Crime classification

N/A

Competent jurisdiction

N/A

Sanction

N/A

Notes

The author suggests that the Ministry of Environment in Iraq needs to give the Marsh Arabs an active role in the rehabilitation process if efficient, effective, and sustainable restoration is to ever take place. The Marsh Arabs are the real stakeholders and, thus, are very eager to commit their time and expertise, including valuable geographical knowledge, to restoration projects that will help them to return to their original way of life. Graduate students studying or residing in close proximity to the marshlands could be recruited to help provide the Marsh Arabs with the technical assistance they need to restore the wetlands that were once their home. (p. 500-03)

Source :

Adan Nieto-Martin, «Eléments pour un droit international pénal de l'environnement», *Revue de science criminelle et de droit pénal comparé*,

	janvier/mars 2012, pp. 69-88
Concept :	« écocide » : « réalisation de dommages environnementaux intentionnels ayant pour but d'en finir avec une ethnie, une race ou une communauté autochtone » (p.77) – « représente surtout le fer de lance qui permettrait d'invoquer la compétence de la Cour Pénale Internationale et pose en outre la question d'une révision stratégique du statut de la Cour afin de dépasser la « barrière Nuremberg », en visant des situations allant bien au-delà des comportements commis dans des contextes de guerre ou de conflit armé » (p.77)
	« géocide » : « une infraction de géocide dont l'intérêt protégé serait spécifiquement l'environnement » (p.80) – « se distingue non seulement par l'élargissement de la dimension subjective (...) mais aussi par l'ajout de deux conditions additionnelles, que sont les conséquences internationales et le caractère injustifié du dommage » (p.80)
Valeur protégée :	<u>Ecocide</u> : race, ethnie, communauté autochtone particulière (pp.77-78, p.82)
	<u>Géocide</u> : environnement (pp.80-81, p.82), intérêts de la communauté internationale dans son ensemble (p. 81)
Sujet mis en cause :	<u>Ecocide et Géocide</u> Personne physique : individus, avec volonté d'atteindre les personnes qualifiées Personne morale : privée et publique. Insistance sur la nécessité d'établir un régime de responsabilité collective pour pouvoir atteindre les entreprises multinationales (p.83)
Infractions envisagées :	<u>Ecocide</u> : pollution ou destruction des ressources vitales d'une communauté précise – ex : accès à l'eau (p.77)
	<u>Géocide</u> : dommages environnementaux à caractère international – ex : marées noires, incidents nucléaires... (p.81)
Éléments matériels :	<u>Ecocide</u> : destruction de la communauté comme conséquence de l'atteinte à l'environnement (p.77)
	<u>Géocide</u> : dommages étendus et durables, injustifiés et à la dimension internationale (p.82)
Élément psychologique (mens rea)	<u>Ecocide</u> (pp. 77-78) Comportement intentionnel et connaissance nécessaire Pour l'auteur, potentielle extension à un « écocide par imprudence », sanctionnant « l'extermination imprudente » et justifiant l'extension des conséquences au déplacement forcé des populations
	<u>Géocide</u> (pp.80-81) Comportement intentionnel ou imprudent Importance du caractère non nécessaire du mal, synonyme d'irrationalité (manquant de tout type de justification économique ou sociale à raison de l'existence d'alternatives raisonnables permettant d'atteindre les mêmes fins)
Élément contextuel	<u>Ecocide</u> : temps de paix. Objectif général : extermination d'une communauté, ethnie ou race par le biais de la destruction de ses ressources (p.77)
	<u>Géocide</u> : temps de paix. Dommage écologique grave, étendu et durable.

	Conséquences internationales du dommage, affectant la communauté internationale dans son ensemble et en tant que telle (p. 80)
Qualification envisagée :	<u>Ecocide et Géocide</u> : crime grave autonome, potentiellement intégré au statut de Rome (p.82)
Juridiction compétente	<u>Ecocide et Géocide</u> : Type : pénale Echelle : régime de compétence universelle, Cour Pénale Internationale ou tribunal international de l'environnement (p.82)
Type de sanction :	N/A
Varia :	Concept de « géocide » ici le plus proche du crime envisagé par L. Neyret car ayant pour valeur protégée principale l'environnement en tant que tel ≠ « écocide » > dommages environnementaux comme éléments matériels et pas comme finalité du crime Développement du concept de « patrimonicide » ou « génocide culturel » > notamment par spoliation des ressources naturelles conséquemment à des actes d'abus de pouvoir de la part des dirigeants d'un pays ou d'entreprises multinationales (pp.81-82)
Source :	B. Peiser , "From Genocide to Ecocide: The rape of Rapa Nui", 16/3&4 <i>Energy & Environment</i> (2005), pp. 513-539.
Concept :	The author criticize "the theory of ecocide has become almost paradigmatic in environmental circles" as explained by Diamond's eco-biased approach to the question of Rapa Nui's collapse: "a society that destroyed itself by over-exploiting its own resources" (pp. 515, 535). He points out the fact that "Other researchers have no doubt that its people, their culture and its environment were destroyed to all intents and purposes by European slave-traders, whalers and colonists – and not by themselves (Métraux, 1957:38), "perhaps the most dreadful piece of genocide in Polynesian history" (Bellwood, 1978:363)." (p.515). Nevertheless the author point out a incrimination under the category of ecocide (p. 534)
Valeur protégée :	The author criticize the perversion in the use of environment as value in the Rapa Nui genocide's case (p. 535).
Sujet mis en cause :	European slave-traders, whalers and colonists (p. 515)
Infractions envisagées :	to remove the entire remaining population (p. 534) to destroy the natives' houses to destroy the harvests, to facilitate the persuasion of the starving natives who had thus little hope of surviving on their own island"
Éléments matériels :	Conduct: (removing population, destruction of property) Consequences (starvation, genocide) Circumstances (colonialism, slave-traders) (p. 534)
Élément psychologique	Intent (full element) Knowledge (full element)

<i>(mens rea)</i>	As “deliberate attempt” (p. 534)
Elément contextuel	In peace colonialist time systematic attack Core goal: the destruction of Rapa Nui's indigenous population. (pp. 532, 534)
Qualification envisagée :	Genocide the word Ecocide is used as secondary and complementary crime (pp. 515, 532, 534, 535,)
Juridiction compétente	N/A
Type de sanction :	N/A
Varia :	This is a scientific (historical) paper.
Source	Ludwik A. Teclaff , “Beyond Restoration—The Case of Ecocide” 34 <i>Natural Resources Journal</i> 933 (1994), pp. 933 ss.
Concept	Ecocide
Object of protection	N/A
Actor	Liability channeled through operators of risk, damage-causing enterprises (p. 955) with states responsible for taking preventative measures (p. 956)
Conduct	Activities, whether during times of war or of peace, that destroy or damage ecosystems (e.g. major river, enclosed sea, mountain range, aquifer, trace of forest, wetland, or other terrain of distinctive vegetation or soil type) on a massive scale (pp. 933-34)
Mens rea	N/A
Other material elements	N/A
Crime classification	The impairment at a certain level (substantial) constitutes a delict, and when the impairment is above that level states commit an international crime (p. 953)
Competent jurisdiction	The appropriate international tribunal could be the international criminal court under discussion in the International Law Commission (note 164) Standing to sue should be given to international organizations and nongovernmental organizations (p. 954)
Sanction	N/A
Notes	Notes 1954 International Convention for the Prevention of Pollution of the Sea by Oil as amended in 1962 and 1969 (imposing on member states an obligation to provide severe penalties for oil discharge within a 50-mile prohibited zone); the 1973 Convention for the Prevention of Pollution from Ships and its 1978 Protocol (allowing port states the right to detain or deny entry to a foreign ship which violates technical requirements); 1958 Convention on the High Seas (merely charging states with the obligation to draw up regulations for preventing the main types of ocean pollution but not providing penal provisions); 1982 Law of the Sea Convention (providing that a state whose port an offending vessel enters may proceed against that ship even if the discharges occurred on the high seas and that a foreign vessel can be arrested while sailing in territorial sea or an exclusive economic zone); 1969 Convention on Civil Liability for Oil Pollution from Ships (making the tanker owner strictly liable for pollution damage occurring in the territories, territorial seas, and exclusive economic zones of contracting states) and the 1971 Fund Convention (establishing a fund to pay for excess losses not covered in the 1969 Convention); the 1962 Nuclear Ships Convention (creating absolute liability for nuclear ship operators and requiring operators to maintain

insurance or other financial security covering liability); the Nuclear Damage Convention of 1963 (making nuclear installation operators liable for damage caused by a nuclear incident in the installation, or originating in the installation and occurring elsewhere); the Seabed Arms Control Treaty of 1971 (forbidding the emplacement of nuclear and other weapons of mass destruction on the seabed and ocean floor and subsoil); the 1963 Nuclear Test Ban Treaty (banning tests under water, in the atmosphere, and in outer space); the Outer Space Treaty of 1967 (prohibiting parties from placing in orbit around the earth any objects carrying nuclear or other weapons of mass destruction and from installing such weapons on celestial bodies or station them in outer space in any other manner); the International Law Commission Rapporteur on International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law (identifying as an international crime the violation of “an obligation of essential importance for the preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas” and using the massiveness of the destruction to transform impairment of the environment into a crime and to distinguish it from a delict)

B. Documents officiels relatifs au crime d’écocide

Source :	UE, « Arrêtons l’Ecocide en Europe: une Initiative des Citoyens pour donner des Droits à la Terre », doc. ECI(2013)00000, <i>Draft Directive européenne sur l’Ecocide</i> , 2013, available at http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2013/000002
Concept :	The draft Ecocide Directive intends to define ecocide (Article 1, p.1) and draft a directive criminalizing ecocide for EU Member State implementation (Article 14, p. 8).
Valeur protégée :	Article 2 enshrines certain breaches of rights relating to ecocide, including the breach of a non-human life as a crime against nature and the causing of a risk or probability of ecocide as a crime against future generations (Article 2, p. 1).
Sujet mis en cause :	States for implementation of directive (Article 14. p.8) and, generally, any “person, company, organisation, partnership, or any other legal entity” that breaches rights as asserted (Article 2, p. 1).
Infractions envisagées :	Crimes against: Humanity, Nature, Future Generations, Ecocide, Cultural Ecocide (Article 2, p. 1-2).
Eléments matériels :	“1. Ecocide This Directive sets out the definition of ecocide as the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that:- (1) peaceful enjoyment by the inhabitants has been severely diminished; and or (2) peaceful enjoyment by the inhabitants of another territory has been severely diminished.” (Article 1, p.1).
Elément psychologique (mens rea)	Strict liability (Art. 4, p. 2).
Elément contextuel	Current international climate of toxic tort regulation (p. 139)
Qualification envisagée :	Proposed definition and criminalization of Ecocide (p 1).
Juridiction compétente	European Union
Type de	Restoration and consequential loss (Article 13, p. 7).

sanction :	
Varia :	This is a draft of EU ecocide legislation based on a 2013 citizens' petition with the European Union
Source :	Patricia Merz (dir.), « Arrêtons l'Ecocide en Europe: une Initiative des Citoyens pour donner des Droits à la Terre », ECI(2013)000002, 2013, <i>Initiative citoyenne pour interdire l'écocide</i> , available at http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing/details/2013/000002
Concept :	Criminalise Ecocide and ensure that natural and legal persons can be held responsible for committing Ecocide according to the principle of superior responsibility. (p. 3).
Valeur protégée :	"We, European citizens deeply concerned about the future of our planet, invite the European Commission to adopt legislation to prohibit, prevent and pre-empt Ecocide, the extensive damage, destruction to or loss of ecosystems of a given territory." (p. 2).
Sujet mis en cause :	Infringers of the proposed law of Ecocide (p. 3).
Infractions envisagées :	Ecocide (p. 4).
Éléments matériels :	Relies on reference to Polly Higgins' work: "Ecocide has been defined by Polly Higgins as the extensive damage, destruction to or loss of ecosystems of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished." (p. 2).
Élément psychologique (mens rea)	Strict liability implied by reference to supporting legislation (p. 9).
Élément contextuel	Current international climate of toxic tort regulation (p. 139)
Qualification envisagée :	Proposed definition and criminalization of Ecocide (p 1).
Juridiction compétente	E.U.
Type de sanction :	N/A.
Varia :	This is a 2013 citizens' petition with the E.U.

II. Doctrine relative aux crimes contre l'environnement

A. Ouvrages

Source :	Laura Westra , <i>Ecoviolence and the Law: Supranational Normative Foundations of Ecocrime</i> , Transnational Publishers: Ardley, New York (2004), pp. xiii-89.
Concept :	Fundamental argument: "breaches of environmental regulations, whether domestic or international, are ultimately to be viewed as breaches of human rights law."(p.xiii).
Valeur	Emphasis is on life, with environmental destruction comprising an attack on it; from

protégée :	the text: “ecological disintegrity should be viewed as an attack on life, a form of violence to natural systems’ structure and function, hence, to all living things at the macro level, and an assault on human life, and on the natural function of human organisms at the micro level” (p. xiii).
Sujet mis en cause :	Moral imperative to classify ecoviolence as a human rights abuse (p. xiii).
Infractions envisagées :	Eco-violence generally (p. xiii).
Éléments matériels :	No listing of proposed elements; Reduction of “the high requirement for ‘knowledge, purpose, and, in general, clear subjective fault intent.’” (p. 53).
Élément psychologique (mens rea)	Strict liability: “Unlike homicide or assault, ecocrimes require no personal acquaintance—no hate or ill feelings between the actor and the recipient of the harm.” (p. 53)
Élément contextuel	Not Applicable
Qualification envisagée :	Moral Imperative of Ecocide
Juridiction compétente	N.A.
Type de sanction :	N.A.
Varia :	This is a book that operates as a work of legal philosophy to overcome positivist conceptions of law as legal construction and instead to build legal culpability on moral grounds by appealing to notions of justice and natural law (p. 31).

B. Articles scientifiques

Source	Mark A. Drumbl , “Waging War Against The World: The Need To Move From War Crimes To Environmental Crimes” 22 <i>Fordham International Law Journal</i> (1998), pp. 122 ss.
Concept	This essay overviews the potential of prosecution crimes against the environment under the Rome Statute as well as under a freestanding convention against ecocide. (pp. 123-24)
Object of protection	This essay posits that collapsing environmental crimes within the permanent International Criminal Court might not be the most effective way to sanction such crimes. One overarching problem is that the International Criminal Court is principally designed to punish and to deter genocide and crimes against humanity per se. As we have seen, environmental offenses are basically just an add-on and, as a result, might be lost in the shuffle. (p. 145)
Actor	N/A
Conduct	N/A
	A successful prosecution under the Rome Statute will, first and foremost, have to show that the accused committed “widespread, long-term and severe” damage to the natural environment. Of great importance is that all three elements must conjunctively be proven. To this end, the Rome Statute may not advance environmental concerns beyond the progress made in these prior documents. In fact, by providing that all three elements must be conjunctively shown to exist, this language regresses from the wording of the 1977 United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, which bases liability disjunctively on proof of only one

of these three characteristics. (pp. 126-27)

To this end, it will be important to develop a memorandum of understanding under the Rome Statute in which the scope of “widespread,” “long-term,” and “severe” is spelled out. . . . For starters, the “widespread” and “long-term” principles attempt to ascribe temporal and geographic limitations on environmental harm that, for the most part, does not know such boundaries. “As the planet constitutes one single ecosystem, environmental degradation of one part of the earth ultimately affects the entire planet.” On another note, the “severe” requirement could mean that damage to an isolated section of the global commons whose natural resources have not yet been valued by global financial markets could escape punishment and this notwithstanding its biodiversity or species-importance. The anthropocentric limitation of “severe” damage to that which affects human life and human consumption of natural resources underscores a more general shortcoming with the existing framework of environmental protection during wartime, namely that this protection is not geared to protecting the environment per se, but, rather, humanity's need to make use of it. (pp. 128-29)

It is important to ground the actus reus [of an ecocide definition] not in the existence of “widespread, long-term and severe” damage, but simply in the existence of damage per se. If consensus is obtained on this latter point, Florencio Yuzon points out that: [in] an international crime of environmental destruction, the quantum of proof that is necessary, or the threshold of damage that must occur, is relatively low compared to ENMOD and Protocol I where higher thresholds of damage must be met. . . . [A]ny damage, regardless of the degree . . . would automatically render the State and/or its military, criminally liable. (pp. 143-44)

Mens rea

In the case of Article 8(2)(b)(iv), criminal sanction will only fall upon the most invidious offender: the individual who knows his or her behavior will cause “widespread, long-term and severe” damage to the environment and, notwithstanding proof of this knowledge, still commits the act with the full intention of causing the environmental damage. . . . Ultimately, it is hoped that the Environment Guidelines could constitute the level of objective knowledge imputed to all military and civilian leaders and agents for purposes of culpability under international criminal legislation. (p. 132)

In conclusion, unless some level of objective knowledge is read into the intentionality requirement, individuals who choose not to inform themselves that what they are doing might be deleterious for the environment might be able to claim ignorance as a full defense. A failure to incorporate an objective element into the Rome Statute's environmental war crimes also represents a step backwards insofar as Protocol I had, as early as 1977, grounded responsibility not in intentional environmental harm, but simply when there was a reasonable expectation that environmental damage would occur. (p. 133)

It would be important for the effectiveness of the ecocide provision to capture not only the mens rea standard of criminal law, but also negligence, reasonable foreseeability, willful blindness, carelessness, and objective certainty standards, many of which animate tort law and civil liability. (p. 144)

Other material elements

N/A

Crime classification

N/A

Competent

The jurisdiction of an international tribunal would lie in the transboundary nature

jurisdiction	of environmental violence, together with the pernicious effects on the global commons. Any international tribunal, however, ought to be guided by the principles of complementarity in its relationships with national courts. In negotiating jurisdiction, it is important for an ecocide convention to apply equally to natural persons, legal persons, public authorities, and states. State responsibility is particularly crucial in order for civil damages and restitution to be viable remedies. (p. 144)
Sanction	N/A
Notes	N/A
Source :	Mark A. Drumbl , “International Human Rights, International Humanitarian Law, and Environmental Security: Can the International Criminal Court Bridge the Gaps?”, <i>ILSA Journal of International & Comparative Law</i> , Vol. 6, Issue 2 (Spring 2000), pp. 305-342
Concept :	Claim for a better supervision and monitoring of the environmental consequences of <u>military activities</u>
Valeur protégée :	Detailed analysis of the <u>Rome Statute art. 8 (2) (b) (iv)</u> : “ <i>Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated</i> ” (p.312) Lives, health and objects of the civilian population “natural environment”: “environment of the human race and where the human race develops, as well as areas the preservation of which is of fundamental importance in protecting the environment” (p. 318)
Sujet mis en cause :	Natural person (p.312)
Infractions envisagées :	Use of environmentally harmful types of warfare (p.312)
Eléments matériels :	Linked to particular weapons cf. Agent Orange in Vietnam (p.308) Widespread, long-term and severe damage: need a better definition Principle of proportionality: “clearly excessive” as not precise enough (p.320). In general, use of vague terms such as “clearly”, “direct”, “overall” or “concrete” in the article: lack of precision (p.320)
Elément psychologique (mens rea)	Full intention of causing the environmental damage (p.321) Knowledge as full element (p.322) No liability for negligence or carelessness (p.322) > criticized by the author who argues for a better education of military and political officials on the environmentally harmful effects of certain types of warfare (p.322). Step backward from Protocol I of 1977, in which the responsibility was grounded in the reasonable expectation that environmental damage would occur (p.323)
Elément contextuel	Only international armed conflicts Widespread, long-term and severe damage: author criticizing the anthropocentric vision of environmental war crime, and claiming for a protection of the environment per se, not only the humanity’s use of it (p.317) General objective: doctrine of “military advantage”. Only “concrete and direct overall military advantage anticipated” can justify the damage. Lack of precision, notably on the notion of “anticipation”
Qualification envisagée :	War crime under the Rome Statute (p.312)
Juridiction compétente	Jurisdiction of the ICC (p.312)
Type de sanction :	Imprisonment, fines and forfeiture of the proceeds of the crime (p.327)

Varia :	<p>Interest: detailed analysis of the breaches of the Rome Statute art. 8 > lessons to be drawn from it when it comes to drafting the “ecocide” article</p> <p>Author wondering about the actual worth of the ICC in terms of environmental criminology. Evokes “geocide” and “ecocide” as “the environmental counterpart of genocide – the killing of earth” (p.324): “<i>significantly harming the natural environment constitutes a breach of a duty of care, and this breach consists, in the least, in tortuous or delictual conduct and, when undertaken with willfulness, recklessness or negligence, ought to constitute a crime</i>” (p.325) Recognition of the existence of such crimes during peace time - reckless misconducts at nuclear power facilities, testing of biological weapons, intentional dumping of oil and chemical wastes from ships, trade of endangered species, setting of forest fires...</p> <p>According to the author, “<i>its chances of being negotiated into the jurisdiction of the ICC are slim at best</i>” (p.325) + doubts about the ICC’s effectiveness to deal with ecocide (p.326)</p> <ul style="list-style-type: none"> - Environmental crimes could be “lost in the shuffle” of the ICC’s activities; - Low expertise of the ICC personnel; - Sanctions delivered by the ICC are not appropriate to correcting environmental desecration; - Limited scope of the Rome Statute; - Negligence / recklessness standard incompatible with the spirit of the Statute. <p>Practical effect of punitive methodology to maintain environmental security at stake (p.332)</p>
Source :	Peggy Rodgers Kalas , “International Environmental Dispute Resolution and the Need for Access by Non-State Actor Entities,” <i>Colorado Journal of International Environmental Law and Policy</i> , vol. 12 (2001), pp. 191 ss.
Concept :	“This article submits that current international environmental dispute mechanisms are inadequate to protect the rights of individuals and the environment in the 21st century. Part I examines the lack of accountability of TNCs with respect to their environmentally destructive practices. It further explores the problems inherent in bringing lawsuits against TNCs under domestic laws. Part II reviews existing international environmental dispute settlement mechanisms, including adjudicative and arbitral dispute settlement procedures found within multilateral treaties. As will be demonstrated, in most cases, non-State parties lack direct access to these fora. Part III describes recent proposals for an international environmental court established under the auspices of the United Nations. Part IV explores significant issues that will need to be addressed before such a court can be implemented.” (p. 192).
Valeur protégée :	“The article concludes that while a permanent international court for the environment would provide a much needed forum for individual cases left unresolved by ineffective or unavailable national systems, it will be some time before an international environmental court can be a reality. Nevertheless, it is imperative that the international community continue to expand and crystallize the body of international environmental law and establish a regime to allow participation by non-State entities.” (p. 192).
Sujet mis en cause :	State and Non-State Actors in Environmental Law (p. 192).
Infractions envisagées :	General Environmental Destruction (p. 192).

Éléments matériels :	N/A; Discussion of Jurisdiction (p. 192).
Élément psychologique (<i>mens rea</i>)	N/A; Discussion of Jurisdiction (p. 192).
Élément contextuel	Development of International Environmental Law (p. 192)
Qualification envisagée :	General Jurisdiction for Environmental Claims (p. 192).
Jurisdiction compétente	Global
Type de sanction :	N/A.
Varia :	This is an academic legal article.
Source :	Aurelie Lopez , “Criminal Liability for Environmental Damage Occurring in Times of Non-International Armed Conflict: Rights and Remedies,” <i>Fordham Environmental Law Review</i> , vol 18, 231 (2007), pp. 1-28.
Concept :	“This article analyses some propositions advanced by legal scholars to foster protection of the natural environment in times of armed conflict and attempts to demonstrate that the criticisms directed toward the International Criminal Court are only partially founded by describing the legal hurdles to prosecution for environmental damage occurring in armed conflicts, in particular non-international armed conflicts.” (p. 2).
Valeur protégée :	“Thus, article 6(c) of the Rome Statute could provide the means to punish ‘environmental cleansing’ which can be defined as the ‘deliberate manipulation and misuse of the environment so as to subordinate groups based on characteristics such as race, ethnicity, nationality, religion and so forth.’ Principally, environmental devastation of areas inhabited by indigenous peoples whose culture, customs and survival depend on the environment could arguably be considered as genocide.” (p. 13).
Sujet mis en cause :	State actors responsible for ecocide or environmental genocide (p. 13).
Infractions envisagées :	General Environmental Destruction (p. 2).
Éléments matériels :	“Finally, some scholars, including Lynn Berat, propose to concentrate on the development of a crime of ‘Geocide’ or ‘Ecocide.’ Framed on the definition of genocide, geocide could be defined as the: [D]estruction, in whole or in part, of any of portion of the global ecosystem, via killing members of a species; causing serious bodily or mental harm to members of the species; inflicting on the species conditions of life that bring about its physical destruction in whole or in part; and imposing measures that prevent births within the group or lead to birth defects. The authors put forward the idea to sanction intentional as well as reckless or negligent ‘destruction of any species or the serious impairment of any part of the global environment,’ at any time, irrespective of the situation of armed conflict or peace.” (p. 14).
Élément psychologique (<i>mens rea</i>)	Strict Liability (p. 14).
Élément contextuel	Litigation under Rome Statute (p. 2)
Qualification envisagée :	General Jurisdiction for Environmental Claims under Rome Statute (p. 2).

Jurisdiction compétente	ICC
Type de sanction :	N/A.
Varia :	This is an academic legal article.
Source :	Bradford Mank , “Can Plaintiffs Use Multinational Environmental Treaties as Customary International Law to Sue Under the Alien Tort Statute?,” 2007 <i>Utah Law Review</i> 1085 (2009), pp. 1-73.
Concept :	Like the Sosa court, this Article would leave the ATS door open to the possibility of an environmental suit, but only in rare cases where international environmental law is both widely adopted and very clear. Part II will review the history of the ATS before the Supreme Court's seminal Sosa decision. Part III will review ATS decisions involving environmental claims before the Sosa decision. Part IV will explore the Sosa decision. Part V will discuss the district court decision in Sarei and the Ninth Circuit's 2006 and 2007 decisions. Part VI will demonstrate that customary international law requiring States to avoid harmful transboundary pollution is too vague to serve as the basis of an ATS suit. It will also show that UNCLOS's provisions are too vague to meet the Sosa standard for ATS suits.” (p. 2).
Valeur protégée :	“[T]his Article argues that most international environmental law principles, including those in UNCLOS, are generally too vague to be the basis of an ATS suit under Sosa's definiteness standard.” (p. 2).
Sujet mis en cause :	State and multinational private actors (p. 2).
Infractions envisagées :	General Environmental Harms (p. 2).
Éléments matériels :	N/A with regard to Ecocide; discussion of jurisdiction under ATS primarily.
Élément psychologique (mens rea)	Discussion of vicarious liability as theory of causation (p. 7).
Élément contextuel	ATS cases in US law (p. 2)
Qualification envisagée :	General Jurisdiction for Environmental Claims (p. 2).
Jurisdiction compétente	USA
Type de sanction :	N/A.
Varia :	N/A
Source	Frederic Megret , “The Problem Of An International Criminal Law Of The Environment” 36 <i>Columbia Journal of Environmental Law</i> (2011), pp. 195 ss.
Concept	This article argues that there is room for a legal development of an international criminal law of the environment as long as it is a carefully crafted response to a very specific set of international issues. The article begins by looking at the limitations on the emergence of a full-fledged international criminal law of the environment to explain why the process has been so protracted). It then goes on to envisage some arguments that militate in favor of the greater development of international criminal law to protect the environment. Finally, it discusses possible future developments related to an

Object of protection	international criminal law of the environment. (pp. 203-04)
Actor	N/A
Conduct	Drafting techniques that have been used with some success to define genocide, crimes against humanity, war crimes, aggression, terrorism, or trafficking offenses could also be used in the context of the environment. These typically involve use of a chapeau to contextualize and broadly define the nature of the offense. In the case of an international offense against the environment, that chapeau might mention any generalized or systematic attack or harm on the environment, drawing inspiration from crimes against humanity. Drawing inspiration from Protocol I, it could also insist that the action be intended or expected to cause widespread, longterm, severe, or irreversible damage to the environment. Following the chapeau, a list of specific offenses could be set forth, which would draw on existing international environmental treaties that set out clear penal prohibitions--for example, the Basel Convention, CITES, and Marpol. (pp. 249-50)
Mens rea	It has been suggested that there is room in the international arsenal for crimes in the strong sense, namely those that involve a high degree of stigma and are consequently punished severely. These would clearly have to be so-called subjective mens rea crimes, i.e., those involving intention, knowledge, or at least willful blindness. However, the possibility of international regulatory offenses based on international environmental law and those that rely on a standard of negligence should not be excluded, as long as these come with lesser penalties that reflect their lesser gravity. (pp. 248-49)
Other material elements	N/A
Crime classification	International criminalization, to begin with, should be doubly subsidiary to both non-criminal and domestic law. Consistent with the liberal notion that criminal punishment should be a last resort, criminalizing harm to the environment should be subsidiary to the search for alternate, non-penal means to deal with the issue, such as through domestic, civil, and administrative law. . . . Even if stronger judicial solutions are sometimes called for, criminal ones are not necessarily preferred, and certainly not the only ones available. (p. 246)
Competent jurisdiction	International criminalization should be subsidiary to domestic forms of criminal law. Here, the main interest lies in respecting sovereignty and protecting against the premature internationalization of issues that might effectively be treated domestically. The sovereignty argument is a particularly sensitive issue when it comes to criminal law, given the close association of criminal law with notions of domestic public order. . . . It is also in line with a broad complementarity principle, illustrated in the field of international criminal law by the Rome Statute of the ICC. (p. 247)
	All other things being equal, the greater the gravity of the crime, the more international the criminal regime is likely to be. The most obvious route to international enforcement is one that focuses on the role of domestic jurisdictions to ensure that they are bound to prosecute environmental crimes of international interest, a model traditionally favored for much transnational criminality. This model typically involves facilitating judicial cooperation and extradition. It also involves encouraging states to exercise personal jurisdiction over their nationals or corporations that commit grave harm to the environment abroad (so-called long arm jurisdiction), especially where there is little hope that the courts of the state in which the crime was committed will adequately prosecute. (p. 251)

There is a strong argument that some crimes against the global commons are so inherently global that they would be natural candidates for at least partial international criminalization. The possibility of universal jurisdiction and of making certain environmental crimes the object of international or supranational jurisdiction is, too, something that should be discussed. The rationale for universal jurisdiction is that environmental crimes affect the whole international community, such that each state has an interest in repressing them even if they were not committed in its territory or by its nationals. (p. 252)

It is important for [an ecocide court] to be empowered to decide on both criminal as well as civil matters. In order for the decisions of this court to be implemented and executed, it would have to be given jurisdiction over natural and legal persons in all nation-states, together with governments themselves. It would also be important for this court to be given injunctive powers to stop violations from happening and to arrest future breaches. The International Criminal Court does not appear to have such a capacity. This absence of injunctive powers is another reason why it may not be well-suited to adjudicate environmental crimes. (p. 150)

Sanction The jurisdiction of the International Criminal Court is limited to natural persons. This limitation makes it impossible to find any institutional or state liability should it be difficult to prove that the actions of one or some individuals accounted for the environmental desecration. [Additionally], and more importantly, sentencing is based on imprisonment, fines, and forfeiture of the proceeds of the crime. There does not appear to be much room to compel restitution, remediation of blight, civil liability or, simply put, to clean up the environmental harm. . . . As a result, there is cause for concern not only that environmental crimes will be poorly cognizable under the International Criminal Court, but also that the punishments for wrongdoing will not address the unique nature of these crimes. This argument further supports an ecocide convention administered by its own secretariat and enforced by its own court. (pp. 149-50)

Notes N/A

Source : **Antonio Pigrau, Susana Borràs, Jordi Jaria i Manzano & Antonio Cardesa-Salzman, *Legal avenues for EJOs to claim environmental liability*** (Barcelona, EJOLT Report No. 4, UE Project, 2012) 98 pp.

Concept : The report don't talk about Ecocide. Nevertheless, crimes against environment are pointed out once, in the *Trafigura* case (The Netherlands): “*Although the Dutch judicial system is responding effectively, strikingly, in April 2011 the Court of Appeal in The Hague rejected the suit of Greenpeace Netherlands seeking to oblige the Dutch public prosecutor to initiate criminal proceedings against Trafigura Beheer for homicide, bodily harm and environmental crimes committed in Ivory Coast in connection with the Probo Koala incident. Interestingly, the Court found that, as an environmental NGO according to its statutes, Greenpeace lacked the capacity to seek the prosecution of offences other than environmental crimes (therefore dismissing its claims with respect to homicide and bodily harm)*” (p. 54) “severe environmental damage” (pp. 7, 87).

Valeur protégée :
Sujet mis en cause : Unless the physical liability, the court cases reported point out “*that severe environmental damage to the environment is often associated with the involvement of large multinational companies*” p. 7.

Infractions N/A

envisagées :	
Eléments matériels :	N/A
Elément psychologique (<i>mens rea</i>)	N/A
Elément contextuel	N/A
Qualification envisagée :	N/A
Jurisdiction compétente	International (pp. 70-78) and national (pp. 32-69) level are studied. The report point out in this issue that: “ <i>The criminal route in particular, in countries where the concept of an environmental crime exists, can be particularly useful for its effects in terms of prevention and dissuasion, and because it is generally accompanied by civil liability. This avenue may be followed either for prosecuting the persons materially responsible for damages, or those in charge of supervising the operations that cause them, or else for bringing criminal proceedings against the company itself if legislation recognises criminal liability for corporate entities.</i> ”(p. 87)
Type de sanction :	The report is concerned by the economic valuation of damages as a key element (p. 87).
Varia :	The report select and summarize eleven cases: “SHELL (the impact of Shell in Nigeria), TEXACO (Texaco/Chevron in Ecuador), TRAFIGURA (Trafigura’s waste dumping in the Ivory Coast), RIO TINTO – PAPUA (the impact of Rio Tinto in Bougainville, Papua New Guinea), YANACOCCHA (the impact of Yanacocha in Peru), DYNCORP (the impact of the Dyncorp’s fumigations for Colombia and Ecuador), INUIT (the impact of climate change on the Inuit), RIO TINTO-NAMIBIA (the impact of the Rössing uranium mine in Namibia, via the Connelly Case), VEDANTA (the impact of Vedanta in India), CHOCÓ (issues related to land ownership and forced displacements in the Department of Chocó in Colombia), and DEFENDERS (persecution of environmental defenders)” p. 31. The court cases are not presented one by one but, the analysis has been grouped into five sections: <i>legal instruments for host state national law (territorial scope)</i> (pp. 32-50), <i>legal instruments for home state national law (extra-territorial scope)</i> (pp. 51-69), <i>legal instruments in international law</i> (pp. 70-78), <i>legal instruments in regulatory frameworks based on voluntary acceptance, and application of other resources for social pressure</i> (pp. 79-85)
Source :	Mary Elliott Rollé , “Unraveling Accountability: Contesting Legal and Procedural Barriers in International Toxic Tort Cases”, <i>Georgetown International Environmental Law Review</i> , Volume 15 (2003), pp. 135 ss.
Concept :	“In the first section, the existing domestic solutions are considered, with special attention paid to U.S. toxic tort law. That section will also focus on the comparability between similarly situated States, as well as the disparity between developed and developing State systems. The second section will look at procedural barriers that allow corporations to avoid liability, including the doctrine of forum non conveniens, the corporate veil, and choice of law rules, as well as attempts by plaintiffs to reach tortfeasors through various methods, including the application of domestic law to foreign torts. The third section provides an overview of existing regional and public international law solutions, including treaties, agreements, and customary obligations. The fourth section finds that because of the difficulty domestic courts may have in asserting jurisdiction over their citizens for their actions in foreign

States, private international law should cover such actions through a universal toxic tort scheme and the creation of an international civil court, rather than through the efforts of individual States.” (p.139)

Valeur protégée :	International environmental legal scheme: “Because these States have not dealt with manufacturing accidents over many years, their laws have not evolved to cover them, leaving transnational corporations largely unsupervised.” (p. 138)
Sujet mis en cause :	States in failing to govern multinationals (p. 139)
Infractions envisagées :	Failure of domestic legal protection of environment and lack of oversight, especially in developing States (p. 139)
Éléments matériels :	Toxic Torts—US: Causation, three elements (p. 142); Comparison of International Tort Regimes to U.S. Model Throughout
Élément psychologique (mens rea)	U.S. Tort law recognizes strict liability (p. 147)
Élément contextuel	Current international climate of toxic tort regulation (p. 139)
Qualification envisagée :	Review of domestic toxic torts regimes (p 139)
Juridiction compétente	N.A.
Type de sanction :	N.A.
Varia :	This is a legal paper.
Source	Geetanjoy Sahu , “Implications of Indian Supreme Court’s Innovations for Environmental Jurisprudence” 4/1 <i>Law, Environment and Development Journal</i> (2008) pp. 3-19
Concept	Describes the Indian Courts of law of a pioneer, both in terms of laying down new principles of law and also in the application of innovative methods in the environmental justice delivery system. (p. 3)
Object of protection	The most important procedural innovation for environmental jurisprudence has been the relaxation of traditional process of standing in the Court and introducing the concept of Public Interest Litigation (PIL). (p. 5). Earlier when the third party approached the appellate Court for seeking relief against an injury they did not incur directly, the action was not maintainable as the appellate Court focused its attention on the identity of the petitioner rather than the subject of petition. (p. 5). But now the Court’s approach has changed and it has been ruled that any member of the public having sufficient interest, may be allowed to initiate the legal process in order to assert diffused and meta-individual rights. (p. 5).
Actor	Allowing third party to bring environmental problems to Court’s notice has also an important bearing on inanimate objects, which cannot represent itself in the litigation process. The voice of the inanimate objects has been represented by concerned NGOs and environmental activists through the instrument of PIL. The polluter has been asked to pay for the damage done to the natural objects and restore the environment to its natural position. (p. 6) (citing Indian Council for Enviro-Legal Action v. Union of India (Bichhri village industrial pollution case), Supreme Court of India, Judgment of 13 February 1996, 1996 (3) SCC 212.) The Court has also shown a willingness to alter the rules of the game wherever necessary to entertain environmental cases. For example, where there are a wide variety of offenders, the Court has chosen to treat a particular case as a representative action and issued orders binding on the entire class. In one case concerning massive

pollution of the river Ganga, the Court has published notices in the newspaper drawing the litigation to the attention of all concerned industries and municipal authorities

inviting them to enter an appearance. In this case, the petition was filed against the Kanpur tanneries and Kanpur Municipal Council to stop polluting the river Ganga. The Court, however, asked all the industrialists and the Municipal Corporations and the town Municipal Councils having jurisdiction over the areas through which the river flows in India, to appear before the Court. Similarly, in 1995, T.N. Godavarman Thirumulpad filed a writ petition with the Supreme Court of India to protect the Nilgiris forest land from deforestation by illegal timber operations. The Court expanded the Godavarman case from a matter of ceasing illegal operations in one forest into a reformation of the entire country's forest policy. (p. 6)

The precautionary principle, as applied by the Court in the Vellore Citizens' Welfare Forum v. Union of India, imposes an obligation on every developer, industry and governmental agency to anticipate, prevent and attack the causes of environmental degradation. The Court also held that, if there are threats of serious and irreversible damage, and then any lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. Finally, the Court emphasised that the onus of proof shall be on the actors or the industrialists to show that their action is environmentally benign. The precautionary principle had also been emphasised in cases such as M.C. Mehta v. Union of India and A. P. Pollution Control Board v. M.V. Nayudu case. (pp. 10-11) (citing Vellore Citizens' Welfare Forum v. Union of India, Supreme Court of India, Judgment of 28 August 1996, AIR 1996 SC 2716; Andhra Pradesh Pollution Control Board v. Prof. M.V. Nayudu, Supreme Court of India, Judgment of 27 January 1999, AIR 1999 SC 812.)

Conduct

An account of the interpretation of right to environment as a part of fundamental right to life would illustrate the efforts of Court to expand the scope of existing fundamental right to life. For instance, in the Ratlam Municipal case, the Court has upheld that public nuisance is a challenge to the social justice component of the rule of law. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Likewise, in the Dehradun Lime Stone Quarrying case, the Court has made it clear that economic growth cannot be achieved at the cost of environmental destruction and peoples' right to healthy environment. In the Doon Valley case, concerning mining environment, the Court has interpreted Article 21 to include the right to live in healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, house and agricultural land and undue affection of air, water and environment. This exercise has been further emphasised in the Ganga water pollution case by Justice Venkataramiah, who has extended the right to life to include the right to defend the human environment for the present and future generation. In M.C. Mehta v. Union of India, the Court has accepted that environmental pollution and industrial hazards are not only potential civil torts, but also violation of right to health. In this way, through the interpretation of Article 21, the Court has sought to convert formal guarantees into positive human rights. (pp. 8-9)

The Court of India, while administering environmental justice, has evolved certain principles and doctrines within and at times outside the framework of the existing environmental law. Environmental principles, such as polluter pays principle [(the polluting party pays for the damage done to the natural environment)], precautionary principle [(the absence of full scientific certainty shall not be used as a reason to postpone measures where there is a risk of serious or irreversible harm to public health or the environment)] and public trust doctrine [(certain resources are preserved for public use, and that the government is required to maintain it for the public's reasonable use)] have been adopted by the Court in its concern to protect the

environment from further degradation and improve the same. It is important to note that these principles have been developed in various international agreements and conferences to control and prevent further environmental degradation. (p. 10)

Drawing inference from international environmental principles, the Court of India has applied various principles to resolve domestic environmental problems. For example, the Polluter Pays Principle was invoked by the court of India in the Indian Council for Enviro-Legal Action v. Union of India. Giving the judgment, the Judges held that 'we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. Once the activity carried on is hazardous or inherently dangerous, the polluter carrying on such activity is liable to make good the loss caused to any other affected party by polluter's activity irrespective of the fact whether the polluter took reasonable care while carrying on his activity'. In this case, the Court has stated that the 'Polluter Pays Principle' means that the absolute liability for harm to the environment extends not only to compensate the victims of the pollution but also the cost of restoring the environmental degradation. Subsequently, 'Polluter Pays Principle' as interpreted by the Court has been recognised as a fundamental objective of government policy to prevent and control pollution. (p. 10) (citing Indian Council for Enviro-Legal Action v. Union of India (Bichhri village industrial pollution case), Supreme Court of India, Judgement of 13 February 1996, 1996 (3) SCC 212.)

Mens rea	N/A
Other material elements	N/A
Crime classification	N/A
Competent jurisdiction	N/A
Sanction	N/A
Notes	A number of cases on environmental issues have been initiated through PIL. Beginning with the Dehradun lime stone quarrying case in 1983, followed by the Ganga Water Pollution case, Delhi Vehicular Pollution case, Oleum Gas Leak case, Tehri Dam case, Narmada Dam case, Coastal Management case, industrial pollution in Patancheru, and T.N. Godavarman case, all of them came to Court's attention through PIL. (pp. 5-6).
Source	Timothy Schofield , "The Environment As An Ideological Weapon: A Proposal To Criminalize Environmental Terrorism" 26 <i>Boston College Environmental Affairs Law Review</i> 619 (1999), pp. 619 ss.
Concept	Global ecosystems are emerging as both targets and conduits of terrorist activity. The end of the Cold War and the changing face of terrorism have contributed to this development. Domestic law has not, however, kept pace with this threat. Applicable legal doctrines do not operate effectively with existing anti-terrorism strategies and fail to express adequately societal outrage at such conduct. A new criminal law of ecocide will provide more appropriate mechanisms for confronting this emerging threat. (p. 619)
Object of protection	A law prohibiting ecocide--the intentional or reckless manipulation or destruction of any aspect of the physical environment--will provide a mechanism for punishing environmental terrorists within existing legal structures while validating societal condemnation of such conduct. (p. 619)
Actor	N/A
Conduct	Environmental terrorists deliberately destroy or manipulate the environment in the

name of political or ideological zealotry. (p. 619)

Environmental terrorism includes both the targeting of the environment itself, such as deliberate contamination of water or agricultural resources, and the use of the environment as a conduit for destruction, such as releasing chemical or biological weapons into the atmosphere. . . . The elements of the global ecosystem that have been, or can be, used for hostile purposes range from complex nuclear forces to the simple, but effective, power of water. (p. 620)

The crime of ecocide should be defined as the intentional or reckless manipulation or destruction of any aspect of the physical environment which damages or exploits, in whole or in part, any portion of the global ecosystem. (p. 645)

Examples:

The classic scenario of nuclear terrorism involves the detonation of a nuclear device in an urban environment. . . . Similar devastation can be achieved by sabotaging commercial nuclear reactors or by attacking a transporter of nuclear weapons or material. . . . On November 23, 1995, a Chechen guerrilla leader, Shamil Basayev, informed a Russian television network that four cases of radioactive cesium had been hidden around Moscow. The network later discovered a thirty-two kilogram case of the material, emitting over 300 times the amount of normal background radioactivity, in Moscow's Ismailovo Park. (p. 626)

Chemical and biological weapons threaten the earth's numerous ecological systems by using the environment as a conduit of violence. (p. 627)

Water represents one of the largest sources of stored energy in the environment. The thousands of levees, dikes, and dams throughout the United States, for example, contain massive destructive capacity. The static energy of the bodies of water held in check by some of these barriers represent a level of destructive force on par with a nuclear accident. . . . The single most destructive act, in terms of lives lost, in the history of warfare resulted from the destruction of a dike by the Chinese army during World War II. . . . Although the ensuing flood succeeded in stopping the Japanese advance, the consequences were devastating. 167 The flood destroyed eleven Chinese cities and more than 4000 villages. Several hundred thousand Chinese drowned and several million more were left homeless. 169 Millions of acres of farmland were submerged, destroying both crops and irreplaceable topsoil. (p. 633-34)

Mens rea

Intentional or reckless conduct (p. 645)

Acts performed with knowledge of or reckless disregard for the immediate or long-term effects on global ecosystems should be punished as acts of ecocide. (p. 645)

Other material elements

Causation would be established from the harm to the ecosystem affected or from evidence that the environment was used as a conduit for an act of terror. (p. 645)

Crime classification

N/A

Competent jurisdiction

N/A

Sanction

N/A

Notes

See Richard J. Lazarus, *Assimilating Environmental Protection Into Legal Rules and the Problem with Environmental Crime*, 27 LOYOLA L.A. L. REV. 867, 868 (1994).

See Robert Deeb, Environmental Criminal Liability, 2 S.C. ENVTL. L.J. 159, 162 (1993).

Source :	Peter Sharp , “Prospects for Environmental Liability in the International Criminal Court”, <i>Virginia Environmental Law Journal</i> , Vol. 18, Issue 2 (1999), pp. 217-244.
Concept :	There is no article on ecocide but elements of definition to be looked at in the existing Rome Statute: “It is not only appropriate but critical to the meaningful existence of the core crimes defined by the Rome Statute that <u>their enforcement includes the criminalization of intentional acts of environmental degradation</u> which cause the injury or death of either individuals or populations.” (p.220) The author is not urging for a premature expansion of the Court’s jurisdiction (no a particular crime of ecocide) but demonstrates how <u>the core crimes already contemplate manners to sanction the most serious environmental crimes</u> (p.220)
Valeur protégée :	International right to be free from fatal environmental degradation (p.233)
Sujet mis en cause :	N/A (by deduction, in link with the current provisions of the Rome Statute?)
Infractions envisagées :	Firing squads Pollution of water sources Poisoning of fields Destruction of a subsistence habitat Irradiation of the countryside (p.235)...
Éléments matériels :	N/A
Élément psychologique (mens rea)	N/A
Élément contextuel	N/A
Qualification envisagée :	<u>Genocide (art.6)</u> : difficulty to link environmental harm with “intent to destroy” because states can always defend themselves on the basis of the “right to development”, based on “acceptable” level of environmental degradation (Rio Declaration) (p.234) <u>Crimes against humanity (art.7)</u> : useful definition because no specific intent to destroy + reaches of crimes of a lesser magnitude than those concerned by the genocide definition. Different elements of the definition to deal with environmental criminality (p.237)> <ul style="list-style-type: none"> - “widespread and systematic” - “attack directed against a civilian population” - “extermination” as including “the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population” (art. 7 (2) (b)) - “deportation or forcible transfer of population” as “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under

international law” (art. 7 (2) (d))

War crime (art. 8 (2) (b) (iv)): expressly recognizes a justifiable level of long-term and severe damage to the environment, but fails to provide any real guidance as to when such actions may become criminal (p.241)

Jurisdiction compétente	International Criminal Court (p.220)
Type de sanction :	N/A (by deduction, in link with the current provisions of the Rome Statute)
Varia :	“In order for criminal proscriptions to be effective, let alone practicable, they must clearly prohibit certain actions” (p.241): need for our ecocide definition to include an explicit list of criminal behaviors
Source	Tara Smith , “Creating A Framework For The Prosecution Of Environmental Crimes In International Criminal Law”, <i>Companion To International Criminal Law: Critical Perspectives</i> , William Schabas, Yvonne Mcdermott, Niamh Hayes And Maria Varaki, Eds., Ashgate Publishers, 2012 (August 25, 2011), p. 1.-19
Concept	Establishing a framework that would attach criminal liability to environmental damage.
Object of protection	The environment.
Actor	N/A
Conduct	N/A
Mens rea	N/A
Other material elements	N/A
Crime classification	Environmental crimes, nevertheless the criminal law appears not to link it on the environment <i>per se</i> , yet when the damage on the environment has further caused damages to a human population: “environmental damage may fall into the sphere of international criminal law and thereby generate individual criminal responsibility. Liability is sought for the effects of the damage on the human population, rather than for the environmental harm alone. As such, there is certainly scope for existing crimes to be interpreted in a ‘green’ manner, and it is to these interpretations that the discussion now turns.” (p.3)
Competent jurisdiction	International Criminal Law is the primary source, thus the ICC and the national Courts of various states would seem as competent jurisdictions.
Sanction	N/A
Notes	“Regrettably, the thresholds of harm contained in Protocol I and the Rome Statute may be a more significant deterrent to prosecutors pursuing charges of this nature, than to commanders on the battlefield contemplating environmental damage as a means or method of warfare. As already discussed, the environmental damage must be physically ‘widespread, long-term and severe’, in addition to the knowledge requirements and an absence of military advantage. (p.14)” In other words, environmental damage is still linked to either warfare or to human rights.
Source :	Shaina Stahl , “Unprotected Ground: The Plight of Vanishing Island Nations,” <i>New</i>

York International Law Review, vol 23 (2010) pp. 1 ss

Concept :	“This article discusses many unique legal issues that will arise from the loss of a nation due to global climate change. It addresses two main questions: First, what will be the status under international law of a sovereign nation once it is submerged? And second, what will be the legal status of the citizens of the submerged nation? Section II provides background on global climate change issues, including scientific scenarios, the formation of international groups and treaties that address this issue, and a discussion of the disproportionate focus of international attention on climate change prevention rather than postdisaster mitigation. Section III discusses international law concepts with respect to state sovereignty and displaced persons. Section IV applies the international law concepts discussed in Section III to the problem of sealevel rise. Finally, this article will recommend methods for handling these issues and states' international obligations to the threatened small island nations.” (p. 2).
Valeur protégée :	“Because there is no comprehensive law on how to deal with the situation of submerged nations, any solution based on the principles of international law that protected the interests of the citizens would be better than the current state. However, different choices of international law may optimize solutions. Therefore, states should begin discussing and solving this problem before the danger is imminent. A solution will depend on the cooperation of nonsubmerged states either voluntarily or due to binding international law.” (p. 17).
Sujet mis en cause :	Effect of Climate Change on Small Island Nations.
Infractions envisagées :	Contribution to Climate Change Causing Damage to Small Island Nations (p. 2).
Éléments matériels :	Currently, no “comprehensive law” (p. 17).
Élément psychologique (mens rea)	“International environmental protection has been approached as a state responsibility issue. The Stockholm Declaration suggests a standard of strict liability for environmental damage, but some cases suggest that a state must have knowledge of environmental damage before it is liable.” (p. 15).
Élément contextuel	International Legal (p. 3)
Qualification envisagée :	Climate Change as Direct Cause of Action (p. 2).
Juridiction compétente	Global
Type de sanction :	N/A.
Varia :	This is an academic legal article.
Source	Patricia Thompson , “Mining: Criminal Sanctions Sought in Philippine Mine Tailing Spill” 1996 <i>Colorado Journal Of International Economic Law & Policy</i> (1996), pp. 54 ss.
Concept	Environmental protection laws of the Philippines (viz. water code, the 1995 Mining Act) as applied to a 1996 copper mine pollution on Marinduque (p. 54)
Object of protection	Boac River system; fish wildlife; potable water (p. 54)
Actor	Mining enterprise and its senior officers (p. 55)
Conduct	Reckless imprudence, violation of water code and violation of the Mining Act (p. 55); violation of the Philippine Pollution Control law (p. 55)
Mens rea	N/A

Other material elements	N/A
Crime classification	Criminal (p. 55)
Competent jurisdiction	Philippines (p. 54)
Sanction	N/A
Notes	See also Renee Ross, Philippines: Mining Accident Prompts Criminal Charges, CLEMENTINE, Winter 1996-1997, at 12, 13 (Mineral Policy Center publication).
Source :	University of British Columbia Faculty , “Climate Change Litigation: Inuit v. the U.S. Electricity Generation Industry,” <i>Case Study</i> , available at www.law.ubc.ca/files/pdf/enlaw/climatechange_04_24_09.pdf (2009).
Concept :	“This case study explores the possibility of climate change litigation. Despite political and legislative efforts, global warming continues. Some stakeholders have looked for alternative ways to force greenhouse gas emission reductions and to reverse the current climate change trends. One of these alternatives is to initiate litigation against another party for acts or omissions that contribute to global warming. The variety of potential claims is almost endless. This case study has narrowed in on a hypothetical but realistic suit. The plaintiffs are the Inuit, the native inhabitants of the arctic region. The defendants are electricity-generating companies from the United States.” (p. 1).
Valeur protégée :	“The main purpose of this case study is to evaluate the factors involved in climate change litigation.” (p. 1).
Sujet mis en cause :	U.S. Electricity Production Industry (p. 1).
Infractions envisagées :	Effect of Climate Change on Inuit (p. 1).
Éléments matériels :	Emphasis on Cause of Action under Nuisance, Trespass, or Negligence Theories (pp. 12-18).
Élément psychologique (mens rea)	Negligence theory potentially dependent upon assumption of risk (p. 18).
Élément contextuel	International Legal (p. 3)
Qualification envisagée :	Climate Change as Direct Cause of Action (p. 2).
Jurisdiction compétente	Global
Type de sanction :	N/A.
Varia :	This is an academic case study for pedagogical purposes that provides a succinct overview to litigation strategies for climate change.

C. Autres sources

Hanne Kirstine Adriansen, “What Happened To The Iraqi Marsh Arabs and Their Land?”, Danish Institute for International Studies, *DIIS Working Paper 2004/26*, p. 1-30.

“Professor Joseph Dellapenna, Villanova University Law School, he explained: ‘The scale of the such that the actions of the Iraqi government can fairly be described as a leading example of “ecocide” – the destruction of an entire ecosystem.’ And he continued: ‘What is unique about this instance of ecocide, and what sets it apart from other instances of ecocide, is that the destruction was for the purpose of destruction and not for some, arguably beneficial purpose such as economic development. Here ecocide was adopted as a deliberate mechanism for bringing about genocide’ (p.13)”.

Joseph W. Dellapenna, “Behind the Red Curtain: Environmental Concerns and the End of Communism,” *Villanova University School of Law Public Law and Legal Theory Working Paper No. 2010-09*, (February 2010), p. 1-38

Environmental damages and state policies (or lack thereof) in various communist countries, most notably specified in the examples of the former USSR states, China, Hungary and the Czech Republic.

Mention of ecocide: “Immediately after the end of the Soviet Union, the Russian Federation classified one- sixth of its territory as uninhabitable because of pollution—yet the inhabitants had nowhere to go. Rivers were poisoned beyond anything found in western countries, while Lake Baikal had become a paradigm of how not to manage a precious natural resource. The Aral Sea, in Central Asia, had become the prime example of “ecocide.” (p.7)”

C. Gibbs, M. L. Gore, E. F. Mcgarrell and L. Rivers, “Introducing Conservation Criminology” (2010), *British Journal of Criminology*, (pp.124-144)

> Not specific enough about ecocide

Ryan K. Gravelle, “Enforcing the Elusive: Environmental Rights in East European Constitutions” 16 *Virginia Environmental Law Journal* 633 (1997), pp. 633 ss.

> Not specific enough about ecocide (using MA Gray’s definition p.658)

J. Jaria i Manzano, “Environmental Justice, Social Change and Pluralism”, *IUCN Academy of Environmental Law e-Journal*, 2012(1), pp. 18-29.

This paper does not address the issues of environmental crimes or ecocide. Its importance arise from the analysis of “*environmental justice*” (p. 18).

Through a constitutional perspective, the main concern is “*that the dominant idea of environmental justice does not provide space for a global redefinition of the rules for the distribution of benefits and harms associated with the use of natural resources*”. (p. 18) In that way, the paper suggests that both the constitution as a project of social change and the use of public policies to put limits on individual economical behavior can be useful (p. 25)

The author suggests that partial remedies (in civil or criminal law) “*are not useful and instead, a program of social change is required in order to guarantee real environmental justice*”. The main concern it’s the need “*to overcome the dominant idea of environmental justice as a response to individual cases of environmental harm*” (p. 19)

The relevance of this paper is in the criticism of the civil or criminal option, as insufficient, to deal with environmental problems.

K.F. McCallion & H.R. Sharma, “Environmental Justice without Borders: the Need for an International Court of the Environment to Protect Fundamental Environmental Rights” (1999-2000), *George Washington Journal of International Law and Environment and Economy*
> Not specific enough about ecocide

Aaron Schwabach, “Ecocide and Genocide in Iraq: International Law, the Marsh Arabs, and Environmental Damage in Non-International Conflicts”, *Colorado Journal of International Environmental Law & Policy* Vol. 27 forthcoming, p. 1-37.

The adverse effects of warfare on the environment: Marsh Arabs and their living environment. Presumably ICC and ICJ since the laws examined are International Environmental Law, International Criminal Law and Public International Law. One could conclude that either the ICC or the ICJ may decide on the competent sanction, although the author also interestingly suggests that there ought to be “a trial for environmental war” (p.35).

James Rochlin, “Critical Security in the 21st Century: The Resonating Voices of Thucydides”, *Turkish Journal Of International Relations* (p. 1-12).

Conclusions of the Cold War in analogy to the Peloponnesian war and the writings of Thucydides. On ecocide: “‘Man’s’ conquest over ‘mother nature’ as a mantra of development is no longer tenable, yet ecocide continues due to the lingering dominance of production and development models from the Modern era. While ecocide represents an important security threat in itself, it is part of the wider rupture in global strategic affairs known as the Revolution in Military Affairs (RMA). Paradoxically, the RMA is about both change and continuity.” (p.4)

R. White, “Environmental crime in global context: Exploring the Theoretical and Empirical Complexities”, (2004-2005) *Current Issues Criminal Justice*. 1 (pp.271-286)
> Not specific enough about ecocide

III. Sources juridiques nationales

A. Sources constitutionnelles

1. Amérique du Nord et Afrique du Sud

AFRICA

SOUTH AFRICA

Most recent version from 1996. Available at <http://www.info.gov.za/documents/constitution/> .

Although the 1996 South African constitution does not specifically mention ecocide, it does have a section on the environment that guarantees a ubiquitous right to an environment conducive to health and well-being and to have the environment protected for present and future generations.

Chapter 2, ss 24 Environment

Everyone has the right-

(a) to an environment that is not harmful to their health or well-being; and
 (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-

- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

NORTH AMERICA

UNITED STATES OF AMERICA

The U.S. Constitution took effect in 1789 and has been amended occasionally from that time through 1992.

The document is available at http://www.senate.gov/civics/constitution_item/constitution.htm .

There is no specific claim to an environmental entitlement that would support a claim of an international crime of ecocide in the U.S. Constitution. The only related principle is found in the 1791 ninth amendment, affirming that the enumeration of certain rights in the Constitution does not have the effect of deying or disparaging other rights retained by the people.

Amendment IX (1791)

« The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. »

CANADA

The Canadian Constitution took effect in 1867 and has been amended through the Constitutional Acts of 1982.

The documents are available at <http://laws.justice.gc.ca/eng/const/FullText.html>

Canada's constitutional position on environmental rights is more related to orderly exploitation than preservation, as outlined below in Article VI, Section 92A :

« Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Marginal note:Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A. (1) In each province, the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

Marginal note:Export from provinces of resources

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Marginal note:Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Marginal note:Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

“Primary production”

(5) The expression “primary production” has the meaning assigned by the Sixth Schedule.

Marginal note: Existing powers or rights

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section. »

2. Amérique Centrale et Caraïbes

BELIZE : pas de mention directe de l'écocide et peu de références à la préservation de l'environnement et des ressources naturelles

Constitution de Belize, 1981

http://www.oas.org/juridico/mla/en/blz/en_blz-int-text-const.pdf (22/09/13)

Preamble, e) require policies of state which (...) protect the environment.

- **L'Etat doit, par certaines mesures, viser à protéger l'environnement.**

COSTA RICA : pas de mention directe de l'écocide et très peu de références à la protection de l'environnement et des ressources naturelles

Constitution politique du Costa Rica, 1949

<http://pdpa.georgetown.edu/Parties/CostaRica/Leyes/constitucion.pdf> (22/09/13)

Art.6 –

El Estado ejerce la soberanía completa y exclusiva en el espacio aéreo de su territorio, en sus aguas territoriales en una distancia de doce millas a partir de la línea de baja mar a lo largo de sus costas, en su plataforma continental y en su zócalo insular de acuerdo con los principios del Derecho Internacional.

Ejerce además, una jurisdicción especial sobre los mares adyacentes a su territorio en una extensión de doscientas millas a partir de la misma línea, a fin de proteger, conservar y explotar con exclusividad todos los recursos y riquezas naturales existentes en las aguas, el suelo y el subsuelo de esas zonas, de conformidad con aquellos principios.

- **juridiction de l'Etat sur le territoire afin de protéger, conserver et exploiter en exclusivité toutes les ressources et richesses naturelles existantes**

CUBA: pas de mention directe de l'écocide

Constitution de la République de Cuba, publiée dans la Gazette Officielle du 31 Janvier 2003

http://www.cubadebate.cu/wp-content/uploads/2009/06/go_x_03_2003.pdf (22/09/13)

Art. 11. - El Estado ejerce su soberanía:

b) sobre el medio ambiente y los recursos naturales del país;

c) sobre los recursos naturales, tanto vivos como no vivos, de las aguas, el lecho y el subsuelo de la zona económica marítima de la República, en la extensión que fija la ley, conforme a la práctica internacional.

- **La souveraineté de l'Etat s'exerce sur l'environnement et les ressources naturelles du pays; sur les ressources naturelles, vivantes ou non, des eaux, la terre et les sous-sols de la zone économique maritime de la République.**

Art. 27.-El Estado protege el medio ambiente y los recursos naturales del país. Reconoce su estrecha vinculación con el desarrollo económico y social sostenible para hacer más racional la vida humana y asegurar la supervivencia, el bienestar y la seguridad de las generaciones actuales y futuras. (...) Es deber de los ciudadanos contribuir a la protección del agua, la atmósfera, la conservación del suelo, la flora, la fauna y todo el rico potencial de la naturaleza.

L'Etat protège l'environnement et les ressources naturelles du pays. Il reconnaît le lien étroit entre cette protection et un développement économique et social durable pour rendre plus rationnelle la vie humaine et assurer la survie, le bien-être et la sécurité des générations actuelles et futures. Il est du devoir des citoyens de contribuer à la protection de l'eau et de l'atmosphère, de la conservation du sol, de la flore, de la faune et de tout le riche potentiel de la nature

RÉPUBLIQUE DOMINICAINE: pas de mention directe de l'écocide mais constitution la plus complète sur la protection de l'environnement

Constitution de la République Dominicaine, publiée dans la Gazette Officielle du 26 Janvier 2010
http://www.suprema.gov.do/PDF_2/constitucion/Constitucion.pdf (22/09/13)

CAPÍTULO IV DE LOS RECURSOS NATURALES

Art. 14.- Recursos naturales. Son patrimonio de la Nación los recursos naturales no renovables que se encuentren en el territorio y en los espacios marítimos bajo jurisdicción nacional, los recursos genéticos, la biodiversidad y el espectro radioeléctrico.

- **Appartiennent au patrimoine de la nation les ressources naturelles non renouvelables du territoire et des espaces maritimes sous sa juridiction, les ressources génétiques, la biodiversité et le spectre radioélectrique.**

Art. 15.- Recursos hídricos. El agua constituye patrimonio nacional estratégico de uso público, inalienable, imprescriptible, inembargable y esencial para la vida. El consumo humano del agua tiene prioridad sobre cualquier otro uso. El Estado promoverá la elaboración e implementación de políticas efectivas para la protección de los recursos hídricos de la Nación.

- **L'eau constitue un patrimoine national stratégique d'usage public, inaliénable, imprescriptible, insaisissable et essentiel à la vie. La consommation humaine de l'eau doit être prioritaire à tout autre usage. L'Etat promet l'élaboration et l'application de politiques effectives pour la protection des ressources hydriques de la Nation.**

Art. 17.- Aprovechamiento de los recursos naturales. Los yacimientos mineros y de hidrocarburos y, en general, los recursos naturales no renovables, sólo pueden ser explorados y explotados por particulares, bajo criterios ambientales sostenibles, en virtud de las concesiones, contratos, licencias,

permisos o cuotas, en las condiciones que determine la ley. Los particulares pueden aprovechar los recursos naturales renovables de manera racional con las condiciones, obligaciones y limitaciones que disponga la ley. En consecuencia:

- 2) *Se declara de prioridad nacional y de interés social la reforestación del país, la conservación de los bosques y la renovación de los recursos forestales;*
- 3) *Se declara de prioridad nacional la preservación y aprovechamiento racional de los recursos vivos y no vivos de las áreas marítimas nacionales, en especial el conjunto de bancos y emersiones dentro de la política nacional de desarrollo marítimo;*
- 4) *Los beneficios percibidos por el Estado por la explotación de los recursos naturales serán dedicados al desarrollo de la Nación y de las provincias*

- **Les ressources naturelles non renouvelables ne peuvent être explorées et exploitées que par des particuliers, selon des critères écologiques durables, en vertu des obligations et limitations disposées par la loi. Sont déclarées priorités nationales la reforestation du pays et la préservation et la mise en valeur rationnelle des ressources vivantes ou non des aires maritimes nationales.**

Les bénéfices perçus par l'Etat au travers de l'exploitation des ressources naturelles doivent être dédiés au développement de la Nation et de ses provinces.

SECCIÓN IV DE LOS DERECHOS COLECTIVOS Y DEL MEDIO AMBIENTE

Art. 66.- Derechos colectivos y difusos. El Estado reconoce los derechos e intereses colectivos y difusos, los cuales se ejercen en las condiciones y limitaciones establecidas en la ley. En consecuencia protege:

- 1) *La conservación del equilibrio ecológico, de la fauna y la flora;*
- 2) *La protección del medio ambiente;*

- **L'Etat reconnaît l'existence de droits collectifs, et protège, en conséquence, la conservation de l'équilibre écologique, de la faune et de la flore ainsi que la protection de l'environnement.**

Art. 67.- Protección del medio ambiente. Constituyen deberes del Estado prevenir la contaminación, proteger y mantener el medio ambiente en provecho de las presentes y futuras generaciones. En consecuencia:

- 1) *Toda persona tiene derecho, tanto de modo individual como colectivo, al uso y goce sostenible de los recursos naturales; a habitar en un ambiente sano, ecológicamente equilibrado y adecuado para el desarrollo y preservación de las distintas formas de vida, del paisaje y de la naturaleza;*
- 2) *Se prohíbe la introducción, desarrollo, producción, tenencia, comercialización, transporte, almacenamiento y uso de armas químicas, biológicas y nucleares y de agroquímicos vedados internacionalmente, además de residuos nucleares, desechos tóxicos y peligrosos;*
- 3) *El Estado promoverá, en el sector público y privado, el uso de tecnologías y energías alternativas no contaminantes;*
- 4) *En los contratos que el Estado celebre o en los permisos que se otorguen que involucren el uso y explotación de los recursos naturales, se considerará incluida la obligación de conservar el equilibrio ecológico, el acceso a la tecnología y su transferencia, así como de restablecer el ambiente a su estado natural, si éste resulta alterado;*

- 5) *Los poderes públicos prevendrán y controlarán los factores de deterioro ambiental, impondrán las sanciones legales, la responsabilidad objetiva por daños causados al medio ambiente y a los recursos naturales y exigirán su reparación. Asimismo, cooperarán con otras naciones en la protección de los ecosistemas a lo largo de la frontera marítima y terrestre.*
- **L'Etat a pour devoir d'empêcher la pollution, de protéger et de maintenir l'environnement au bénéfice des générations actuelles et futures. En conséquence :**
- 1) **Toute personne a le droit, de manière individuelle et collective, à l'usage et à la jouissance durable des ressources naturelles ; d'habiter un environnement sain, équilibré écologiquement et adéquate au développement et à la préservation des différentes formes de vie, du paysage et de la nature.**
 - 2) **Interdiction générale des armes chimiques, biologique et nucléaires**
 - 3) **L'Etat promeut l'usage de technologies et formes d'énergie alternatives non polluantes**
 - 4) **Dans les contrats que l'Etat honore et dans les permis qu'il octroie dans le domaine de l'usage et de l'exploitation des ressources naturelles, est considérée comme incluse l'obligation de protéger l'équilibre écologique, l'accès à la technologie et à son transfert, ainsi que de réhabiliter l'environnement dans son état naturel s'il est altéré**
 - 5) **Les pouvoirs publics contrôlent les facteurs de détérioration environnementale, imposent les sanctions légales, la responsabilité objective pour les dommages causés à l'environnement et aux ressources naturelles, et exigent leur réparation (+ coopération internationale).**

Art. 75.- Deberes fundamentales. Los derechos fundamentales reconocidos en esta Constitución determinan la existencia de un orden de responsabilidad jurídica y moral, que obliga la conducta del hombre y la mujer en sociedad. En consecuencia, se declaran como deberes fundamentales de las personas los siguientes:

11) Desarrollar y difundir la cultura dominicana y proteger los recursos naturales del país, garantizando la conservación de un ambiente limpio y sano;

- **Parmi les devoirs fondamentaux des citoyens: développer et diffuser la culture dominicaine et protéger les ressources naturelles du pays, en garantissant la conservation d'un environnement propre et sain**

Art. 193.- Principios de organización territorial. La República Dominicana es un Estado unitario cuya organización territorial tiene como finalidad propiciar su desarrollo integral y equilibrado y el de sus habitantes, compatible con sus necesidades y con la preservación de sus recursos naturales, de su identidad nacional y de sus valores culturales. La organización territorial se hará conforme a los principios de unidad, identidad, racionalidad política, administrativa, social y económica.

- **La République dominicaine est un Etat uni dont l'organisation territoriale a pour finalité le développement intégral et équilibré de ses habitants, répondant à leurs besoins et à la préservation de leurs ressources naturelles.**

Art. 260.- Objetivos de alta prioridad. Constituyen objetivos de alta prioridad nacional:

- 1) *Combatir actividades criminales transnacionales que pongan en peligro los intereses de la República y de sus habitantes;*
- 2) *Organizar y sostener sistemas eficaces que prevengan o mitiguen daños ocasionados por desastres naturales y tecnológicos.*

- **Constituent des objectifs nationaux hautement prioritaires:**
 - 1) **Combattre les activités criminelles transnationales qui mettent en danger les intérêts de la république et de ses habitants**
 - 2) **Organiser et soutenir les systèmes efficaces qui empêchent ou mitigent les dommages occasionnés par des désastres naturels et technologiques.**

GUATEMALA : pas de mention directe de l'écocide

Constitution politique de la République du Guatemala, réformée sur décision législative en 1993
http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-const.pdf (22/09/13)

Art. 97.- Medio ambiente y equilibrio ecológico. El Estado, las municipalidades y los habitantes del territorio nacional están obligados a propiciar el desarrollo social, económico y tecnológico que prevenga la contaminación del ambiente y mantenga el equilibrio ecológico. Se dictarán todas las normas necesarias para garantizar que la utilización y el aprovechamiento de la fauna, de la flora, de la tierra y del agua, se realicen racionalmente, evitando su depredación.

- **L'Etat, les municipalités et les habitants du territoire national ont l'obligation de mettre en place une forme de développement social, économique et technologique qui empêche la pollution de l'environnement et qui maintienne l'équilibre écologique.**

Art. 119.- Obligaciones del Estado. Son obligaciones fundamentales del Estado: c) Adoptar las medidas que sean necesarias para la conservación, desarrollo y aprovechamiento de los recursos naturales en forma eficiente.

- **Parmi les obligations fondamentales de l'Etat: adopter les mesures nécessaires et efficaces quant à la conservation, au développement et à la mise en valeur des ressources naturelles.**

Art. 125.- Explotación de recursos naturales no renovables. Se declara de utilidad y necesidad públicas, la explotación técnica y racional de hidrocarburos, minerales y demás recursos naturales no renovables. El Estado establecerá y propiciará las condiciones propias para su exploración, explotación y comercialización.

- **L'Etat établit les conditions adéquates à l'exploration, l'exploitation et la commercialisation des ressources naturelles non renouvelables.**

Art. 126.- Reforestación. Se declara de urgencia nacional y de interés social, la reforestación del país y la conservación de los bosques. La ley determinará la forma y requisitos para la explotación racional de los recursos forestales y su renovación, incluyendo las resinas, gomas, productos vegetales silvestres no cultivados y demás productos similares, y fomentará su industrialización. La explotación de todos estos recursos, corresponderá exclusivamente a personas guatemaltecos, individua les o jurídicas.

Los bosques y la vegetación en las riberas de los ríos y lagos, y en las cercanías de las fuentes de aguas, gozarán de especial protección.

- **La loi détermine la forme et les conditions de l'exploitation rationnelle des ressources forestières et de leur réhabilitation. Certains éléments de la flore doivent bénéficier d'une protection particulière.**

HAÏTI: pas de mention directe de l'écocide

Constitution de la République d'Haïti, 1987

<http://minustah.org/pdfs/presse/Constitution1987.pdf> (22/09/13)

Art. 52.1- Le devoir civique est l'ensemble des obligations du citoyen dans l'ordre moral, politique, social et économique vis-à-vis de l'Etat et de la patrie. Ces obligations sont:

h) respecter et protéger l'environnement;

CHAPITRE II DE L'ENVIRONNEMENT

Art. 253: L'environnement étant le cadre naturel de vie de la population, les pratiques susceptibles de perturber l'équilibre écologique sont formellement interdites.

Art. 257: La loi détermine les conditions de protection de la faune et de la flore. Elle sanctionne les contrevenants.

Art. 258: Nul ne peut introduire dans le Pays des déchets ou résidus de provenances étrangères de quelque nature que ce soit.

HONDURAS : pas de mention directe de l'écocide

Constitution de la République du Honduras, 1982, comprenant les réformes constitutionnelles de 1982 à 2004

http://www.elheraldo.hn/var/ezflow_site/storage/original/application/f9c88492acb6cfa7e22950be1fbb e9ab.pdf (22/09/13)

Art. 145. – se reconoce el derecho a la protección de la salud. El deber de todos participar en la promoción y preservación de la salud personal y de la comunidad. El Estado conservará el medio ambiente adecuado para proteger la salud de las personas.

- **Le droit à la protection de la santé est reconnu. Il est du devoir de chacun de participer à la promotion et à la préservation de sa propre santé, ainsi qu'à celle de la communauté. L'Etat doit veiller à maintenir l'environnement naturel adéquat pour protéger la santé des personnes.**

Art. 199, 9) Existence d'un "Procurador del medio Ambiente"

(site Internet : <http://parnhn.org/quienessomos.html> > peu d'informations supplémentaires)

Art. 274.– Las fuerzas armadas (...) participaran (...) en programas de protección y conservación del ecosistema.

- **Les forces armées participent à des programmes de protection et de conservation de l'écosystème.**

JAMAÏQUE: pas de mention directe de l'écocide mais utilisation du concept de futures générations

Constitution de la Jamaïque, 1962

<http://www.moj.gov.jm/sites/default/files/laws/Ja%20%28Constitution%29%20Order%20in%20Council%201962.pdf> (22/09/13)

CHAPTER III – CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

Art. 13 1) (b) all persons in Jamaica are entitled to preserve for themselves and future generations the fundamental rights and freedoms to which they are entitled by virtue of their inherent dignity as persons and as citizens of a free and democratic society;

3)(i) the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage;

- **Parmi les droits et libertés fondamentaux : le droit à un environnement sain et productif, libre de la menace d'une blessure ou d'un autre dommage du fait d'un abus environnemental et de la dégradation de l'héritage écologique.**

MEXIQUE : pas de mention directe de l'écocide

Constitution politique des Etats Unis du Mexique, 1917, réformée en 2013

<http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf> (22/09/13)

Art. 4. Toda persona tiene derecho a un medio ambiente sano para su desarrollo y bienestar. El Estado garantizará el respeto a este derecho. El daño y deterioro ambiental generará responsabilidad para quien lo provoque en términos de lo dispuesto por la ley.

- **Toute personne a le droit à un environnement sain nécessaire à son développement et son bien-être. Ce droit est garanti par l'Etat et les détériorations de l'environnement engagent la responsabilité des personnes.**

Art. 25.- Bajo criterios de equidad social y productividad se apoyará e impulsará a las empresas de los sectores social y privado de la economía, sujetándolos a las modalidades que dicte el interés público y al uso, en beneficio general, de los recursos productivos, cuidando su conservación y el medio ambiente.

Art. 27. (...) - La nación tendrá en todo tiempo el derecho de imponer a la propiedad privada las modalidades que dicte el interés público, así como el de regular, en beneficio social, el aprovechamiento de los elementos naturales susceptibles de apropiación, con objeto de hacer una distribución equitativa de la riqueza pública, cuidar de su conservación, lograr el desarrollo equilibrado del país y el mejoramiento de las condiciones de vida de la población rural y urbana. En consecuencia, se dictarán las medidas necesarias para ordenar los asentamientos humanos y establecer adecuadas provisiones, usos, reservas y destinos de tierras, aguas y bosques, a efecto de ejecutar obras públicas y de planear y regular la fundación, conservación, mejoramiento y crecimiento de los centros de población; para preservar y restaurar el equilibrio ecológico; para el fraccionamiento de los latifundios; para disponer, en los términos de la ley reglamentaria, la organización y explotación colectiva de los ejidos y comunidades; para el desarrollo de la pequeña propiedad rural; para el fomento de la agricultura, de la ganadería, de la silvicultura y de las demás

actividades económicas en el medio rural, y para evitar la destrucción de los elementos naturales y los daños que la propiedad pueda sufrir en perjuicio de la sociedad.

- **L'activité des entreprises publiques et privées est soumise à des modalités visant à la protection de l'environnement et de ses ressources, notamment pour éviter qu'ils ne soient exploités de manière défavorable à la société et à l'intérêt public.**

Art. 122 – C - V- j) (Gobierno del Distrito Federal) Legislar en materia de planeación del desarrollo; en desarrollo urbano, particularmente en uso del suelo; preservación del medio ambiente y protección ecológica; vivienda; construcciones y edificaciones; vías públicas, tránsito y estacionamientos; adquisiciones y obra pública; y sobre explotación, uso y aprovechamiento de los bienes del patrimonio del Distrito Federal

- **Il est du devoir du gouvernement fédéral de légiférer en termes de préservation de l'environnement et de la protection écologique.**

NICARAGUA : pas de mention directe de l'écocide

Constitution politique de la République du Nicaragua, 2007

<http://www.ineter.gob.ni/Constitucion%20Politica%20de%20Nicargua.pdf> (22/09/13)

Art. 60.- Los nicaragüenses tienen derecho de habitar en un ambiente saludable. Es obligación del Estado la preservación, conservación y rescate del medio ambiente y de los recursos naturales.

- **Les citoyens du Nicaragua ont le droit d'habiter dans un environnement sain. L'Etat a l'obligation de préserver, de conserver et de réhabiliter l'environnement et les ressources naturelles.**

PANAMA : pas de mention directe de l'écocide

Constitution politique de la République du Panama, réformée en 1978, 1983 et 1994

<http://www.legalinfo-panama.com/legislacion/Constitucion/Constitucion.pdf> (22/09/13)

Capítulo 7o. Régimen Ecológico

Art. 114.- Es deber fundamental del Estado garantizar que la población viva en un ambiente sano y libre de contaminación, en donde el aire, el agua y los alimentos satisfagan los requerimientos del desarrollo adecuado de la vida humana.

- **L'Etat a pour devoir fondamental de garantir que la population vive dans un environnement sain et libre de toute pollution, où l'air, l'eau et les aliments satisfont les besoins nécessaires au développement approprié de la vie humaine.**

Art. 115.- El Estado y todos los habitantes del territorio nacional tienen el deber de propiciar un desarrollo social y económico que prevenga la contaminación del ambiente, mantenga el equilibrio ecológico y evite la destrucción de los ecosistemas.

- **L'Etat et tous les habitants du territoire national ont le devoir de favoriser un développement social et économique qui empêche la pollution de l'environnement, qui maintienne l'équilibre écologique et qui évite la destruction des écosystèmes.**

Art. 116.- El Estado reglamentará, fiscalizará y aplicará oportunamente las medidas necesarias para garantizar que la utilización y el aprovechamiento de la fauna terrestre, fluvial y marina, así como de los bosques, tierras y aguas, se lleven a cabo racionalmente, de manera que se evite su depredación y se asegure su preservación, renovación y permanencia.

- **Par les mesures nécessaires, l'Etat garantit une utilisation et une mise en valeur rationnelles de la faune terrestre, fluviale et marine, ainsi que des forêts, des terres et des eaux, afin d'éviter leur dépréciation et d'assurer leur préservation, leur renouvellement et leur durée de long terme.**

Art. 117.- La Ley reglamentará el aprovechamiento de los recursos naturales no renovables, a fin de evitar que del mismo se deriven perjuicios sociales, económicos y ambientales.

- **La loi règlemente la mise en valeur des ressources naturelles non renouvelables, afin d'éviter qu'elle ne mène à des préjudices sociaux, économiques et environnementaux.**

SALVADOR : pas de mention directe de l'écocide

Constitution de la République du Salvador, 1983, réformée en 2009

<http://www.pgr.gob.sv/documentos/constituciondelarepublica.pdf> (22/09/13)

Art. 117.- Es deber del Estado proteger los recursos naturales, así como la diversidad e integridad del medio ambiente, para garantizar el desarrollo sostenible.

- **Il est du devoir de l'Etat de protéger les ressources naturelles, ainsi que la diversité et l'intégrité de l'environnement, pour garantir le développement durable.**

TRINITÉ ET TOBAGO, BAHAMAS, SAINTE LUCIE, BARBADE, SAINT-VINCENT: pas de mention directe de l'écocide et particulièrement pauvre en matière environnementale

<http://www.auditorgeneral.gov.tt/sites/default/files/Constitution%20of%20the%20Republic%20of%20Trinidad%20and%20Tobago.pdf> (22/09/13)

http://www.oas.org/juridico/mla/en/bhs/en_bhs-int-text-const.pdf (22/09/13)

http://www.oas.org/juridico/mla/en/lca/en_lca-int-text-const.pdf (22/09/13)

http://www.oas.org/dil/The_Constitution_of_Barbados.pdf (22/09/13)

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_132645.pdf (22/09/13)

3. Amérique du Sud

ARGENTINE : pas de mention directe de l'écocide ou des crimes environnementaux. Néanmoins, la première partie, chapitre 2 (nouveaux droits et garanties) mentionne l'environnement, comme droit et donne un mécanisme judiciaire de protection aux ressortissants

Constitution politique de la Nation Argentine de 1853, conformément la réforme promulguée le 22 août de 1994.

<http://bibliotecadigital.csjn.gov.ar/Constitucion-de-la-Nacion-Argentina-Publicacion-del-Bicent.pdf>
(2/11/13)

Art. 41.- Todos los habitantes gozan del derecho a un ambiente sano, equilibrado, apto para el desarrollo humano y para que las actividades productivas satisfagan las necesidades presentes sin comprometer las de las generaciones futuras; y tienen el deber de preservarlo. El daño ambiental generará prioritariamente la obligación de recomponer, según lo establezca la ley.

Las autoridades proveerán a la protección de este derecho, a la utilización racional de los recursos naturales, a la preservación del patrimonio natural y cultural y de la diversidad biológica, y a la información y educación ambientales.

Corresponde a la Nación dictar las normas que contengan los presupuestos mínimos de protección, y a las provincias, las necesarias para complementarlas, sin que aquellas alteren las jurisdicciones locales.

Se prohíbe el ingreso al territorio nacional de residuos actual o potencialmente peligrosos, y de los radiactivos.

- **Tous les habitants ont droit à un environnement sain et équilibré, adapté au développement humain et à la garantie que les activités productives répondent aux besoins actuels sans compromettre ceux des générations futures, et ont le devoir de le préserver. Les dommages environnementaux produiront de façon prioritaire l'obligation de réparer, conformément à la loi.**

Les autorités doivent assurer la protection de ce droit, l'utilisation rationnelle des ressources naturelles, la préservation du patrimoine naturel et culturel et de la diversité biologique, l'éducation et l'information environnementale.

La Nation doit réglementer le minimum de protection, et les provinces doivent fournir les règles complémentaires nécessaires pour le renforcer, sans altérer leurs juridictions locales.

Il est interdit de faire entrer dans le territoire national des déchets dangereux ou potentiellement dangereux, et radioactifs.

Art. 43.- Toda persona puede interponer acción expedita y rápida de amparo, siempre que no exista otro medio judicial más idóneo, contra todo acto u omisión de autoridades públicas o de particulares, que en forma actual o inminente lesione, restrinja, altere o amenace, con arbitrariedad o ilegalidad manifiesta, derechos y garantías reconocidos por esta Constitución, un tratado o una ley. En el caso, el juez podrá declarar la inconstitucionalidad de la norma en que se funde el acto u omisión lesiva.

Podrán interponer esta acción contra cualquier forma de discriminación y en lo relativo a los derechos que protegen al ambiente, a la competencia, al usuario y al consumidor, así como a los derechos de incidencia colectiva en general, el afectado, el defensor del pueblo y las asociaciones que

propendan a esos fines, registradas conforme a la ley, la que determinará los requisitos y formas de su organización (...).

- **Toute personne peut déposer un recours d'*amparo*, à condition qu'il n'existe pas d'autre voie de recours contre un acte ou une omission de la part des autorités publiques ou des personnes privées, qui de façon actuelle ou imminente endommagent, modifient ou menacent de façon arbitraire ou illégale, les droits et garanties reconnus par la Constitution, un traité ou une loi. Dans ce cas, le juge peut déclarer inconstitutionnelle la disposition invoquée par l'acte ou l'omission.**

Cette procédure sommaire contre toute forme de discrimination et à l'égard des droits qui protègent l'environnement, la concurrence, les utilisateurs et les consommateurs, ainsi que les droits collectifs en général, (pourra être interposé par) la personne affectée, le défenseur du peuple et les associations qui favorisent de telles droits conformément le registre légal pertinent, lequel déterminera les conditions et la forme d'organisation (...).

BOLIVIE : pas de mention directe de l'écocide ou des crimes environnementaux . Néanmoins la Constitution fait référence à l'environnement à 36 reprises comme droit humain, comme patrimoine présent et future et prévoit certaines mécanismes protection aux ressortissants

Constitution politique de l'Etat plurinational de Bolivie, promulgué le 9 février de 2009, après le referendum populaire du 25 janvier 2009.

<http://www.presidencia.gob.bo/documentos/publicaciones/constitucion.pdf> (2/11/2013)

Art. 9.- Son fines y funciones esenciales del Estado, además de los que establece la Constitución y la ley: (...)

6. Promover y garantizar el aprovechamiento responsable y planificado de los recursos naturales, e impulsar su industrialización, a través del desarrollo y del fortalecimiento de la base productiva en sus diferentes dimensiones y niveles, así como la conservación del medio ambiente, para el bienestar de las generaciones actuales y futuras.

- **Les fins et les fonctions essentielles de l'État sont, en plus de ceux établis par la Constitution et la loi: (...)**

Promouvoir et assurer une utilisation responsable et planifiée des ressources naturelles et favoriser leur industrialisation par le développement et le renforcement de la base productive dans ses différentes dimensions, ainsi que la conservation de l'environnement, pour le bien-être des générations présentes et futures.

Art. 33.- Las personas tienen derecho a un medio ambiente saludable, protegido y equilibrado. El ejercicio de este derecho debe permitir a los individuos y colectividades de las presentes y futuras generaciones, además de otros seres vivos, desarrollarse de manera normal y permanente.

- **Toute personne a droit à un environnement sain, protégé et équilibré. L'exercice de ce droit doit permettre aux individus et aux groupes des générations actuelles et futures, ainsi qu'aux autres êtres vivants, de se développer normalement et durablement.**

La Constitution bolivienne inclut certaines actions judiciaires du contentieux public pour s'attaquer aux dommages environnementaux :

Art. 34.- Cualquier persona, a título individual o en representación de una colectividad, está facultada para ejercitar las acciones legales en defensa del derecho al medio ambiente, sin perjuicio de la obligación de las instituciones públicas de actuar de oficio frente a los atentados contra el medio ambiente.

- **Toute personne, individuellement ou au nom d'une communauté, est habilitée à agir en justice pour la défense du droit à l'environnement, sans préjudice de l'obligation des établissements publics à agir en son propre nom contre les atteintes à l'environnement.**

Art. 135.- La Acción Popular procederá contra todo acto u omisión de las autoridades o de personas individuales o colectivas que violen o amenacen con violar derechos e intereses colectivos, relacionados con el patrimonio, el espacio, la seguridad y salubridad pública, el medio ambiente y otros de similar naturaleza reconocidos por esta Constitución.

- **L'action populaire agira contre tout acte ou omission des autorités ou des individus ou des groupes qui violent ou menacent de violer les droits et intérêts liés au patrimoine, à l'espace, à la sécurité et à la santé publique, à l'environnement et à d'autres éléments de même nature reconnus par la Constitution.**

Art. 345.- Las políticas de gestión ambiental se basarán en:

1. *La planificación y gestión participativas, con control social.*
2. *La aplicación de los sistemas de evaluación de impacto ambiental y el control de calidad ambiental, sin excepción y de manera transversal a toda actividad de producción de bienes y servicios que use, transforme o afecte a los recursos naturales y al medio ambiente.*
3. *La responsabilidad por ejecución de toda actividad que produzca daños medioambientales y su sanción civil, penal y administrativa por incumplimiento de las normas de protección del medio ambiente.*

- **Les politiques de gestion de l'environnement seront basées sur:**
 1. **La planification participative et la gestion, le contrôle social.**
 2. **L'application de systèmes d'évaluation de l'impact environnemental et le contrôle de qualité de l'environnement, sans exception et de façon transversale à toute activité de production de biens et services utilisant, transformant ou affectant les ressources naturelles et l'environnement.**
 3. **La responsabilité pour la mise en œuvre de toute activité se traduisant par des dommages environnementaux, y compris, des sanctions civiles, pénales et administratives en cas de violation des normes de protection de l'environnement.**

BRÉSIL : pas de mention directe de l'écocide ou des crimes environnementaux. Néanmoins la Constitution fait référence à l'environnement comme droit humain, comme patrimoine présent et future et prévoit certains mécanismes de protection.

Constitution de la République fédérale du Brésil, promulgué en 1988 et mise à jour par les réformes de 1992, 1993, 1994, 1995 et 1996.

http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm (2/11/13)

Art. 5, LXXIII- qualquer cidadão é parte legítima para propor ação popular que vise a anular ato lesivo ao patrimônio público ou de entidade de que o Estado participe, à moralidade administrativa, ao meio ambiente e ao patrimônio histórico e cultural, ficando o autor, salvo comprovada má-fé, isento de custas judiciais e do ônus da sucumbência

- **Tout citoyen est en droit d'intenter une action populaire en vue d'annuler un acte préjudiciable au patrimoine public ou à une entité dans laquelle l'Etat participe, à la morale administrative, à l'environnement et au patrimoine historique et culturel, et l'auteur, sauf preuve de mauvaise foi, n'a pas à payer les frais de justice et les pénalités en cas d'échec du recours.**

Art. 23.- É competência comum da União, dos Estados, do Distrito Federal e dos Municípios: (...)

VI – proteger o meio ambiente e combater a poluição em qualquer de suas formas;

VII – preservar as florestas, a fauna e a flora;

- **Il est de la responsabilité commune de l'Union, des États, du District fédéral et des municipalités: (...)**
VI - de protéger l'environnement et de lutter contre la pollution dans toutes ses formes ;
VII - de préserver les forêts, la faune et la flore ;

Art. 129.- São funções institucionais do Ministério Público: (...)

III – promover o inquérito civil e a ação civil pública, para a proteção do patrimônio público e social, do meio ambiente e de outros interesses difusos e coletivos;

- **Sont des fonctions institutionnelles du Ministère Public: (...)**
III – d'instituer une enquête civile et une action civile pour la protection du patrimoine public et social, de l'environnement et d'autres intérêts diffus et collectifs ;

Art. 225. - Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá-lo para as presentes e futuras gerações.

§ 1º Para assegurar a efetividade desse direito, incumbe ao Poder Público: (...)

IV – exigir, na forma da lei, para instalação de obra ou atividade potencialmente causadora de significativa degradação do meio ambiente, estudo prévio de impacto ambiental, a que se dará publicidade; (...)

§ 3º As condutas e atividades consideradas lesivas ao meio ambiente sujeitarão os infratores, pessoas físicas ou jurídicas, a sanções penais e administrativas, independentemente da obrigação de reparar os danos causados.

- **Chacun a le droit à un environnement écologiquement équilibré, à son usage commun et essentiel à une bonne qualité de vie, imposant au gouvernement et à la société le devoir de le défendre et de le préserver pour les générations présentes et futures.**
§ 1 Pour assurer l'efficacité de ce droit, il incombe au gouvernement : (...)
IV – d'exiger, conformément à la loi, pour l'installation d'une activité pouvant entraîner une dégradation importante de l'environnement, une étude d'impact environnemental préalable, qui doit être rendue publique ; (...)

§ 3 Les procédures et les activités jugées nuisibles à l'environnement doivent soumettre les contrevenants, personnes physiques ou morales, à des sanctions pénales et administratives, indépendamment de l'obligation de réparer les dégâts.

CHILI : pas de mention directe de l'écocide ou des crimes environnementaux. Le Chapitre III (droits et devoirs constitutionnels) mentionne l'environnement sain comme droit humain et donne quelques voies de protection.

Constitution politique de la République de Chili, promulguée en 1980 et reformée en 2005.
http://www.camara.cl/camara/media/docs/constitucion_politica.pdf (2 novembre 2013)

Art. 19- 8°- El derecho a vivir en un medio ambiente libre de contaminación. Es deber del Estado velar para que este derecho no sea afectado y tutelar la preservación de la naturaleza. La ley podrá establecer restricciones específicas al ejercicio de determinados derechos o libertades para proteger el medio ambiente;

- **Le droit de vivre dans un environnement sans pollution. Il est du devoir de l'Etat de veiller à ce que ce droit ne soit pas affecté et de promouvoir la conservation de la nature. La loi peut imposer des restrictions spécifiques à l'exercice de certains droits et libertés pour protéger l'environnement ;**

Art. 20 (Parágrafo 2) - Procederá, también, el recurso de protección en el caso del N° 8° del artículo 19, cuando el derecho a vivir en un medio ambiente libre de contaminación sea afectado por un acto arbitrario e ilegal imputable a una autoridad o persona determinada.

- **Sera également recevable la demande de protection dans le cas n° 8 de l'article 19, lorsque le droit de vivre dans un environnement sans pollution est affecté par un acte arbitraire et illégal attribuable à une autorité ou une personne déterminée.**

COLOMBIE : pas de mention directe de l'écocide ou des crimes environnementaux . Le Titre II (Droits, garanties et devoirs), chapitre 3 est dédié aux droits collectifs et de l'environnement

Constitution politique de la République de Colombie, promulguée le 6 juillet de 1991, publiée dans la Gazette constitutionnelle n° 116 de 20 juillet 1991.
<http://web.presidencia.gov.co/constitucion/index.pdf> (2/11/2013)

Art.79.- Todas las personas tienen derecho a gozar de un ambiente sano. La ley garantizará la participación de la comunidad en las decisiones que puedan afectarlo. Es deber del Estado proteger la diversidad e integridad del ambiente, conservar las áreas de especial importancia ecológica y fomentar la educación para el logro de estos fines.

- **Toutes les personnes ont le droit de jouir d'un environnement sain. La loi garantit la participation des communautés aux décisions qui peuvent l'affecter. Il est du devoir de l'Etat de protéger la diversité et l'intégrité de l'environnement, la conservation des zones d'importance écologique particulière et de promouvoir l'éducation pour la réalisation de ces objectifs.**

Art.80.- *El Estado planificará el manejo y aprovechamiento de los recursos naturales, para garantizar su desarrollo sostenible, su conservación, restauración o sustitución.*

Además, deberá prevenir y controlar los factores de deterioro ambiental, imponer las sanciones legales y exigir la reparación de los daños causados.

Así mismo, cooperará con otras naciones en la protección de los ecosistemas situados en las zonas fronterizas.

- **L'État planifiera la gestion et l'utilisation des ressources naturelles pour assurer un développement durable, la conservation, la restauration ou le remplacement.**
De plus, il devra prévenir et contrôler les facteurs de dégradation de l'environnement, imposant des sanctions juridiques et demandant réparation pour le préjudice causé.
De même, il coopérera avec d'autres pays dans la protection des écosystèmes dans les zones frontalières.

En outre, la Constitution colombienne inclut deux actions judiciaires du contentieux public pour s'attaquer aux dommages environnementaux : action populaire et action de groupe :

Art.88- *La ley regulará las acciones populares para la protección de los derechos e intereses colectivos, relacionados con el patrimonio, el espacio, la seguridad y la salubridad pública, la moral administrativa, el ambiente, la libre competencia económica y otros de similar naturaleza que se definen en ella.*

También regulará las acciones originadas en los daños ocasionados a un número plural de personas, sin perjuicio de las correspondientes acciones particulares.

- **La loi réglera les actions populaires pour la protection des droits et intérêts collectifs liés au patrimoine, l'espace, la sécurité et de la santé publique, l'éthique administrative, l'environnement, la libre concurrence économique et d'autres éléments de nature analogue qui sont définis en elle.**
Elle réglera aussi les actions découlant des dommages causés à un grand nombre de personnes, sans préjudice de l'action individuelle appropriée.

EQUATEUR : pas de mention directe de l'écocide ou des crimes environnementaux . Le Titre II (droits), chapitre 2 (*Buen vivir*), section 2 est dédié à l'environnement sain. Aussi, le Titre VII (régime du *buen vivir*), chapitre II, est dédié à la biodiversité et les ressources naturels.

Constitution politique de la République de l'Equateur, promulguée le 20 octobre de 2008, publiée dans le Registre officiel n° 449.

http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf (2/11/2013)

Art. 14.- *Se reconoce el derecho de la población a vivir en un ambiente sano y ecológicamente equilibrado, que garantice la sostenibilidad y el buen vivir, *sumak kawsay*.*

Se declara de interés público la preservación del ambiente, la conservación de los ecosistemas, la biodiversidad y la integridad del patrimonio genético del país, la prevención del daño ambiental y la recuperación de los espacios naturales degradados.

- **Est reconnu le droit de chacun de vivre dans un environnement sain et écologiquement équilibré, afin d'assurer la durabilité et de bien vivre, *sumak kawsay*.**

Sont déclarés d'intérêt public la préservation de l'environnement, la conservation des écosystèmes, la biodiversité et l'intégrité génétique du pays, la prévention des atteintes à l'environnement et à la réhabilitation des espaces naturels dégradés.

Art. 15.- (Parágrafo 2). Se prohíbe el desarrollo, producción, tenencia, comercialización, importación, transporte, almacenamiento y uso de armas químicas, biológicas y nucleares, de contaminantes orgánicos persistentes altamente tóxicos, agroquímicos internacionalmente prohibidos, y las tecnologías y agentes biológicos experimentales nocivos y organismos genéticamente modificados perjudiciales para la salud humana o que atenten contra la soberanía alimentaria o los ecosistemas, así como la introducción de residuos nucleares y desechos tóxicos al territorio nacional.

- **Sont interdits le développement, la production, la possession, la vente, l'importation, le transport, le stockage et l'utilisation d'armes chimiques, biologiques et nucléaires, de polluants organiques persistants hautement toxiques, de produits agrochimiques interdits au niveau international, et des technologies et agents biologiques expérimentaux nocifs et des organismes génétiquement modifiés nocifs pour la santé humaine ou qui portent atteinte à la souveraineté alimentaire et les écosystèmes, ainsi que l'introduction des déchets nucléaires et des déchets toxiques dans le pays.**

Art. 395.- La Constitución reconoce los siguientes principios ambientales:

1. El Estado garantizará un modelo sustentable de desarrollo, ambientalmente equilibrado y respetuoso de la diversidad cultural, que conserve la biodiversidad y la capacidad de regeneración natural de los ecosistemas, y asegure la satisfacción de las necesidades de las generaciones presentes y futuras (...).

4. En caso de duda sobre el alcance de las disposiciones legales en materia ambiental, éstas se aplicarán en el sentido más favorable a la protección de la naturaleza.

- **La Constitution reconnaît les principes environnementaux suivants:**
 - 1. L'Etat garantit un modèle de développement durable, un environnement équilibré et respectueux de la diversité culturelle, qui protège la biodiversité et la capacité de régénération naturelle des écosystèmes, et assure la satisfaction des besoins des générations présentes et futures (...).**
 - 4. En cas de doute sur la portée des lois sur l'environnement, elles seront appliquées de la manière la plus favorable à la protection de la nature.**

Art. 396.- El Estado adoptará las políticas y medidas oportunas que eviten los impactos ambientales negativos, cuando exista certidumbre de daño. En caso de duda sobre el impacto ambiental de alguna acción u omisión, aunque no exista evidencia científica del daño, el Estado adoptará medidas protectoras eficaces y oportunas.

La responsabilidad por daños ambientales es objetiva. Todo daño al ambiente, además de las sanciones correspondientes, implicará también la obligación de restaurar integralmente los ecosistemas e indemnizar a las personas y comunidades afectadas.

- **L'Etat doit adopter des politiques et des mesures appropriées pour prévenir les impacts négatifs sur l'environnement, lorsqu'il y a certitude du préjudice. En cas de doute au sujet de l'impact environnemental d'une action ou d'une omission, même en absence des preuves scientifiques de dommage, l'Etat doit prendre des mesures de protection efficaces et appropriées.**

La responsabilité environnementale est objective. Tout dommage à l'environnement, en plus des pénalités, implique également l'obligation de restaurer pleinement les écosystèmes et d'indemniser les personnes et les communautés touchées.

Outre l'*action extraordinaire de protection* (arts 94 et 437 de la Constitution), la Constitution équatorienne inclut un service public de protection citoyenne pour s'attaquer aux dommages environnementaux : le défenseur de l'environnement et de la nature.

Art. 399.- El ejercicio integral de la tutela estatal sobre el ambiente y la corresponsabilidad de la ciudadanía en su preservación, se articulará a través de un sistema nacional descentralizado de gestión ambiental, que tendrá a su cargo la defensoría del ambiente y la naturaleza.

- **La supervision globale de l'Etat sur la protection de l'environnement et la responsabilité des citoyens dans sa préservation, sera articulée par un système national décentralisé de gestion de l'environnement, qui aura en charge le bureau du défenseur de l'environnement et de la nature.**

GUYANA: no mention of ecocide or environmental crimes. Nevertheless, some articles refer to the environment as a human right and duty and to its protection as a State commitment.

Constitution of the Co-operative Republic of Guyana of 1980, last amendment in 1996.

http://www.wipo.int/wipolex/es/text.jsp?file_id=215361 (2/11/2013)

Art. 25.- Every citizen has a duty to participate in activities designed to improve the environment and protect the health of the nation.

Art. 36.- In the interests of the present and future generations, the State will protect and make rational use of its land, mineral and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment.

PARAGUAY : pas de mention directe de l'écocide mais la Constitution prévoit la définition du crime environnemental. Le Titre II (droits), dédie le chapitre 1 à la vie et environnement et prévoit les mécanismes judiciaires applicables.

Constitution politique de la République du Paraguay, promulguée le 20 juin de 1992, reformée en 2005.

<http://www.tsje.gov.py/constituciones.php> (2/11/2013)

Art. 7 - DEL DERECHO A UN AMBIENTE SALUDABLE

Toda persona tiene derecho a habitar en un ambiente saludable y ecológicamente equilibrado.

Constituyen objetivos prioritarios de interés social la preservación, la conservación, la recomposición y el mejoramiento del ambiente, así como su conciliación con el desarrollo humano integral. Estos propósitos orientarán la legislación y la política gubernamental pertinente.

- **Le droit à un environnement sain**
Tout le monde a le droit de vivre dans un environnement sain et écologiquement équilibré.

Constituent des objectifs prioritaires d'intérêt social la préservation, la conservation, la réorganisation et l'amélioration de l'environnement, et sa réconciliation avec le développement humain intégral . Ces objectifs guident la législation et la politique du gouvernement concerné.

Art. 8 - DE LA PROTECCIÓN AMBIENTAL

Las actividades susceptibles de producir alteración ambiental serán reguladas por la ley. Asimismo, ésta podrá restringir o prohibir aquellas que califique peligrosas.

Se prohíbe la fabricación, el montaje, la importación, la comercialización, la posesión o el uso de armas nucleares, químicas y biológicas, así como la introducción al país de residuos tóxicos. La ley podrá extender ésta prohibición a otros elementos peligrosos; asimismo, regulará el tráfico de recursos genéticos y de su tecnología, precautelando los intereses nacionales.

El delito ecológico será definido y sancionado por la ley. Todo daño al ambiente importará la obligación de recomponer e indemnizar.

➤ **Protection de l'environnement**

Les activités susceptibles d'entraîner une dégradation de l'environnement sont réglementées par la loi. En outre, celle-ci peut restreindre ou interdire celles qu'elle qualifie de dangereuses.

Sont interdits la fabrication, l'assemblage, l'importation, la commercialisation, la possession ou l'utilisation d'armes nucléaires, biologiques et chimiques, et l'introduction de déchets toxiques dans le pays. La loi peut étendre cette interdiction à d'autres éléments dangereux ; ainsi que réglementer la circulation des ressources génétiques et de la technologie qui leur est propre, préservant ainsi les intérêts nationaux.

Le crime environnemental sera défini et puni par la loi. Tout dommage à l'environnement conduira à l'obligation de réparer et d'indemniser.

Art. 38 - DEL DERECHO A LA DEFENSA DE LOS INTERESES DIFUSOS

Toda persona tiene derecho, individual o colectivamente, a reclamar a las autoridades públicas medidas para la defensa del ambiente, de la integridad del hábitat, de la salubridad pública, del acervo cultural nacional, de los intereses del consumidor y de otros que, por su naturaleza jurídica, pertenezcan a la comunidad y hagan relación con la calidad de vida y con el patrimonio colectivo.

➤ **Le droit de défendre les intérêts diffus**

Chacun a le droit, individuellement ou collectivement, de réclamer des autorités publiques les mesures pertinentes pour la défense de l'environnement, l'intégrité de l'habitat, la santé publique, le patrimoine culturel national, les intérêts des consommateurs et d'autres qui, par leur nature juridique, appartiennent à la communauté et ont un rapport avec la qualité de vie et le patrimoine collectif.

PÉROU : pas de mention directe de l'écocide ou des crimes environnementaux. Le Titre I- Chapitre I (droits fondamentaux), mentionne l'environnement équilibré comme un droit, sans prévoir des mécanismes judiciaires pertinents. Le titre I- Chapitre II (Environnement et ressources naturelles) fait référence aux ressources naturelles, renouvelables et non renouvelables comme étant le patrimoine de la Nation et met l'accent dans la souveraineté

étatique dans son utilisation (Articles 66-67). Il n'y a pas de mention de réglementations relatives aux dommages environnementaux.

Constitution politique de la République du Pérou, promulguée le 31 décembre de 1993.

<http://www.congreso.gob.pe/ntley/Imagenes/Constitu/Cons1993.pdf> (2/11/13)

Art. 2.- *Toda persona tiene derecho: (...)*

22. *A la paz, a la tranquilidad, al disfrute del tiempo libre y al descanso, así como a gozar de un ambiente equilibrado y adecuado al desarrollo de su vida.*

➤ **Toute personne a le droit : (...).**

22. À la paix, à la tranquillité, aux loisirs et au repos, et de profiter d'un environnement équilibré propice au développement de la vie.

Art. 66.- *Los recursos naturales, renovables y no renovables, son patrimonio de la Nación. El Estado es soberano en su aprovechamiento.*

Por ley orgánica se fijan las condiciones de su utilización y de su otorgamiento a particulares. La concesión otorga a su titular un derecho real, sujeto a dicha norma legal.

➤ **Les ressources naturelles, renouvelables ou non, sont le patrimoine de la Nation. L'État est souverain dans son utilisation.**

Les lois organiques déterminent les conditions de leur utilisation et de leur octroi aux particuliers. La concession confère à son titulaire un droit de propriété, assujettie à cette loi.

Art. 67.- *El Estado determina la política nacional del ambiente. Promueve el uso sostenible de sus recursos naturales.*

➤ **L'État détermine la politique environnementale nationale. Il favorise l'utilisation durable des ressources naturelles.**

Art. 68.- *El Estado está obligado a promover la conservación de la diversidad biológica y de las áreas naturales protegidas.*

➤ **L'Etat est tenu de promouvoir la conservation de la diversité biologique et des zones naturelles protégées.**

SURINAME : no mention of ecocide or environmental crimes. Nevertheless, Article 6 considers the protection of nature and ecological balance within the social objectives of the State.

Republic of Suriname, 1987 Constitution of 30 September with Reforms of 1992 (Grondwet van de Republiek Suriname).

<http://www.wipo.int/wipolex/es/details.jsp?id=8816> (2/11/13)

Art. 6.- *The social objectives of the State shall aim at:*

a. The identification of the potentialities for development of the own natural environment and the enlarging of the capacities to ever more expand those potentialities; (...)

g. Creating and improving the conditions necessary for the protection of nature and for the preservation of the ecological balance.

URUGUAY : pas de mention directe de l'écocide ou des crimes environnementaux. Cependant l'article 47 détermine la protection de l'environnement comme étant d'intérêt général et laisse ouverte la possibilité d'une régulation légale des dommages environnementaux

Constitution politique de la République Orientale de l'Uruguay de 1967, conformément la dernière réforme de 31 octobre de 2004.

<http://www.rau.edu.uy/uruguay/const97-1.6.htm> (2/11/13)

Art. 47.- La protección del medio ambiente es de interés general. Las personas deberán abstenerse de cualquier acto que cause depredación, destrucción o contaminación graves al medio ambiente. La ley reglamentará esta disposición y podrá prever sanciones para los transgresores.

- **La protection de l'environnement est d'intérêt général. Les personnes devraient s'abstenir de tout acte qui entraîne la dégradation, la destruction ou la pollution grave de l'environnement. La loi régleme cette disposition et peut prévoir des sanctions pour les contrevenants.**

VENEZUELA : pas de mention directe de l'écocide ou des crimes environnementaux. Néanmoins, le Titre I (Principes fondamentaux) contient le chapitre IX des droits environnementaux et les obligations étatiques respectives

Constitution politique de la République Bolivarienne de Venezuela, publiée dans la Gazette officielle no 36.860 du 30 décembre de 1999.

Disponible en: <http://www.tsj.gov.ve/legislacion/constitucion1999.htm> (2 novembre 2013)

Art. 127.- Es un derecho y un deber de cada generación proteger y mantener el ambiente en beneficio de sí misma y del mundo futuro. Toda persona tiene derecho individual y colectivamente a disfrutar de una vida y de un ambiente seguro, sano y ecológicamente equilibrado. El Estado protegerá el ambiente, la diversidad biológica, los recursos genéticos, los procesos ecológicos, los parques nacionales y monumentos naturales y demás áreas de especial importancia ecológica. El genoma de los seres vivos no podrá ser patentado, y la ley que se refiera a los principios bioéticos regulará la materia.

Es una obligación fundamental del Estado, con la activa participación de la sociedad, garantizar que la población se desenvuelva en un ambiente libre de contaminación, en donde el aire, el agua, los suelos, las costas, el clima, la capa de ozono, las especies vivas, sean especialmente protegidos, de conformidad con la ley.

- **Il relève du droit et du devoir de chaque génération de protéger et de maintenir l'environnement pour le bénéfice d'elle-même et du monde à venir. Chacun a le droit, individuellement et collectivement, de profiter de la vie et d'un environnement sain et écologiquement équilibré. L'Etat doit protéger l'environnement, la biodiversité, les ressources génétiques, les processus écologiques, les parcs nationaux et monuments naturels et d'autres zones d'importance écologique particulière. Le génome des organismes vivants ne peut pas être breveté, et la loi relative aux principes bioéthiques devra régler cette question.**

Il relève d'une obligation fondamentale de l'État, avec la participation active de la société, de s'assurer que la population se développe dans un environnement sans pollution, où l'air, l'eau, le sol, les côtes, le climat, la couche d'ozone, les espèces vivantes sont spécialement protégés, conformément à la loi.

Art. 129.- Todas las actividades susceptibles de generar daños a los ecosistemas deben ser previamente acompañadas de estudios de impacto ambiental y socio cultural. El Estado impedirá la entrada al país de desechos tóxicos y peligrosos, así como la fabricación y uso de armas nucleares, químicas y biológicas. Una ley especial regulará el uso, manejo, transporte y almacenamiento de las sustancias tóxicas y peligrosas.

En los contratos que la República celebre con personas naturales o jurídicas, nacionales o extranjeras, o en los permisos que se otorguen, que afecten los recursos naturales, se considerará incluida aun cuando no estuviera expresa, la obligación de conservar el equilibrio ecológico, de permitir el acceso a la tecnología y la transferencia de la misma en condiciones mutuamente convenidas y de restablecer el ambiente a su estado natural si éste resultara alterado, en los términos que fije la ley.

- **Toutes les activités qui sont susceptibles de causer des dommages aux écosystèmes doivent être précédées par des études d'impact environnemental et socio-culturel. L'État interdira l'entrée dans le pays de déchets toxiques et dangereux, ainsi que la fabrication et l'utilisation des armes nucléaires, chimiques et biologiques. Une loi spéciale réglementera l'utilisation, la manipulation, le transport et le stockage de substances dangereuses.**

Dans les contrats de la République avec des personnes physiques ou morales, nationales ou étrangères, ou dans les autorisations accordées qui affectent les ressources naturelles, seront considérées incluses même si elles ne sont pas explicites, les obligations de préserver l'équilibre écologique, de permettre l'accès et le transfert des technologies dans des conditions mutuellement convenues et de restaurer l'environnement à son état naturel s'il est altéré, dans les termes établis par la loi.

4. Asie

CHINESE CONSTITUTION

Available in : <http://english.people.com.cn/constitution/constitution.html>

Article 26. The state protects and improves the living environment and the ecological environment, and prevents and controls pollution and other public hazards. The state organizes and encourages afforestation and the protection of forests.

INDIAN CONSTITUTION

Available in: <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>

48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

INDONESIAN CONSTITUTION

Available in : <http://www.embassyofindonesia.org/about/pdf/IndonesianConstitution.pdf>

Article 28H . (1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

Article 33. (4) The organization of the national economy shall be conducted on the basis of economic democracy upholding the principles of . . . environmental perspective

JAPANESE CONSTITUTION

Available in:

http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html

No mention made to the environment

SOUTH KOREAN CONSTITUTION

Available in:

http://www.ccourt.go.kr/home/att_file/download/Constitution_of_the_Republic_of_Korea.pdf

Article 35. (1) All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.

5. Europe de l'Est

Nota Bene: Almost all English translations of the following Constitution may be found on these three sites:

<http://legislationline.org/documents/section/constitutions;>

<http://www.constitution.org/cons/croatia.htm>

<http://www.wipo.int/wipolex/en/details.jsp?id=11243>

CONSTITUTION OF THE REPUBLIC OF CROATIA

Accessible at: <http://legislationline.org/documents/section/constitutions;>

Consolidated text 2001: No mention of ecocide, however the environment is mentioned in the following Articles: 3, 50, 52, 70 and 135.

Article 3: "Freedom, equal rights, national equality, peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the human environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia."

Article 50: "Ownership may in the interests of the republic be restricted by law, or property taken over against indemnity equal to its market value. Entrepreneurial freedom and property rights may exceptionally be restricted by law for the purposes of protecting the interests and security of the Republic, nature, the human environment and human health."

Article 52: “The sea, seashore and islands, waters, air space, mineral wealth and other natural resources, as well as land, forests, fauna and flora, other parts of nature, real estate and things of special cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic, shall enjoy its special protection. The way in which goods of interest to the Republic may be used and exploited by holders of rights to them and by owners, and compensation for the restrictions imposed on them, shall be regulated by law.” Article 70: “Everyone shall have the right to a healthy life. The state shall ensure conditions for a healthy environment. Everyone shall, within the scope of their powers and activities, accord particular attention to the protection of human health, nature and the human environment.”

Article 135: “Units of local self-government shall administer affairs of local jurisdiction by which the needs of citizens are directly fulfilled, and in particular affairs related to the organization of localities and housing, zoning and urban planning, public utilities, child care, social welfare, primary health services, education and primary schools, culture, physical education and sports, customer protection, protection and improvement of the environment, fire protection and civil defense...”

CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Accessible at: <http://legislationline.org/documents/section/constitutions>

Consolidated translation, with amendments indicated. No mention of ecocide or protecting the environment.

CONSTITUTION OF THE REPUBLIC OF SERBIA

Accessible at: <http://legislationline.org/documents/section/constitutions>

No mention of ecocide. Protection of the environment is mentioned primarily in Article 74 and further in Articles 83, 88, 183 and 190.

Article 74: “Everyone shall have the right to healthy environment and the right to timely and full information about the state of environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.”

Article 83: “Entrepreneurship may be restricted by the Law, for the purpose of protection of people’s health, environment and natural goods and security of the Republic of Serbia.”

Article 88: “Utilization and management of agricultural land, forest land and municipal building land on private assets shall be permitted. The Law may restrict the models of utilization and management, that is stipulate terms of utilization and management, in order to eliminate the danger of causing damage to environment or prevent violation of rights and legally based interests of other persons.”

Article 183: “...Autonomous provinces shall, in accordance with the Law, regulate the matters of provincial interest in the following fields: 1. urban planning and development, 2. agriculture, water economy, forestry, hunting, fishery, tourism, catering, spas and health resorts, environmental protection, industry and craftsmanship, road, river and railway transport and road repairs, organising fairs and other economic events, 3. education, sport, culture, health care and social welfare and public informing at the provincial level...”

Article 190: “The municipality shall, through its bodies, and in accordance with the Law: ...
6. be responsible for environmental protection, protection against natural and other disasters;
protection of cultural heritage of the municipal interest...”

CONSTITUTION OF THE REPUBLIC OF SLOVENIA

Accessible at: <http://legislationline.org/documents/section/constitutions>

No mention of ecocide, environment is only noted in Article 72.

Article 72: “Everyone has the right in accordance with the law to a healthy living environment. The state shall promote a healthy living environment. To this end, the conditions and manner in which economic and other activities are pursued shall be established by law. The law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation. The protection of animals from cruelty shall be regulated by law.”

CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

Accessible at: <http://legislationline.org/documents/section/constitutions>

No mention of ecocide, however there are articles on the the environment – Article 19 and Article 65 in the 1994 version. Nevertheless in the new 2007 version, there is only one Article on the environment, which is Article 23.

Article 23: “Everyone shall have the right to a sound environment. Everyone shall have the right to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights. Everyone, the state in particular, shall be bound to preserve and promote the environment.”

CONSTITUTION OF THE REPUBLIC OF MACEDONIA (“Former Yugoslav Republic of Macedonia”)

Accessible at: <http://legislationline.org/documents/section/constitutions>

Does not mention ecocide, contains provisions on the environment in Articles 43, and (briefly) in Articles 8 and 55.

Article 43: “Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.” Article 8: “The fundamental values of the constitutional order of the Republic of Macedonia are ... ecological protection and development”. Article 55: “...The freedom of the market and entrepreneurship can be restricted by law only for reasons of the defense of the Republic, protection of the natural and living environment or public health.”

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Accessible at: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

Ecocide is not mentioned, there is only Article 52 on the environmet, and it is further mentioned in the Values section of Article 8.

Article 52: “Nature and biodiversity, environment and national inheritance are everyone’s responsibility. Everyone should be provided an opportunity to be heard by public institutions and have their opinions considered on issues that impact the environment in which they live. The impact on the environment shall be considered by public institutions in their decision making processes.”

CONSTITUTION OF THE REPUBLIC OF BELARUS

Accessible at: <http://legislationline.org/documents/section/constitutions>

No mention of ecocide, protection of the environment is mentioned in Article(s) 44 and 46 and further in Articles 34 and 97.

Article 44: “The State shall guarantee everyone the right of property and shall contribute to its acquisition. A proprietor shall have the right to possess, enjoy and dispose of assets either individually or jointly with others. The inviolability of property and the right to inherit property shall be protected by law. Property acquired in accordance with the law shall be safeguarded by the State. The State shall encourage and protect the savings of citizens and guarantee conditions for the return of deposits. The compulsory alienation of assets shall be permitted only by reason of public need, under the conditions and the procedure specified by law, with timely and full compensation for the value of the alienated assets, and in accordance with a ruling of a court of law. The exercise of the right of property shall not be contrary to social benefit and security, or be harmful to the environment or historical and cultural treasures, or infringe upon the rights and legally protected interests of others. Article 46: “Everyone shall be entitled to a conducive environment and to compensation for loss or damage caused by the violation of this right. The State shall supervise the rational utilization of natural resources to protect and improve living conditions, and to preserve and restore the environment.” Article 34: “Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment. ...” Article 97: “The House of Representatives shall: ... 2) consider; environmental protection and the rational utilization of natural resources. ...”

CONSTITUTION OF THE CZECH REPUBLIC

Accessible at: <http://legislationline.org/documents/section/constitutions>

No mention of ecocide nor protection of the environment. Also took “nature” into consideration and equally there are no Articles within the Constitution.

CONSTITUTION OF THE SLOVAK REPUBLIC

Accessible at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_128037.pdf

Ecocide is not mentioned, however protection of the environment may be found in Article(s) 44 – 45 and also mentioned in Articles 20 and 23.

Article 44: “(1) Everyone shall have the right to favorable environment. (2) Everyone shall have a duty to protect and improve the environment and to foster cultural heritage. (3) No one shall imperil or damage the environment, natural resources and cultural heritage beyond the limits laid down by a law. (4) The State shall care for economical exploitation of natural resources, for ecological balance and on effective environmental policy, and shall secure protection of determined sorts of wild plants and wild animals.” (5) Details on the rights and duties according to paragraphs 1 to 4 shall be laid down by a law.” Article 45: “Everyone shall have the right to full and timely information about the environmental situation and about the reasons and consequences

thereof.”Article 20: “ ... The exercise of right in property must not be detrimental to the health of other people, nature, cultural sites or the environment beyond the margin laid down by a law.”Article 23: “(1) Freedom of movement and residence shall be guaranteed.(2) Everyone residing legally on the territory of the Slovak Republic has the right to leave its territory freely.(3) Freedoms defined in paragraphs 1 and 2 may be restricted by a law if it is necessary for national security, maintenance of public order, for the health protection or the protection of the rights and freedoms of others, and in the interest of the environment protection in specified territories. ...”

CONSTITUTION OF UKRAINE

Accessible at: <http://www.wipo.int/wipolex/en/details.jsp?id=7587>

Ecocide is not included in the Constitution. On the protection of the environment , there is primarily Article 50, and Articles 85, 116, 119 and 138. For the environment – firstly, there is compensation for damages to a moral person, or to the legal person depending on the environment owned; secondly, local administrations, as well as the Cabinet of Ministers of Ukraine ensure environmental protection.

Article 50: “Everyone has the right to an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right. Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.”Article 85: “The authority of the Verkhovna Rada of Ukraine comprises:... 6) approving national programs of economic, scientific and technical, social, national and cultural development, and the protection of the environment. ...”Article 116: “The Cabinet of Ministers of Ukraine:...3) ensures the implementation of financial, pricing, investment and taxation policy; the policy in the spheres of labor and employment of the population, social security, education, science and culture, environmental protection, ecological safety and the utilization of nature ... “Article 119: “Local state administrations on their respective territory ensure:... 3) the implementation of national and regional programs for socio-economic and cultural development, programs for environmental protection ...”Article 138: “The competence of the Autonomous Republic of Crimea comprises:... 5) elaborating, approving and realizing programs of the Autonomous Republic of Crimea for socio-economic and cultural development, the rational utilization of nature, and environmental protection in accordance with national programs.”

CONSTITUTION OF THE REPUBLIC OF POLAND

Accessible at: <http://www.wipo.int/wipolex/en/details.jsp?id=7539>

No mention of ecocide. The protection of the environment is mentioned in Article 74, and further noted in Articles 5, 31, 68 and 86. For the environment – the principles of responsibility shall be specified by the State for an offense (Article 86). Moreover, Public Authorities ought to protect and improve the quality of the environment (Article 74).

Article 74: “Public authorities shall pursue policies ensuring the ecological security of current and future generations. Protection of the environment shall be the duty of public authorities. Everyone shall have the right to be informed of the quality of the environment and its protection. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.”Article 5: “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens,

safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.” Article 31: “... Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.” Article 68: “... Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment. ...” Article 86: “Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.”

CONSTITUTION OF THE REPUBLIC OF BULGARIA

Accessible at: <http://www.wipo.int/wipolex/en/details.jsp?id=456>

Ecocide is not included in the constitution. The protection of the environment is mentioned in Articles 16 and 56.

Article 16: “The Republic of Bulgaria shall ensure the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the sensible utilization of the country's natural wealth and resources.” Article 56: “Citizens have the right to a healthy and favorable environment, consistent with stipulated standards and regulations. They have an obligation to protect the environment.”

CONSTITUTION OF THE RUSSIAN FEDERATION

Accessible at: <http://www.constitution.ru/en/10003000-01.htm>

No mentioned of ecocide, yet the protection of the environment is found within Article 36, 42, 58 and 72.

For the environment – the environment per se is classified under the joint jurisdiction of the Russian Federation and correspondingly the Constitution and federal laws regulate environmental protection (Article 72). The citizens are under a duty to preserve nature and the environment (Article 58) and pursuant to Article 36 any private or public possession of land and natural resources must not be detrimental to the environment.

Article 36: “... Possession, utilization and disposal of land and other natural resources shall be exercised by the owners freely, if it is not detrimental to the environment and does not violate the rights and lawful interests of other people. ...” Article 42: “Everyone shall have the right to a favorable environment, reliable information about its state and to restitution for damage inflicted on his health and property by ecological transgressions.” Article 58: “Everyone shall be obliged to preserve nature and the environment, treat and carefully the riches of nature.” Article 72: “The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes: ...e) utilization of natural resources, protection of the environment and ensuring ecological safety; specially protected natural territories, protection of historical and cultural monuments. ...”

6. Europe de l’Ouest

UNITED KINGDOM

Although the United Kingdom does not have a written constitution similar to that of other constitutional monarchies, « a joint committee of the House of Commons and the House of Lords recommended that the right to a healthy environment be included in a proposed UK Bill of Rights » in 2008 (see, e.g., <http://www.environmentmagazine.org/Archives/Back%20Issues/2012/July-August%202012/constitutional-rights-full.html>, citing UK House of Commons and House of Lords Joint Committee on Human Rights, Twenty-ninth Report (London: House of Lords, 2008)).

At this point, I find nothing more in the constitutional law of the United Kingdom to support a claim to an environmental entitlement that would support a claim of ecocide as a foundational supranational criminal act.

7. Oceania

AUSTRALIA

The Australian constitution came into force in 1900, and has been amended from that time to 1977, but the most recent attempt to amend it was in 1999 (http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0203/03rp11).

The document is available at :

http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution .

Although the Australian Constitution does not specifically discuss environmental rights, the parliament of Australia has provided the following discussion of the State's ability to act on environmental concerns pursuant to international environmental treaty law in an overview to the Constitution drafted in 2010. It states the following :

« Overview

This list of powers given to the Commonwealth Parliament does not expressly refer to a number of important subjects including education, the environment, criminal law, and roads – but this does not mean that those subjects are wholly outside the Parliament's powers. For example, even though the Commonwealth Parliament has no specific power in relation to the environment, it can, under its external affairs power, prohibit the construction of a dam by a State if that is necessary to give effect to an international agreement on the environment. »

B. Sources de droit pénal

1. Amérique du Nord et Afrique du Sud

SOUTH AFRICA

The government of South Africa provides a website through its Department of Environmental Affairs at <https://www.environment.gov.za/> . Although there is no specific reference to ecocide as a crime,

there is an emphasis on nuisance, and the Department provides a summary called « Stepping Up Enforcement Against Environmental Crime, » in which it describes the following common criminal acts as contrary to South African law :

- Operating a Waste Disposal Site Without a Permit:
 - Section 20 of the Environment Conservation Act, 1989
 - R200 000* and/or imprisonment of 10years; and additional fine not exceeding three times the commercial value of anything in respect of which the offence was committed
- Emitting an Offensive Odour from an Activity or Premises :
 - Section 51(1)(a) of the National Environmental Management: Air Quality Act, 2004
 - R200 000* and/or imprisonment of 10 years
- Commencement of a property development without an environmental authorization :
 - Section 24 of the National Environmental Management Act, 1998
 - R5million and/or 10 years imprisonment
- Hunting or gathering a listed threatened or protected species without a permit :
 - Section 57 of the National Environmental Management: Biodiversity Act, 2004
 - R100 000* or three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater and/or imprisonment of 5 years
- Mining in a protected area :
 - Section 48 of the National Environmental Management: Protected Areas Act, 2003
 - R100 000* and/or imprisonment of 5 years
- Fishing of Certain Species Without a Permit :
 - Section 13 of the Marine Living Resources Act, 1998
 - R2 million or imprisonment of 5 years
- Driving on the beach without a permit :
 - Section 3 of Regulations in terms of the National Environmental Management Act, 1998: Control of Vehicles in the Coastal Zone :
 - Fine of between R2000 - R10000; and/or imprisonment of between 6 months and 2 years.

NORTH AMERICA

UNITED STATES OF AMERICA

Although there is no specific crime against ecocide in the United States of America, environmental crimes are enacted thematically in general (e.g., the « Clean Air Act ») and the U.S. Department of Justice has listed federal environmental crimes by statute at the following web address :

<http://www.justice.gov/enrd/5469.htm>

The following is a list of the provisions with the same organization as used by the U.S. Department of Justice with a selection of criminal penalties with international implications :

Pollution Crimes

- Act to Prevent Pollution from Ships (APPS), 33 U.S.C. §§ 1901-1912
 - (a) A person commits a class A misdemeanor if that person
 - (1) willfully violates a provision of this chapter or a regulation issued thereunder; or
 - (2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this chapter; or
 - (3) willfully obstructs any person who is acting in compliance with an order or direction under this chapter. 33 U.S.C.A. § 1481 (West)
- Atomic Energy Act, 42 U.S.C. §§ 2011-2296
- Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671
 - (a) Assessment and collection
 - (1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).
 - (B)(i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section.
 - (ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b)(2)(B) of this section.
 - (2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates--
 - (i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 7411, 7477, 7603, or 7412 of this title, or

(iii) a stationary source which is not in compliance with any requirement of subchapter IV-A, V, or VI of this chapter, or

(iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of subsection (d)(2) of this section, in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause. 42 U.S.C.A. § 7420 (West)

- Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675
- Deepwater Port Act, 33 U.S.C. §§ 1501-1524
- Emergency Planning and Community Right to Know Act (EPCRA) (also known as SARA Title III), 42 U.S.C. §§ 11001-11050
- Energy Supply and Environmental Coordination Act, 15 U.S.C. §§ 791-798
- Federal Hazardous Material Transportation Law, 49 U.S.C. §§ 5101-5127
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136y
- Federal Water Pollution Control Act (FWPCA)(also known as the Clean Water Act (CWA)), 33 U.S.C. §§ 1251-1387

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited; 33 U.S.C.A. § 1251 (West)

- Noise Control Act, 42 U.S.C. §§ 4901-4918, 42 U.S.C. § 4910 (criminal provision)
- Ocean Dumping Act (ODA), 33 U.S.C. §§ 1401-1445

The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. 33 U.S.C.A. § 1401 (West)

- Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356
- Ports and Waterways Safety Act, 33 U.S.C. §§ 1221-1236
- Rivers and Harbors Appropriations Act, 33 U.S.C. §§ 401-467
- Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. §§ 6901- 6992k
- Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-26
- Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. §§ 1201-1328
- Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692

Wildlife Crimes

- Endangered Species Act, 16 U.S.C. § 1531
- Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. § 668

- Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 707
- The Lacey Act, 16 U.S.C. § 3372

CANADA

The regime of environmental legislative acts is described on the Environment Canada website here :
<http://www.ec.gc.ca/default.asp?lang=En&n=E826924C-1>

The following is a list of the acts of parliament administered by Environment Canada as a government agent of enforcement as listed on the above website :

- Environmental Protection
 - The Department of the Environment Act
 - Water Governance and Legislation
 - Lake of the Woods Control Board Act
 - Weather Modification Information Act
- Pollution Prevention
 - Canadian Environmental Protection Act, 1999 (CEPA 1999)
 - Fisheries Act
 - Antarctic Environmental Protection Act (AEPA)
 - Arctic Waters Pollution Prevention Act
- Biodiversity and Conservation
 - Species at Risk Act (SARA)
 - Migratory Birds Convention Act, 1994 (MBCA)
 - Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)
 - Canada Wildlife Act
- Sustainable Development
 - Federal Sustainable Development Act
 - Canada Foundation for Sustainable Development Technology Act
- Other Significant Acts
 - Canadian Environmental Assessment Act, 2012
 - Environmental Enforcement Act

- Canadian Environment Week Act
- National Wildlife Week Act

Nota bene:

Ms. Westra [see doctrine Westra, *Ecoviolence and the Law*, in this report, p. 17], describes the general power of the Canadian parliament to make criminal law for general application and argues that this power is appropriately used in the case of environmental crime, but I do not find in her argument a claim that such a general cause of action currently exists. Please compare the below quotations:

p. 227: "While it is indeed true that regulatory offenses are covered under criminal law, they are not presently treated as true crimes. This chapter has argued against that position, citing the similarities between the consequences of environmental regulatory offenses and those of assaults and other crimes against the person. La Forest J. states that, 'Under s.91(27) of the Constitution act, 1867, Parliament had been accorded plenary powers to make Criminal Law in the widest sense' (Ibid. at 2). In addition, Parliament also has the right to decide what threatening evil they wish to suppress. The protection of the environment is a 'wholly legitimate public objective in the exercise of the criminal law power.' Recognizing the significant threat imposed by highly toxic but long-lasting PCBs, and the grave risks of serious harms to both animals and humans, these clearly fall within criminal law power, even without seeking to add 'Parliament's jurisdiction to make laws for the peace, order and good government of Canada.'" (p. 227)

p. 238: "Part of the difficulty is that Canadians do not have a constitutional right to a healthy environment, although critics have made a strong case for including such rights in Section 7 of the Canadian Charter of Rights and Freedoms (Muldoon, 1999)."

After reviewing all of the references to Canada in the index of the Westra book (there are none specific to Quebec), I think the answer to the question is that Westra is not arguing that a general tort of invasion against the environment exists, but rather that such a general tort would fall within the power of the parliament to make criminal law for the public good and that making such a criminal law would make sense in light of parallels to other torts.

2. Amérique Centrale et Caraïbes

GUATEMALA:

Code Pénal du Guatemala, 1973

http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf
(17/11/13)

Actions criminalisées:

Art. 344: propagation de maladie végétale ou animale (art. 345 : conséquence aggravante si la propagation est intentionnelle)

Art. 346 : exploitation illégale de ressources naturelles

Art. 347 ; Art. 347 – D : exploitation, taille, destruction, commercialisation ou export de ressources de la forêt

Art. 347 – A : pollution de l'air, du sol, des eaux par le biais d'émanations toxiques, de bruit excessifs, du versement de substances dangereuses ou de l'abandon de produits pouvant causer préjudice aux personnes, aux animaux, aux forêts ou aux plantations.

Art. 347 – B : pollution industrielle et responsabilité qualifiée des personnes juridiques concernées

Art. 347 – C : approbation de l'installation d'une exploitation industrielle ou commerciale polluante, ou consentement à son fonctionnement – responsabilité qualifiée du fonctionnaire

Art. 347 – E : chasse non autorisée d'animaux, oiseaux ou insectes

Eléments aggravants :

- si les délits sont commis de manière intentionnelle (art. 345, art. 347)
- si la pollution est réalisée au sein d'une population, ou dans sa proximité immédiate, ou affecte les plantations et les eaux destinées à l'usage public (art. 347 B)
- si le délit a lieu dans une aire protégée ou un parc national (art. 347 D, E)
- si les espèces concernées par le délit sont en voie d'extinction (art. 347 D)

Sanctions : (hors éléments aggravants) amende de cinquante à dix mille quetzales et peine de prison de six mois à quinze ans. **La peine maximale de quinze ans est applicable, selon l'art. 347 D, concernant l'exploitation, la taille, la destruction, la commercialisation ou l'export de ressources de la forêt, dans le cas où l'infraction porte sur une espèce en voie d'extinction ou si elle a lieu dans une aire protégée ou un parc national.**

MEXIQUE:

Code Pénal Fédéral, 1931, réformé en 2010

http://www.wipo.int/wipolex/fr/text.jsp?file_id=199696 (17/11/13)

Actions criminalisées :

Art. 414 : activités de production, stockage, trafic, importation ou exportation, transport, abandon, rejet, déchargement ou toute autre activité liée à des substances considérées dangereuses du fait de leurs caractéristiques corrosives, réactives, explosives, toxiques, inflammables, radioactives ou analogues, ou fait d'ordonner ou d'autoriser de telles activités, qui causent un dommages aux ressources naturelles, à la flore, à la faune, aux écosystèmes, à la qualité de l'eau, du sol, du sous-sol ou de l'environnement

Art. 415 : Emission, rejet, déchargement dans l'atmosphère (ainsi qu'autorisation ou ordre de commettre de tels actes) de gaz, fumées, poussières, polluants, bruit, vibrations, énergie thermique ou lumineuse qui occasionnent des dommages aux ressources naturelles, à la flore, à la faune, aux écosystèmes, ou à l'environnement.

Art. 416 : déchargement, dépôt ou infiltration (ainsi qu'autorise ou ordre de commettre de tels actes) d'eaux contaminées, de liquides chimiques ou biochimiques, de déchets ou polluants dans les sols, sous-sols, eaux marines, rivières, bassins, mares ou autres points d'eau ou eaux courantes sous juridiction fédérale, endommageant ou risquant d'endommager les ressources naturelles, la flore, la faune, les écosystèmes, ou l'environnement.

Art. 417 : introduction dans le territoire national, ou organisation d'un trafic de ressources des forêts sylvestres qui véhiculent, subissent ou ont subi une maladie contagieuse, occasionnant ou pouvant occasionner sa dissémination ou la des écosystèmes

Art. 418 : déboisement, destruction, déracinement ou taille de la végétation naturelle

Art. 419 : transport, commerce, stockage, transformation du bois ou de la terre provenant de la forêt

Art. 420 : capture, chasse, pêche, transformation, stockage ou dégradation d'espèces animales et de leurs dérivés

Art. 420 bis : dommage à l'encontre des zones humides et récifs ; perturbation des écosystèmes par introduction de spécimens de la flore ou de la faune exotique; incendie

Art. 420 Ter : introduction ou extraction, commercialisation, transport, stockage ou libération de n'importe quel organisme génétiquement modifié qui altère ou pourrait altérer négativement les composants, la structure ou le fonctionnement des écosystèmes naturels

Art. 420 Quater : transport ou consentement à, autorisation ou ordre de transporter le transport un déchet considéré comme dangereux sans autorisation ; non-respect des mesures techniques, correctives ou de sécurité nécessaires pour éviter le dommage ou le risque environnemental

Eléments aggravants :

- si le délit a lieu dans une aire naturelle protégée (art. 414, 415, 416)
- si le délit est réalisé à des fins commerciales (art. 420)

Sanctions : (hors éléments aggravants et peines/mesures supplémentaires) peine de prison de six mois à neuf ans et trois cent à trois mille jours-amendes

Art. 421 : peines et mesures de sécurité supplémentaires:

I. La réalisation des actions nécessaires pour rétablir les conditions initiales des éléments naturels qui constituent les écosystèmes affectés, dans l'état dans lesquelles ils se trouvaient avant la réalisation du délit ;

II. La suspension, modification ou démolition des constructions, œuvres ou activités qui ont donné lieu au délit environnemental en question ;

III. la réincorporation des éléments naturels, des spécimens ou espèces de la flore et de la faune sylvestre, dans les habitats desquelles ils ont été soustraits, si et seulement si leur réincorporation ne constitue pas un danger pour l'équilibre écologique ou ne met pas en difficulté la reproduction ou la migration des espèces de la flore ou de la faune sylvestre ;

IV. le retour des matériaux ou déchets dangereux ou spécimens de la flore et de la faune sylvestre menacés ou en danger d'extinction, à leur pays d'origine, en conformité avec les traités et les conventions internationales auxquels Mexico appartient, ou

V. La déclaration comme inapte, quand l'auteur ou le participant au délit agissait en sa qualité de serviteur public, pour un temps égal à la durée de la peine privative de liberté, et commençant au moment où la peine de prison aura été accomplie ou considérée comme telle. Les travaux d'intérêt général concernés consisteront en des activités en relation avec la protection de l'environnement ou avec la restauration des ressources naturelles.

Dispositions administratives et pénales également détaillées dans la Loi Générale de l'Equilibre Ecologique et de la Protection de l'Environnement, 28 Janvier 1988

http://www.wipo.int/wipolex/es/text.jsp?file_id=199941 (23/11/13)

NICARAGUA

Code Pénal du Nicaragua

http://www.wipo.int/wipolex/fr/text.jsp?file_id=227667 (24/11/13)

Actions criminalisées:

Art. 365: dépôt ou infiltration (ou autorisation de) d'eaux contaminées, de liquides ou de matières chimiques ou biochimiques, de déchets ou de polluants toxiques dangereux ou causant un dommage à la santé, aux ressources naturelles, à la biodiversité, à la qualité de l'eau ou aux écosystèmes

Art. 366 : voir art. 365 mais activités affectant les eaux marines, les fleuves, les bassins ou autres points ou cours d'eau

Art. 367 : émission polluant l'atmosphère et l'air avec des gaz, des fumées, des poussières ou des polluants, causant de graves dommages à la santé des personnes, aux ressources naturelles, à la biodiversité, ou aux écosystèmes, provoquées par le biais de l'incinération de matériaux liquides ou solides, chimiques ou biochimiques ou toxiques

Art. 368 : transport (ou autorisation ou ordre de) de matériaux ou déchets toxiques ou polluant mettant en danger ou endommageant la santé des personnes ou l'environnement

Art. 369 : stockage ou manipulation de substances toxiques, dangereuses, explosives, radioactives ou polluantes

Art. 373 : utilisation, occultation, commercialisation, exploitation, transport, trafic des spécimens, produits ou parts des ressources de la faune, des ressources sylvestres, florales, hydrobiologiques, génétiques et substances minérales

Art. 374 : déviation et stockage illégal des eaux

Art. 378 : pêche par le biais et autres formes destructives de pêche

Art. 380 : chasse d'animaux en voie d'extinction

Art. 381 : commercialisation de la faune et de la flore

Art. 383 : incendies forestiers

Art. 384 : coupe, transport et commercialisation illégaux de bois

Art. 388 : non-respect des études d'impact environnemental

Art. 390 : introduction d'espèces invasives, agents biologiques et biochimiques

Eléments aggravants

Art. 370 : peine augmentée quand le délit

a) Affecte des réserves d'eaux destinées à la consommation humaine ;

b) Entraîne la destruction de tout type de point d'eau ;

c) Affecte les sols et les sous-sols de foyers de peuplement ou la santé des personnes ;

d) Est réalisé au sein des aires protégées ou des zones tampons ;

e) Détruit totalement ou en partie les écosystèmes côtiers marins, fluviaux ou pluviaux ;

f) Est réalisé dans des aires déclarées, par l'autorité compétente, comme ayant une valeur biologique, écologique, éducative, scientifique, historique, culturelle, récréative, archéologique, esthétique ou de développement économique particulière ;

g) Cause un dommage direct ou indirect à un bassin hydrographique ;

h) Affecte des ressources hydro-biologiques ;

i) Implique l'incendie de matériaux solides, liquides, chimiques et biochimiques dans les rues ou avenues des villes, dans des centres de population ou des terrains urbains ;

j) Occasionne des maladies contagieuses qui constituent un danger pour les personnes et les espèces de la vie sylvestre ;

k) Est réalisé avec des substances, produits, éléments ou matériaux cancérigènes ou pouvant altérer le capital génétique des personnes ;

l) Est réalisé avec des substances, produits, éléments ou matériaux qui occasionnent des risques d'explosion, qui sont inflammables ou substantiellement radioactifs.

Art. 382 : quand la chasse ou commercialisation des espèces est destinée au trafic ou commerce international.

Eléments atténuant la peine :

- Imprudence (art. 365, 366, 367, 368)

Sanctions : peine de prison de six mois à cinq ans et de cinquante à mille jours-amendes

Art. 389 Le juge doit ordonner à la charge de l'auteur ou des auteurs du fait et en accord du principe de proportionnalité certaines des mesures suivantes par ordre de priorité :

- a) La restitution à l'état précédent la commission du fait punissable
- b) La réparation du dommage environnemental causé ; et
- c) La compensation totale du dommage environnemental produit.

Si les délits sont réalisés par l'intermédiaire d'une personne juridique, lui seront appliquées de manière additionnelle les conséquences accessoires qui retombent sur la personne juridique prévues dans le Code.

PANAMA

Code Pénal de la République du Panama, 2007, réformé en 2008

http://www.wipo.int/wipolex/en/text.jsp?file_id=189272 (17/11/13)

Actions criminalisées :

Art. 399 : destruction, extraction, pollution ou dégradation des ressources naturelles

Art. 400 : déviation, obstruction ou stockage illégal des eaux

Art. 402 : import ou export, gestion, émission, dépôt, commercialisation, transport, déversement de matériel radioactif, d'eaux contaminées, de résidus et déchets solides, liquides, gazeux

Art. 406 : taille, destruction ou dégradation de végétaux ou arbres constitutifs de forêts ou sujets à une protection spéciale, dans des aires protégées, dans des bassins hydrographiques, dans des zones interdites ou à l'accès restreint, ou quand ils protègent les ressources d'eaux potables de la population

Art. 407 : incendie de masses végétales

Art. 408 : émission de bruit, vibrations, gaz, odeurs, énergie thermiques, lumineuses, ou de quelque autre nature, qui occasionnent de graves dommages à la santé publique, à la flore, à la faune ou aux écosystèmes

Art. 409 : chasse, pêche, provocation de la mort, capture ou extraction d'une ressource ou d'une espèce de la vie sylvestre, aquatique ou terrestre protégée ou en danger d'extinction

Art. 410 : trafic, commerce, export, import, de spécimens de la vie sylvestre, d'espèces endémiques vulnérables, menacées ou en voie d'extinction ou toute autre ressources génétique

Art. 411 : introduction, utilisation ou propagation d'espèces de la vie sylvestre ou d'un agent biologique ou biochimique, capable d'altérer significativement la population animale ou végétale ou de mettre en danger leur existence

Eléments aggravants:**Art. 399:**

1. Quand l'action prend place dans des aires protégées ou quand elle détruit totalement ou en partie des écosystèmes côtiers, marins ou des zones humides.
2. Quand un dommage direct est causé aux bassins hydrographiques.
3. Quand le dommage porte sur une aire dont la valeur biologique, historique, archéologique ou scientifique est spécifiquement reconnue.
4. Quand sont ostensiblement affectées les ressources hydriques superficielles ou sous-terraines, d'une façon qui nuit gravement à l'écosystème.
5. Quand la santé ou la vie des personnes sont mises en danger.

6. Quand l'activité de pêche est réalisée par le biais d'explosifs ou de substances toxiques.
7. Quand la conduite en question est réalisée par une industrie ou une activité fonctionnant sans avoir obtenu l'autorisation adéquate ou l'approbation de l'autorité compétente.
8. Quand la conduite en question implique la falsification ou l'occultation d'informations quant à l'impact environnemental de l'activité, ou l'obstruction de l'inspection ordonnée par l'autorité compétente.
9. Quand le dommage causé est irréversible. Sont irréversibles les effets qui impliquent l'impossibilité de retrouver la situation initiale.

Art. 402 : quand les déchets et résidus concernés

1. Occasionnent des maladies contagieuses qui constituent un danger pour les personnes ou la vie sylvestre.
2. Sont cancérigènes ou altèrent le capital génétique des personnes.
3. Occasionnent des risques d'explosion, ou sont inflammables ou hautement radioactifs.
4. Peuvent porter préjudice aux eaux, à l'atmosphère ou au sol, ou mettent en grave péril la nature, la qualité ou la quantité de la vie sylvestre

Art. 407 :

1. Quand se produit une perte de la fertilité ou un dessèchement du sol.
2. Quand une superficie de plus de cinq hectares est affectée.
3. Quand la qualité de la vie végétale est significativement endommagée.
4. Quand l'action est réalisée à des fins lucratives.
5. Quand l'action a lieu dans une aire protégée ou un bassin hydrographique.

Art. 409 :

1. Si l'action est réalisée par le biais d'un instrument ou d'un moyen non autorisé ou interdit par les normes en vigueur.
6. Si elle est réalisée dans de grandes proportions.

Eléments atténuant la peine :

Art. 410 : si le spécimen est restitué à son habitat sans dommage aucun, avant que ne soient conclues la phase judiciaire initiale et l'enquête.

Sanctions : peine de prison d'un à huit ans ; pour les peines les plus courtes, équivalences en jours-amendes ou détentions de fin de semaine

3. Amérique du Sud

Source :

BRESIL

[Lei nº 9.605, de 12 de fevereiro de 1998, Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências].

Loi n° 9.605, du 12 février 1998, Disposant les sanctions pénales et administratives découlant des conduites et des activités nuisibles à l'environnement et d'autres questions.

Il s'agit d'une loi ayant une vocation unificatrice des règles

environnementales, qui doit être appliquée par le juge du contentieux public et par le juge pénal selon la *rationae materiae*. En tant que loi fédérale est supérieure aux dispositions étatiques et elle applique de façon subsidiaire le code pénal fédéral (art. 79 de la loi) bien qu'elle ne fait pas partie de celui-ci. La loi a été réglementé par le décret 3179 du 21 Septembre 1999.

Concept :	<p>Crimes contre l'environnement (Chapitre V, Loi)</p> <p>“Article 2. Qui, d’une façon quelconque, contribue à la commission des crimes prévus par la présente loi, sera passible sanctions ici imposées, dans la mesure de sa culpabilité, comme directeur, administrateur, membre du conseil d’administration ou des organes techniques, auditeur, le gérant, agent ou représentant d’une personne morale, qui, connaissant la conduite criminelle d’autrui, ne parviennent pas à empêcher une telle pratique, quand il pourrait agir pour l’éviter.</p> <p>Article 3. Les personnes morales seront passibles des sanctions administratives, civiles et pénales, conformément aux prévisions de la présente loi, lorsque l’infraction est commise par une décision de son représentant légal ou contractuel, ou son organe collégial, dans l’intérêt ou pour le bénéfice de dite organisation.</p> <p><i>Paragraphe unique.</i> La responsabilité des personnes morales n’exclut pas celle des personnes physiques comme auteurs, co-auteurs ou participants du même fait”.</p>
Valeur protégée :	l’environnement
Sujet mis en cause :	Personne physique, en particulier le chef d’entreprise (art. 2), personne morale (art. 3) et responsabilité partagée (art. 3 alinéa), le fonctionnaire public comme personne qualifiée pour les crimes contre l’administration environnementale (art. 66 et ss.)
Infractions envisagées :	<ul style="list-style-type: none"> - <u>Crimes contre la faune</u> : chasse, pêche et commerce illégal (arts. 29, 34-39), exportation illégale d’amphibiens et reptiles (art. 30), introduction illégale d’espèces (art. 31), violence contre les animaux (art. 32), destruction de la faune fluviale (art. 33). - <u>Crimes contre la flore</u> : destruction de zone de réserve permanente, de végétation primaire ou secondaire (art 38), commerce (vendre, acheter, transformer) de l’espèce illégalement obtenue (arts. 30-53), empêche la régénération naturelle (art. 48). - <u>Pollution et autres crimes</u> : pollution (art. 54), extraction minière illégale (art. 55), production, transformation et trafic de déchets (art. 56), pollution sans licence (art. 60) - <u>Crimes contre l’administration environnementale</u> : octroi de licence avec information frauduleuse (art. 66), octroi de licence sans compétence pour le faire (art. 67), omission des devoirs (art. 68), obstruction du pouvoir public (art. 69) - <u>Autres infractions administratives</u> : action ou une omission qui viole les règles légales d’utilisation, la jouissance, promotion, la protection et la valorisation de l’environnement (art. 70)
Eléments matériels :	Application subsidiaire du code pénal et du code de procédure pénale (art. 79) Comportements (tuer, poursuivre, chasser, pêcher, utiliser illégalement un espèce protégée) (art. 29-32, 34-35), conséquences (ruiner la faune aquatique des eux brésiliennes) (art. 33) nuisance à la santé humaine, mort des animaux

	ou perte significative de la flore (art. 54), circonstances associées à chaque infraction (par le transport fluvial) (art. 33).
Elément psychologique (mens rea)	Intention (arts. 2-3) Connaissance (art. 2-3) La faute non intentionnelle est admise pour les crimes contre la faune (arts. 38-53, paragraphes uniques).
Elément contextuel	Aucun élément contextuel n'est déterminant
Qualification envisagée :	Crime autonome (de droit interne) contre l'environnement
Juridiction compétente	Règle générale applicable : tribunal suprême de l'État fédéré, sauf si l'infraction porte sur des biens, des services ou des intérêts de l'Union, de ses collectivités locales ou entreprises publics (type mixte : pénale, administratif) Echelle : national étatique et pouvoir fédéral
Type de sanction :	- Détention d'un mois à quatre ans + amende selon le crime (arts. 29-61, 66-). - Saisie des produits et outils liés à l'infraction (25) - Restriction de droits (art. 8) : prestation de services à la communauté, suspension temporaire des droits, suspension partielle ou totale d'activité, prestations en espèces, résidence surveillée. - Montant des amendes : entre 16 et 16 millions d'euros (art. 75). L'impossibilité de paiement est contemplé pour les crimes de mineur potentiel offensif (arts. 26-28) - Annulation de la personnalité juridique si celle-ci fait obstacle aux réparations (art. 4).
Varia :	Par règle générale au Brésil, la peine privative de liberté peut être remplacée dans les délits non intentionnels ayant des pénalités de moins de quatre ans (art. 59 du Code pénal). Dans le cas des infractions environnementales, une telle substitution n'est pas autorisée (art. 44 Code pénal).

4. Asie

Chinese Criminal Code

Section 6 Crimes of Impairing the Protection of Environment and Resources

Article 338 Whoever, in violation of the regulations of the State, discharges, dumps or treats radioactive waste, waste containing pathogen of infectious diseases, toxic substances or other hazardous waste on the land or in the water bodies or the atmosphere, thus causing a major environmental pollution accident which leads to the serious consequences of heavy losses of public or private property or human casualties, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 339 Whoever, in violation of the regulations of the State, has solid waste from abroad dumped, piled up, or treated within the territory of China shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if a major environmental pollution accident is caused, which leads to heavy losses of public or private

property or serious harm to human health, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined.

Whoever, without permission of the competent administration department under the State Council, imports solid waste as raw material, thus causing a major environmental pollution accident, which leads to heavy losses of public or private property or serious harm to human health, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

Whoever, under the pretext of using it as raw material, imports solid waste that cannot be used as such shall be convicted and punished in accordance with the provisions of Article 155 of this Law.

Article 340 Whoever, in violation of the law or regulations on protection of aquatic resources, catches aquatic products in an area or during a season closed to fishing, or uses prohibited fishing gear or methods for the purpose, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance or be fined.

Article 341 Whoever illegally catches or kills precious and endangered species of wildlife under special State protection or illegally purchases, transports or sells such species of wildlife as well as the products thereof shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined or be sentenced to confiscation of property.

Whoever, in violation of the law or regulations on hunting, hunts wildlife in an area or during a season closed to hunting or uses prohibited hunting gear or methods for the purpose, thus damaging wildlife resources, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined.

Article 342 Whoever, in violation of the law or regulations on land administration, unlawfully occupies cultivated land and uses it for other purposes, if the area involved is relatively large and a large area of such land is damaged, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined.

Article 343 Whoever, in violation of the provisions of the Mineral Resources Law, mines without a mining license, enters and mines in a mining area that is embraced in State plans or a mining area that is of great value to the national economy or another person's mining area, or mines specified minerals of which protective mining is prescribed by the State, if he refuses to stop mining after being ordered to do so, thus damaging the mineral resources, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if severe damage is caused to mineral resources, he shall be

sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever, in violation of the provisions of the Mineral Resources Law, mines mineral resources in a destructive way, thus causing severe damage to mineral resources, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined.

Article 344 Whoever, in violation of the provisions of the Forestry Law, illegally fells or destroys precious trees shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 345 Whoever stealthily fells trees, bamboo, etc. in forest or woods, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount involved is huge,, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined; if the amount involved is especially huge,, he shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined;

Whoever, in violation of the provisions of the Forestry Law, arbitrarily fells trees, bamboo, etc. in forest or woods, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount involved is huge,, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever, for the purpose of profit, illegally purchases in a forest area trees , bamboo, etc., which he knows are felled stealthily or arbitrarily, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever stealthily or arbitrarily fells trees, bamboo, etc. in forest or woods, of nature reserves at the national level shall be given a heavier punishment.

Article 346 Where a unit commits any of the crimes mentioned in the Articles from 338 through 345 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the Articles of this Section respectively.

Indian Environment (Protection) Act, (No. 29 of) 1986

Chapter I Preliminary

2. Definitions

In this Act, unless the context otherwise requires,--

(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

(c) "environmental pollution" means the presence in the environment of any environmental pollutant;

(d) "handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;

(e) "hazardous substance" means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment;

(f) "occupier", in relation to any factory or premises, means a person who has, control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance

Chapter III: Prevention, Control, And Abatement Of Environmental Pollution

7. Persons Carrying On Industry Operation, Etc., Not To Allow Emission Or Discharge Of Environmental Pollutants In Excess Of The Standard

No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.

8. Persons Handling Hazardous Substances To Comply With Procedural Safeguards

No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

15. Penalty For Contravention Of The Provisions Of The Act And The Rules,

Orders And Directions

(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

Indonesian Penal Code

No mention made to the environment

Japanese Penal Code

No mention made to the environment

South Korean Penal Code

No mention made to the environment

5. Europe de l'Est

All the following Articles have been taken from the Criminal Codes of the mentioned States.

Bosnia and Herzegovina: Krivični zakon

N/A

Bulgaria: Наказателния кодекс

SECTION III: □ CRIMES AGAINST THE PEOPLE'S HEALTH AND THE ENVIRONMENT (HEADING SUPPLEMENTED, SG NO. 26/2004)

Article 352

(1) (Amended, SG No. 95/1975, SG No. 86/1991, SG No. 85/1997, SG No. 26/2004) A person who pollutes or allows the pollution of water sources, basins, ground waters and the territorial or inland sea waters, the soil and the air and thereby renders them hazardous to people, animals and plants, or makes them unfit for use for cultural and every day, health, agricultural, and other national-economy purposes, shall be punished by deprivation of liberty for up to five years and a fine from BGN one hundred to five thousand. □

(2) (Amended, SG No. 26/2004) The same punishment shall also be imposed on the official who has failed in designing, constructing or operating drainage or irrigation systems to take the necessary measures for prevention of hazardous pollution of potable water supply zones, or for raising of ground water levels in residential and resort areas. □

(3) (Amended, SG No. 10/1993) For acts under the preceding paragraphs committed through negligence, the punishment shall be probation or a fine from BGN one hundred to three hundred. □

(4) (New, SG No. 95/1975, amended, No. 28/1982, SG No. 10/1993) In minor cases under paragraphs (1) and (2) the punishment shall be a fine from BGN one hundred to three hundred, and under paragraph (3) - from BGN one hundred to three hundred, imposed pursuant to administrative procedure.

The abovementioned is the most relevant article in relation to the environment. Further articles on the environment and people's health affected due to it involve Article 349, Article 349a, Article 350a, Article 351 and Article 352. □

Croatia: Kazneni zakon

CHAPTER NINETEEN (xix)

CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

Environmental Pollution

Article 250

(1) Whoever, contrary to regulations, pollutes the air, soil, running, still or ground water, watercourses or the sea, sea bed or subsoil or in some other way imperils the quality of air, soil, water, watercourses or the sea, sea bed or subsoil or the natural genetic harmony of biological diversity within a wide area and to an extent which can worsen the conditions of life of humans or animals, or endanger the existence of forests, plants and other vegetation, shall be punished by imprisonment for three months to five years.

(2) The same punishment referred to in paragraph 1 of this Article shall be inflicted on whoever pollutes the air, soil, running, still or ground water, watercourses or the sea, sea bed or subsoil or in some other way imperils the quality of the air, soil, watercourses or the sea, sea bed or subsoil or the natural genetic harmony of biological diversity, thus causing danger to the life or health of humans or animals, or causes destruction or substantial damage to forests, plants and other vegetation within a wider area.

(3) Whoever commits the criminal offense referred to in paragraphs 1 and 2 of this Article by negligence shall be punished by a fine or by imprisonment not exceeding three years.

The abovementioned appears to be the most pertinent article in relation to the environment. Further articles on the environment and its endangerment are Article 251, Article 252, Article 253, Article 254 and the Article 262 on the serious criminal offenses against the environment.

Czech Republic: Trestní zákoník

(Provisions on the environment may be found in Chapter 8 of the Czech Penal Code, nevertheless there is no official English translation of the entire Code (just certain provisions) by WIPO, COE, LegislationOnline etc. As I do not speak Czech, I would not attempt to translate it on my own for potentially erring in the translation of the Articles. Should you deem a “google translation” sufficient, I shall insert the provisions herein.)

Former Yugoslav Republic of Macedonia: Кривичен законик

22. CRIMES AGAINST THE ENVIRONMENT

Pollution of the environment

Article 218

(1) A person who, by not adhering to the regulations for protection and development of the environment, pollutes the air, soil, water, water surface or water flow to a larger extent or in a wider area, thus causing danger for the life or health of the people or destruction of animal and plant life to a larger extent, shall be punished with imprisonment of one to five years.

(2) The same punishment shall also apply to an official or responsible person who, by not adhering to the regulations for protection and development of the environment, omits to place filtering devices or permits the construction, activation or use of a plant that pollutes the environment, or who in some other way omits to undertake measures for preventing or making it impossible to pollute the air, soil, water, water surface or water flow, which significantly exceeds the allowed limit, or for preventing noise that significantly exceeds the allowed limit, thus creating danger to the life and health of the people or destruction of animal and plant life to a larger extent.

(3) If the crime from item 1 was committed out of negligence, the offender shall be punished for the crime from item 1 with imprisonment of up to three years. (4) When pronouncing a conditional sentence, the court may order the perpetrator of the crime from items 1 and 2 the condition to undertake the prescribed measures for protection and development of the human environment within a certain time frame.

The aforementioned Article is the key Article in relation to the environment. Further articles on the pollution of the environment include Article 219 on the pollution of drinking water and Article 234 on the serious crimes against the environment reflecting Articles 218, 219, 230 and 232.

Kosovo: Kodi penal

CHAPTER XXVIII CRIMINAL OFFENSES AGAINST THE ENVIRONMENT, ANIMALS, PLANTS AND CULTURAL OBJECTS

Article 347

Polluting, degrading or destroying the environment

1. Whoever, in violation of the law, pollutes or degrades the air, water or soil or excessively uses or exploits natural resources shall be punished by a fine or by imprisonment of up to two (2) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

3. When the offense provided for in paragraph 1 of this Article results in the impairment to health of a significant number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other significant material damage to the environment or an increase in pollution to a critical level the perpetrator shall be punished by a fine and by imprisonment of to five (5) years.

4. When the offense provided for in paragraph 2 of this Article results in the impairment to health of a significant number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other significant material damage to the environment or an increase in pollution to a critical level or critical damage to the environment, the perpetrator shall be punished by a fine and by imprisonment up to two (2) years.

5. When the offense provided for in paragraph 1 of this Article results in irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by a fine and imprisonment of one (1) to eight (8) years.

6. When the offense provided for in paragraph 2 of this Article results irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

The abovementioned appears to be the most pertinent article in relation to the environment. Further articles on the environment constitute Articles 349 and 350 on the unlawful construction and pollution, and on the damaging objects and installations for protection of the environment.

Montenegro: Krivični zakon / Кривични закон

CHAPTER TWENTY FIVE □ CRIMINAL ACTS AGAINST THE ENVIRONMENT

Pollution of the environment

Article 301

(1) Anyone who by not adhering to regulations for protection and development of the environment pollutes the air, water and soil to a larger extent or in a wider area, shall be punished by maximum three-year imprisonment sentence.

(2) If an act as of paragraph 1 herein is committed out of negligence, the offender shall be punished by pecuniary penalty or maximum one-year imprisonment sentence.

(3) If due to an act as of paragraph 1 herein animal or plant life is destroyed or damaged to a larger extent or the environment is polluted to such an extent that longer period of time and larger expenditures are needed for removing harmful consequences, the offender shall be punished by imprisonment sentence ranging from one to eight years.

(4) If as a result of an act as of paragraph 2 herein animal and plant life is destroyed or damaged to a larger extent or the environment polluted to such an extent that longer time period and larger expenditures are needed for removing harmful consequences, the offender shall be punished by imprisonment sentence ranging from six months to five years.

(5) If a conditional sentence is pronounced for offenses as of paragraphs 1 and 4 herein, the court may order the perpetrator to take particular prescribed measures for protection, preservation and development of the environment within a certain time notice.

The abovementioned Article is the most substantial in regards to the pollution of the environment. Further articles on the environment and the failure to take measure to protect it are Article 302, 303, 304, 305, 313, 314 and 315.

Poland: Kodeks karny

CHAPTER XXII □ OFFENCES AGAINST THE ENVIRONMENT

Article 182

§ I. Whoever pollutes the water, air or ground with a substance or contaminates with ionizing radiation in such quantities or form that it could endanger the life or health of many persons or cause destruction to plant and animal life of considerable dimensions shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. If the perpetrator acts unintentionally he □ shall be subject to a fine, the penalty of

restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

The abovementioned Article is the sole Polish Article in relation to the pollution of the environment. Further Articles on the environment and the violations thereof are Article 181, 182, 183, 188 and 46.

Serbia: Кривични законик / Krivični zakonik

CHAPTER TWENTY FOUR: CRIMINAL OFFENCES AGAINST THE ENVIRONMENT

Environmental Pollution

Article 260

(1) Whoever by violating the regulations on protection, preservation and improvement of the environment pollutes air, water or soil to larger extent or over a wider area, shall be punished by imprisonment up to three years. □

(2) If the offence specified in paragraph 1 of this Article is committed from negligence, the offender shall be punished by fine or imprisonment up to one year. □

(3) If the offence specified in paragraph 1 of this Article results in destruction or damage to animal and plant life to large extent or environmental pollution in such extent that cleanup requires longer period of time or great expense, □ the offender shall be punished by imprisonment of one to eight years.

(4) If the offence specified in paragraph 2 of this Article results in destruction or damage to animal and plant life to large extent or environmental pollution in such extent that cleanup requires longer period of time or great expense, the offender shall be punished by imprisonment of six months to five years. □

(5) If the court pronounces a suspended sentence for offences specified in paragraphs 1 through 4 of this Article, it may order the offender to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement.

Article 260 of the Serbian Criminal Code appears to be the most pertinent article in relation to the environment. Further articles on the environment and the failures to protect it are Articles 261, 262 and on the damaging of the environment Articles 263 and 264.

Slovakia: Trestný zákonník

TITLE TWO □ CRIMINAL OFFENCES AGAINST THE ENVIRONMENT

Endangering and Damaging the Environment

Section 300

(1) Any person who willfully creates the danger of smaller environmental damage by

violating generally binding legal environmental protection regulations or the rules of protection and management of natural resources including natural healing resources and natural resources of mineral table water shall be liable to a term of imprisonment of up to three years.

(2) Any person who unlawfully erects any building in a protected area shall be liable to a term of imprisonment of one to five years.

(3) The same sentence as referred to in paragraph 2 shall be imposed on the offender if he commits the offence referred to in paragraph 1 a) acting in a more serious manner, or b) in a protected area including protection zone of natural healing resources and natural resources of mineral table water.

(4) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1, and causes substantial environmental damage through its commission.

(5) The offender shall be liable to a term of imprisonment of four to ten years if he commits the offence referred to in paragraph 1, and causes large-scale environmental damage through its commission.

The abovementioned appears to be the most relevant Section in relation to the environment. Further articles on the environment, the damage inflicted upon it (terrorism included) are Section 301, 124, 126, 309 and 419.

Slovenia: Kazenski zakonik

CHAPTER THIRTY-TWO: CRIMINAL OFFENCES AGAINST THE ENVIRONMENT, SPACE AND NATURAL RESOURCES

Burdening and Destruction of Environment

Article 332

(1) Whoever endangers the life or health of a substantial number of people, or causes, in whole or in part, damage to, or the destruction of the environment, or causes the threat of such damage or destruction, by breaching regulations

1) or by any other general dangerous action releases or introduces dangerous substances or ionizing radiation into the air, soil or water,

2) processes, including the removal, storage, transport, export or import of waste, dangerous waste or other dangerous substances, or sending these illegally for profit,

3) manages a plant where a dangerous activity takes place or dangerous substances or preparations are stored which results in a threat to the area outside of the plant,

4) significantly degrades a protected habitat,

5) trades in or uses substances which cause ozone layer depletion,

6) causes an excessive pollution of environment, impair the environment or excessively exploits natural goods, shall be sentenced to imprisonment for not more than five years.

(2) If the offence under the preceding paragraph is committed through negligence, the perpetrator shall be punished by a fine or by an imprisonment of up to two years.

(3) If the offence under paragraphs 1 or 2 of this Article has as a consequence the impairment of health of a substantial number of people, the destruction, in whole or in part, of flora or fauna, or reservoirs of drinking water, or any other damage to the environment resulting in serious consequences, continuous pollution at a critical level or critical damage to the environment, the perpetrator shall be punished by imprisonment of up to eight years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be punished by imprisonment of up to three years.

(4) If the offence under paragraphs 1 or 2 of this Article results as a consequence in irreparable damage to, or destruction of the environment or protected natural resources, the perpetrator shall be punished by imprisonment of up to ten years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be punished by imprisonment of up to five years.

(5) If the offence under paragraphs 1 or 2 of this Article entails the death of one or more persons, the perpetrator shall be sentenced to imprisonment for not less than one and not more than twelve years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be sentenced to imprisonment for not less than one and not more than eight years.

(6) The same punishment as referred to in the preceding paragraph shall be imposed on a perpetrator who commits the offences referred to in the preceding paragraph as a member of a criminal association for the commission of such criminal offences.

This Article is the most crucial one in relation to the environment. Another Article on the environment is Article 318 on the damaging or destroying of public installations.

Ukraine: Кримінальний кодекс

CHAPTER VIII: CRIMINAL OFFENSES AGAINST ENVIRONMENT

Article 236

Violation of environmental safety rules

Violation of regulations on environmental assessment or environmental safety during designing, location, construction, reconstruction, putting into operation, operation, and closure of industrial plants, facilities, mobile units and other objects, where it caused death of people, or environmental pollution of large areas, or other grave consequences, -shall be punishable with imprisonment for a term of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Article 237

Failure to eliminate consequences of environmental pollution

This Article is the key Article, together with Article 237 in respect to the environment. Further Articles on the environment are Articles 238, 239, 239-1, 239-2, 240, 241, 242 and 253.

Russia: Уголовный кодекс Российской Федерации

CHAPTER 26. ENVIRONMENTAL CRIMES

Article 247

Violation of the Rules for Dealing with Environmentally Hazardous Substances and Waste

1. Production of illicit dangerous waste, transportation, storage, dumping, use, or any other circulation of radioactive, bacteriological, or chemical substances or waste, with a violation of fixed rules, if these acts have created a threat of infliction of substantial harm on human health or the environment, shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by restriction of liberty for a term of up to two years, or by compulsory labor for a term of up to two years, or by deprivation of liberty for the same term.

2. The same acts, which have involved the pollution, poisoning, or contamination of the environment, the infliction of harm to human health or mass-scale injury to animals, and likewise acts committed in a zone of ecological distress or in a zone of ecological emergency, shall be punishable with a fine in an amount of 100 thousand to 300 thousand rubles, or in the amount of a wage/salary or any other income of the convicted person for a period of one to two years, or with compulsory labor for a term of up to five years, or with deprivation of liberty for the same term.

3. Acts provided for by the first or second part of this Article, and entailing by negligence the death of a man or mass disease infection of people, shall be punishable by deprivation of liberty for a term of up to eight years.

The abovementioned appears to be the most pertinent Article in relation to the environment. Further articles on the environment and its pollution, violation thereof and justified risk are Articles 215, 246, 247, 252, 254 and 41.

6. Europe de l'Ouest

UNITED KINGDOM

The United Kingdom environment agency operates a website that describes regulatory controls in the UK (available at <http://www.environment-agency.gov.uk/business/regulation/31851.aspx>). In general, the approach to environmental law in the U.K. seems to be civil rather than criminal. For additional information, the government of the United Kingdom also provides a search database for law that returns over 200 results to an inquiry on the theme « environment » on its website (available at <http://www.legislation.gov.uk/all?theme=environment>). A sample of the legislation from this search engine follows:

- Climate Change Act 2008 2008 c. 27 UK Public General Acts
- Natural Environment and Rural Communities Act 2006 2006 c. 16 UK Public General Acts
- Clean Neighbourhoods and Environment Act 2005 2005 c. 16 UK Public General Acts
- Countryside and Rights of Way Act 2000 2000 c. 37 UK Public General Acts
- Wildlife and Countryside (Amendment) Act 1991 1991 c. 39 UK Public General Acts
- Environmental Protection Act 1990 1990 c. 43 UK Public General Acts
- Wildlife and Countryside (Amendment) Act 1985 1985 c. 31 UK Public General Acts
- Wildlife and Countryside Act 1981 1981 c. 69 UK Public General Acts
- Control of Pollution Act 1974 1974 c. 40 UK Public General Acts
- The Grey Squirrels (Prohibition of Importation and Keeping) Order, 1937 1937 No. 478 UK Statutory Rules and Orders
- The Musk Rats (Prohibition of Importation and Keeping) Order, 1933 1933 No. 106 UK Statutory Rules and Orders
- The Carbon Budget Order 2011 2011 No. 1603 UK Statutory Instruments
- The Climate Change Act 2008 (Credit Limit) Order 2011 2011 No. 1602 UK Statutory Instruments
- The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 2011 No. 1543 UK Statutory Instruments
- The Energy Information Regulations 2011 2011 No. 1524 UK Statutory Instruments
- The Greenhouse Gas Emissions Trading Scheme (Nitrous Oxide) Regulations 2011 2011 No. 1506 UK Statutory Instruments
- The Waste (England and Wales) Regulations 2011 2011 No. 988 UK Statutory Instruments
- The Aviation Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2011 2011 No. 765 UK Statutory Instruments
- The Greenhouse Gas Emissions Trading Scheme (Amendment) (Fees) and National Emissions Inventory Regulations 2011 2011 No. 727 UK Statutory Instruments
- The Smoke Control Areas (Exempted Fireplaces) (England) Order 2011 2011 No. 714 UK Statutory Instruments

7. Oceania

AUSTRALIA

The Australian Institute of Criminology (« AIC ») is described on its website as « Australia's national research and knowledge centre on crime and justice” as established in 1973 under the Criminology Research Act of 1971 (http://www.aic.gov.au/about_aic.html). The AIC provides an executive summary of Australian criminal environmental law on its website at <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp109/04.html> . It offers the following:

« Environmental crime is the perpetration of harms against the environment that violate current law. The term environmental harm is often interchanged with environmental crime and, for some, any activity that has a deleterious effect on the environment is considered an environmental crime. At the other end of the spectrum, the harm may be conceived of as a crime per se only if it is subject to criminal prosecution and criminal sanction.

The activities that are recognised in Australia as environmental crimes include:

- pollution or other contamination of air, land and water;
- illegal discharge and dumping of, or trade in, hazardous and other regulated waste;
- illegal trade in ozone-depleting substances;
- illegal, unregulated and unreported (IUU) fishing;
- illegal trade in (protected) flora and fauna and harms to biodiversity;
- illegal logging and timber trade;
- illegal native vegetation clearance; and
- water theft.

Compared with other crimes, environmental crime has taken longer to be accepted as a genuine category of crime. Changing perceptions about the vulnerability of the environment, particularly with respect to long-term outcomes of environmentally harmful practices, has altered this view to the extent that most behaviour with a potential environmental consequence is now tightly regulated. »

IV. Affaires

A. Juridictions nationales

Source :	Brésil TSJ-B, Deuxième chambre, (Arrêt) 24 mai 2011, <i>Entreprise minière Santa Vitória do Palmar Ltda</i> , Recours spécial n° 1.238.089, RS (2011/0036074-5)
Faits :	Il s'agit d'un appel interjeté par le requérant contre la décision de l' <i>ad quo</i> concernant le retrait de la licence d'exploitation minière, basée sur son danger potentiel et le risque de nuire à l'environnement. Le TSJ-B analyse l'équilibre entre l'intérêt particulier et l'intérêt public en matière environnementale (p. 3).
Valeur	« ... l'intérêt public dans l'existence d'un environnement durable et dans la dignité

protégée :	humaine des générations présentes et futures », pp. 1, 4, 7, 8, 10. Notion de patrimoine environnemental dans la Constitution (art. 88): «concept trans-temporel qui se révèle, en prenant l’aujourd’hui, le hier et de demain », comme un héritage du passé, qui, en passant par la présente, est destiné à être offert aux futurs hôtes de la planète. Dans cette perspective, un <i>environnement sain</i> laisse d’être un droit des générations présentes pour se transformer dans un devoir de conservation au service des générations futures, ce qui exige aux juristes d’adopter des mesures de protection contre la destruction de l’environnement. Ceci parce que le droit de l’environnement est le lien entre toutes les formes de vie de la planète et le besoin de l’homme pour progresser / évoluer » pp. 8-9.
Sujet mis en cause :	Personne morale : privée
Infractions envisagées :	Exploitation illicite de ressources naturelles...
Éléments matériels :	Exploitation nuisible
Élément psychologique (<i>mens rea</i>)	N/A
Élément contextuel	N/A
Qualification envisagée :	N/A
Juridiction compétente	National aux plus au niveau étatique (non fédéral)
Type de sanction :	Suspension de la licence d’exploitation
Varia :	Le Tribunal Supérieur de Justice de la 4 ^{ème} région, a mis en exergues le fait que « la Constitution de 1988, la Loi des Crimes contre l’environnement, la Politique nationale de l’environnement et la législation pertinente, visent en priorité absolue, la préservation de l’environnement » (para. 4).
Source :	Equateur CPJS-E, Chamber (Judgment) 14 February 2011, <i>María Aguinda et al v. Chevron Corporation</i> , No. 002-2003
Facts:	The plaintiffs alleged severe environmental contamination of the land where Texaco conducted its oil operation activities. According to the claim, this contamination has led to increased rates of cancer as well as other serious health problems for the residents of the region. (p. 98, 133).
Protected principles:	Balance between environment, human life and ecosystem (pp. 98, 119, 128, 147) The Court has established Thus, the lack of rules or parameters governing the discharges of hazardous substances into the environment in any way meant no implicit license to pour them: “ <i>De este modo, la falta de reglamentos o parámetros que regulen los vertimientos de Cromo VI al ambiente, no significaba de modo alguno una autorización implícita para verter esta sustancia peligrosa al ambiente</i> ” (p. 99)
Defendant :	Multinational Corporations (Chevron Corporation & Texaco Corporation)
Infractions envisagées :	Civil lawsuit
Material	N/A

elements :	
<i>mens rea</i>	N/A
Elément contextuel	N/A
Qualification envisagée :	N/A
Juridiction compétente	National jurisdiction: Provincial Court of Justice of Sucumbios (Ecuador) International procedure were engaged too.
Type de sanction :	Principal measures of compensation looking back the nature to its initial state (p. 177) Complementary measures: compensation and mitigation of damages. Economic valuation of damages : U\$8.6 billion in damages and clean up costs, with the damages increasing to U\$18 billion if Chevron does not issue a public apology (pp. 178-184) Freezing of funds: CPJS-E, Presidency (Order) 15 October 2012, <i>María Aguinda et al v. Chevron Corporation</i> , Proceeding No. 21100-2003-0002
Varia :	Detailed sources are available in : http://www.business-humanrights.org/LegalPortal/Home/Company/T
Source :	United States
Faits :	U.S. Supreme Court, <i>Kiobel v. Royal Dutch Petroleum Co.</i> , 133 S.Ct. 1659 (2013). « Nigerian nationals residing in United States sued Dutch, British, and Nigerian corporations pursuant to Alien Tort Statute (ATS), alleging that corporations aided and abetted Nigerian government in committing violations of the law of nations in Nigeria. The United States District Court for the Southern District of New York, Kimba M. Wood, J., 456 F.Supp.2d 457, dismissed claims in part and certified order for interlocutory appeal. Parties cross-appealed. The Court of Appeals for the Second Circuit, Cabranes, Circuit Judge, 621 F.3d 111, affirmed in part and reversed in part, dismissing entire complaint. Certiorari was granted. » (Westlaw Synopsis)
Valeur protégée :	« The Supreme Court, Chief Justice Roberts, held that: [1] principles underlying presumption against extraterritoriality constrain courts exercising their power under ATS, and [2] ATS did not apply to violations of the law of nations occurring within territory of sovereign other than United States. » (Westlaw Synopsis)
Sujet mis en cause :	Dutch, British, and Nigerian corporations
Infractions envisagées :	Violations of the « Law of Nations » within Nigeria
Eléments matériels :	N/A (specific to statutory construction of the ATS to determine whether the ATS provides extraterritorial jurisdiction in the U.S. for violations of international law).
Elément psychologique (mens rea)	N/A
Elément contextuel	N/A
Qualification envisagée :	N/A
Juridiction compétente	Domestic Law
Type de sanction :	N/A
Varia :	N/A

Source :	United States United States District Court, C.D. California, <i>Sarei v. Río Tinto PLC.</i> , July 9, 2002, No. CIV.00-11695 MMM.
Facts:	“This appeal presents questions of justiciability and exhaustion in the context of the Alien Tort Claims Act, 28 U.S.C. § 1350 (“ATCA”). Plaintiffs are current or former residents of Bougainville, Papua New Guinea (“PNG”), who allege that they or their family members were the victims of numerous violations of international law as a result of defendant mining corporation Rio Tinto, PLC’s (“Rio Tinto”) Bougainville mining operations and the 10-year civil conflict that followed an uprising at the Rio Tinto mine. The plaintiffs appeal the district court’s dismissal of their lawsuit seeking redress under the ATCA, which provides that “[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350.” (Opinion, Fisher, Circuit Judge)
Valeur protégée :	The environment (United Nations Convention on the Law Of the Sea (UNCLOS), even if not ratified by the US: Art.194: measures to prevent, reduce, and monitor contamination of the marine environment; Art. 207: contamination deriving from terrestrial sources) Violation of the principle of sustainable Human rights, notably the right to health and life
Sujet mis en cause :	Rio Tinto PLC and Rio Tinto Limited
Infractions envisagées :	War crimes Crimes against humanity Violation of the rights to health, life, and security of the person Cruel, inhuman, and degrading treatment International environmental violations
Éléments matériels :	N/A
Mens rea	N/A
Élément contextuel	N/A
Qualification envisagée :	N/A
Jurisdiction compétente	United States Court Of Appeals For The Ninth Circuit
Type de sanction :	N/A
Varia :	For the first time, a US federal court ruled that an environmental norm could be the basis for admissibility under the ATCA, by consideration as a customary law : “As for the UNCLOS claim, the treaty has been ratified by at least 149 nations, which is sufficient for it to codify customary international law that can provide the basis of an ATCA claim” (II A 3) Main issue dealt with by the court: the exhaustion of domestic resources before allowing a recourse to US courts . The necessity of such requirement was <u>rejected for certain charges</u> (crimes against humanity, genocide, war crimes, and racial discrimination), but not for the others, including <u>violation of the UNCLOS</u> , which was considered to lack the same degree of seriousness as the others. The claimants

therefore dropped this particular claim in following proceedings.

Source :	Nigeria DCH-N, Commercial team (Judgment), 30 January 2013, <i>Friday Alfred Akpan v. Royal Dutch Shell PLC & Shell Petroleum Development Company of Nigeria LTD</i> , case number: C/09/337050 / HA ZA 09-1580.
Facts:	This claim address the impact of oil spillages that occurred in 2006 and 2007 near Ikot Ada Udo in Akwa Ibom State in Nigeria. Allegedly, the oil flowed into plaintiffs' farmland and fishponds, polluting it and making it unfit for use. With regard to the allegations of negligence, the suit argues that Shell Nigeria acted negligently by allowing the oil spill to occur, or at least it did not prevent or limit it, and did not adequately clear the oil. Plaintiffs also allege that Shell PLC (the parent company) was negligent because it did not ensure that its subsidiary carried out oil production in Nigeria in a careful manner, although it was able and obligated to do so. (pp. 2-8).
Protected principles:	Tort of negligence under Nigerian law (p. 9)
Defendant :	Multinational Corporations (RDS: Royal Dutch Shell PLC & SPDC Shell Petroleum Development Company of Nigeria LTD)
Incriminations :	Comercial lawsuit
Material elements :	N/A
<i>mens rea</i>	N/A
Contextual element	N/A
Qualification	N/A
Compentent Jurisdiction	National jurisdiction of the home state: District Court of The Hague (The Netherlands) Other two lawsuits make similar claims regarding oil spillages in Goi and Oruma.
Sanction :	The Court dismissed all the claims initiated against Royal Dutch Shell, the parent company in The Hague, under the argument of lack of proximity and specific duty of care. This lack of duty suppose that the paarent company did not commit any tort of negligence against the plainfits (para. 4.34, p. 19) Nevertheless, the requirement of proximity was satisfied to find that, under the specific circumstances of the case, Shell Petroleum Development Company of Nigeria (SPDC) should have foreseen this obvious risk of sabotage and should have taken more and better preventive measures against this risk (para. 4-43, p. 22). Subsequently, the Court : " <i>renders a declaratory judgment to the effect that under Nigerian law, SPDC committed a specific tort of negligence against Akpan by insufficiently securing the wellhead of the IBIBIO-I well prior to the two oil spills in 2006 and 2007 near Ikot Ada Udo in Nigeria at issue in these proceedings against the sabotage that was committed at that time in an easy manner, and orders SPDC to compensate Akpan for the damage he suffered as a result, to be assessed by the court and to be settled in conformance with the law</i> " (para. 5.1, p. 28)
Varia :	Detailed sources are available in : http://www.business-humanrights.org/LegalPortal/Home/Company/S

B. Juridictions internationales

Source :	IACtHR (Merits) 3 April 2009, <i>Káwas Fernández vs. Honduras</i>.
Facts:	“Blanca Jeannette Kawas was a well-known Honduran defender of the environment who promoted the protection of her country’s natural resources, principally in Tela, an area located on the Atlantic coast of Honduras”. In this capacity, she was murdered on February 6, 1995. The representatives reiterated that the death of Mrs. Kawas-Fernández “was particularly symbolic, because she was the first person murdered in Honduras for defending natural resources and the environment. After her murder, and owing to the impunity that characterized it, a series of murders of other defenders of the environment in Honduras occurred”. (para. 5)
Valeur protégée :	Duty to respect and guarantee the right to life (Article 4(1) of the Convention), in accordance with Article 1(1) of the American Convention (to respect and guarantee the human rights protected under such instrument) (paras. 96, 97).
Sujet mis en cause :	State of Honduras
Infractions envisagées :	International State responsibility (paras. 156, 157)
Éléments matériels :	N/A
<i>Mens rea</i>	N/A
Élément contextuel	N/A
Qualification envisagée :	N/A
Juridiction compétente	International of Human Rights
Type de sanction :	Responsibility to redress for material and immaterial damages. (para. 227) : compensation for pecuniary and nonpecuniary damage and reimbursement of costs and expenses (para. 227-7); The State shall have a period of two years to construct a monument in memoriam of Blanca Jeannette Kawas-Fernández, and to mount up signs at the national park named after her (para. 206). The State shall have a period of two years to carry out a national awareness and sensitivity campaign regarding the importance of the work performed by environmentalists in Honduras and their contribution to the defense of human rights (para. 214).
Varia :	The relevance of this case law is in the statement of the Court that seems to allow the environmental lawsuit under the American Convention of Human Rights: “ <i>there is an undeniable link between the protection of the environment and the enjoyment of other human rights</i> ” (para. 148). Nevertheless, the main subject of the Convention remains the human victims at risk: “ <i>The recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.</i> ” (para. 149)
Source :	ICJ, <i>Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)</i>, Judgment of 20 April 2010.
Faits :	Description of Facts from the Judgment : « On 4 May 2006, the Argentine Republic (hereinafter “Argentina”) filed in the Registry of the Court an Application instituting proceedings against the Eastern Republic of Uruguay (hereinafter “Uruguay”) in respect of a dispute concerning the breach, allegedly committed by Uruguay, of obligations under the Statute of the River Uruguay (United Nations, Treaty Series (UNTS), Vol. 1295, No. I-21425, p. 340), a treaty signed by Argentina and Uruguay

	at Salto (Uruguay) on 26 February 1975 and having entered into force on 18 September 1976 (hereinafter the “1975 Statute”) ; in the Application, Argentina stated that this breach arose out of “the authorization, construction and future commissioning of two pulp mills on the River Uruguay”, with reference in particular to “the effects of such activities on the quality of the waters of the River Uruguay and on the areas affected by the river.” » (Judgment p. 25).
Valeur protégée :	The Court held that « the Eastern Republic of Uruguay has breached its procedural obligations under Articles 7 to 12 of the 1975 Statute of the River Uruguay and that the declaration by the Court of this breach constitutes appropriate satisfaction » (Judgment p. 106). Although the dispute arose under a bilateral treaty, it may be important for the development of an international crime of ecocide that « The Court considers that its finding of wrongful conduct by Uruguay in respect of its procedural obligations per se constitutes a measure of satisfaction for Argentina. » (Judgment p. 92).
Sujet mis en cause :	Transnational river pollution contrary to international treaty.
Infractions envisagées :	Contravention of international treaty
Éléments matériels :	Specific to Terms of Treaty
Élément psychologique (<i>mens rea</i>)	N/A
Élément contextuel	N/A
Qualification envisagée :	International Environmental Treaty
Jurisdiction compétente	International Court of Justice
Type de sanction :	ICJ Condemnation of Uruguayan action.
Varia :	N/A
Source :	ICJ, <i>Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)</i> , Written proceedings, 9 May 2011 (Memorial of Australia and Contre-Memorial of Japan), Available at: http://www.icj-cij.org/docket/index.php?p1=3&p2=1&case=148&code=aj&p3=1
Faits :	The Australian Memorial alleges the following facts : « Notwithstanding Japan’s acceptance in 1986 of the moratorium on commercial whaling, it was determined to continue its whaling activities by one means or another. Its purported means of doing so was, and remains, the use of special permits “for purposes of scientific research” authorising large-scale takes of minke whales in the Southern Ocean allegedly issued in reliance upon Article VIII of the ICRW. It was no coincidence that Japan only started to issue special permits authorising large-scale so-called “scientific whaling” immediately after the moratorium on whaling for commercial purposes came into effect for Japan’s pelagic (deep sea) whaling operations in May 1987. The Japanese Whale Research Program under Special Permit in the Antarctic (“JARPA”) was commenced during the next whaling season. The permits issued to give effect to JARPA were but a ruse to enable the continuation of whaling by Japan. Japan terminated JARPA in 2005 and then commenced immediately the much larger Japanese Whale Research Program under Special Permit in the Antarctic Phase II (“JARPA II”) which is the subject of these proceedings. Not only does that program envisage the taking of double the number of minke whales than taken under JARPA, it also envisages the taking of humpback and fin whales and it has no defined end date. Furthermore, Japan commenced JARPA II despite the absence of a proper

review of the immediately preceding JARPA and in the face of 20 years of sustained criticism of JARPA from both within and outside the IWC. That criticism focused in particular on the complete absence of a need for lethal whaling to achieve the posited objectives of JARPA. Yet this unnecessary lethal whaling is the *raison d'être* of its successor, JARPA II. (Memorial of Australia, p. 2-3).

Valeur protégée : **Australia :** « In this *Memorial*, Australia will establish that Japan's whaling under JARPA II, and hence any special permit whaling of a similar kind carried out by Japan, is contrary to Japan's obligations under international law. The focus of Australia's case is Japan's failure to comply with its obligations under the ICRW, and, in particular, its obligation not to kill whales for commercial purposes and its obligation not to conduct commercial whaling for fin and humpback whales in the Southern Ocean Sanctuary. » (Memorial of Australia, p. 3).

Japan : Based on the above, in this Counter-Memorial, Japan will show that JARPA II is a legitimate scientific programme, permitted under Article VIII of the ICRW. JARPA II's objectives and methods, together with its valuable scientific outputs designed to contribute to the working of the International Whaling Commission (IWC) and its Scientific Committee, are fully consistent with the text as well as with the object and purpose of the ICRW." (Counter-Memorial of Japan, p. 4).

New Zealand : New Zealand argues for an interpretation of the treaty that requires "meaningful cooperation" so that scientific whaling does not meaningfully reduce the whale population; its primary purpose is outlined in the introduction to its written observations: "In accordance with the Order of the Court, New Zealand's intervention is confined to observations on the construction of the convention at issue in the proceedings, and does not deal with any other aspect of the case before the Court." (Written Observations of New Zealand, p. 1).

Sujet mis en cause : State Signatories in Dispute over the terms of the International Convention for the Regulation of Whaling
Infractions envisagées : Whaling
Éléments matériels : Specific to Terms of Treaty and Interpretation of Appropriate Scope of Scientific Exception to Whaling Ban
Élément psychologique (*mens rea*) : Not applicable
Élément contextuel : N/A
Qualification envisagée : International Environmental Treaty
Juridiction compétente : International Court of Justice
Type de sanction : Potential ICJ Condemnation of Japanese whaling and non-binding order to cease such whaling.
Varia : N/A

V. Liste d'experts

Expert	Adresse de contact	Etat du contact
Liliana Juc Environmental Security Sub-Directorate (ENS) INTERPOL General	l.juc@interpol.int (contact confidentiel)	Questionnaire envoyé par M. Garin et L. Neyret. Négociations pour entretien en personne en cours.

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Langues : Français, Anglais

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Questionnaire envoyé par J.
Pham. Relancé le 6-10-2013.
En attente de réponse.
Langue : Anglais, Allemand

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Questionnaire envoyé par R.
Estupinan-Silva. Relancé 26-
11-2013. En attente de
réponse.
Langues : Espagnol, Anglais

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Questionnaire envoyé par R.
Estupinan-Silva. Relancé 26-
11-2013.
Réponse : 26-11-2013. En
annexe.
Langue : Espagnol

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Questionnaire envoyé par M.
Garin. Discussion relancée le
7-11-2013. En attente de
réponse.
Langue : Français

VI. Annexes

- A. Annexe 1. Codes pénaux de l'Amérique centrale et caraïbes**
- B. Annexe 2. Codes pénaux de l'Europe de l'Est**
- C. Annexe 3. Entretien à Antonio Gomez (Procureur argentin)**

ANNEXE 1. Droit pénal : Amérique centrale et caraïbes**MEXIQUE:**

Code Pénal Fédéral, 1931, réformé en 2010

http://www.wipo.int/wipolex/fr/text.jsp?file_id=199696 (17/11/13)

TITULO VIGESIMO QUINTO - Delitos Contra el Ambiente y la Gestión Ambiental**CAPITULO PRIMERO****De las actividades tecnológicas y peligrosas**

Art. 414.- *Se impondrá pena de uno a nueve años de prisión y de trescientos a tres mil días multa al que ilícitamente, o sin aplicar las medidas de prevención o seguridad, realice actividades de producción, almacenamiento, tráfico, importación o exportación, transporte, abandono, desecho, descarga, o realice cualquier otra actividad con sustancias consideradas peligrosas por sus características corrosivas, reactivas, explosivas, tóxicas, inflamables, radioactivas u otras análogas, lo ordene o autorice, que cause un daño a los recursos naturales, a la flora, a la fauna, a los ecosistemas, a la calidad del agua, al suelo, al subsuelo o al ambiente.*

La misma pena se aplicará a quien ilícitamente realice las conductas con las sustancias enunciadas en el párrafo anterior, o con sustancias agotadoras de la capa de ozono y cause un riesgo de daño a los recursos naturales, a la flora, a la fauna, a los ecosistemas, a la calidad del agua o al ambiente.

En el caso de que las actividades a que se refieren los párrafos anteriores, se lleven a cabo en un área natural protegida, la pena de prisión se incrementará hasta en tres años y la pena económica hasta en mil días multa, a excepción de las actividades realizadas con sustancias agotadoras de la capa de ozono.

- **Une peine d'un à neuf ans de prison et de trois cent à trois mille jours-amendes sera imposée à celui qui, illégalement, ou sans appliquer les mesures de prévention et de sécurité, réalise des activités de production, stockage, trafic, importation ou exportation, transport, abandon, rejet, déchargement, ou réalise n'importe quelle autre activité avec des substances considérées dangereuses du fait de leurs caractéristiques corrosives, réactives, explosives, toxiques, inflammables, radioactives ou analogues, ou ordonne ou autorise de telles activités, qui causent un dommages aux ressources naturelles, à la flore, à la faune, aux écosystèmes, à la qualité de l'eau, du sol, du sous-sol ou de l'environnement.**

La même peine s'appliquera à qui réalise de manière illégale ces conduites avec les substances énoncées dans le paragraphe précédent, ou avec des substances nocives pour la couche d'ozone, et causant un risque de dommage aux ressources naturelles, à la flore, à la faune, aux écosystèmes, à la qualité de l'eau ou de l'environnement.

Dans le cas où les activités auxquelles se réfèrent les paragraphes précédents prendraient place dans une aire naturelle protégée, la peine de prison pourra être augmentée de trois ans et la peine économique de mille jours-amendes, à l'exception des activités réalisées avec des substances nocives pour la couche d'ozone.

Art. 415.- *Se impondrá pena de uno a nueve años de prisión y de trescientos a tres mil días multa, a quien sin aplicar las medidas de prevención o seguridad:*

I. Emita, despida, descargue en la atmósfera, lo autorice u ordene, gases, humos, polvos o contaminantes que ocasionen daños a los recursos naturales, a la fauna, a la flora, a los ecosistemas o al ambiente (...)

II. Genere emisiones de ruido, vibraciones, energía térmica o lumínica (...) que ocasionen daños a los recursos naturales, a la flora, a la fauna, a los ecosistemas o al ambiente.

Las mismas penas se aplicarán a quien ilícitamente lleve a cabo las actividades descritas en las fracciones anteriores, que ocasionen un riesgo a los recursos naturales, a la flora, a la fauna, a los ecosistemas o al ambiente.

En el caso de que las actividades a que se refiere el presente artículo se lleven a cabo en un área natural protegida, la pena de prisión se incrementará hasta en tres años y la pena económica hasta en mil días multa.

- **Une peine d'un à neuf ans de prison et de trois cent à trois mille jours-amendes sera imposée à celui qui, sans appliquer les mesures de prévention et de sécurité :
Emet, rejette, décharge dans l'atmosphère, l'autorise ou l'ordonne, des gaz, fumées, poussières, polluants, qui occasionnent des dommages aux ressources naturelles, à la flore, à la faune, aux écosystèmes, ou à l'environnement
Génère des émissions de bruit, vibrations, énergie thermique ou lumineuse (...) qui occasionnent des dommages aux ressources naturelles, à la flore, à la faune, aux écosystèmes, ou à l'environnement
Dans le cas où les activités auxquelles se réfère le présent article prendraient place dans une aire naturelle protégée, la peine de prison pourra être augmentée jusqu'à trois ans et la peine économique jusqu'à mille jours-amendes.**

Art. 416.- Se impondrá pena de uno a nueve años de prisión y de trescientos a tres mil días multa, al que ilícitamente descargue, deposite, o infiltre, lo autorice u ordene, aguas residuales, líquidos químicos o bioquímicos, desechos o contaminantes en los suelos, subsuelos, aguas marinas, ríos, cuencas, vasos o demás depósitos o corrientes de agua de competencia federal, que cause un riesgo de daño o dañe a los recursos naturales, a la flora, a la fauna, a la calidad del agua, a los ecosistemas o al ambiente.

Quando se trate de aguas que se encuentren depositadas, fluyan en o hacia una área natural protegida, la prisión se elevará hasta tres años más y la pena económica hasta mil días multa.

- **Une peine d'un à neuf ans de prison et de trois cent à trois mille jours-amendes sera imposée à celui qui, illégalement, décharge, dépose ou infiltre, ou l'autorise ou l'ordonne, des eaux contaminées, des liquides chimiques ou biochimiques, des déchets ou polluants dans les sols, sous-sols, eaux marines, rivières, bassins, mares ou autres points d'eau ou eaux courantes sous juridiction fédérale, endommageant ou risquant d'endommager les ressources naturelles, la flore, la faune, les écosystèmes, ou l'environnement.
Quand les eaux en question stagnent, s'écoulent dans ou vers une aire naturelle protégée, la peine de prison pourra être augmentée jusqu'à trois ans et la peine économique jusqu'à mille jours-amendes.**

CAPÍTULO SEGUNDO

De la biodiversidad

Art. 417.- Se impondrá pena de uno a nueve años de prisión y de trescientos a tres mil días multa, al que introduzca al territorio nacional, o trafique con recursos forestales, flora o fauna silvestre viva o muerta, sus productos o derivados, que porten, padezcan o hayan padecido, según corresponda

alguna enfermedad contagiosa, que ocasione o pueda ocasionar su diseminación o propagación o el contagio a la flora, a la fauna, a los recursos forestales o a los ecosistemas.

- **Une peine d'un à neuf ans de prison et de trois cent à trois mille jours-amendes sera imposée à celui qui introduit dans le territoire national, ou organise un trafic de ressources des forêts, de la flore ou de la faune sylvestre vivante ou morte, leurs produits et dérivés, qui véhiculent, subissent ou ont subi une quelconque maladie contagieuse, occasionnant ou pouvant occasionner sa dissémination ou sa propagation ou la contamination de la flore, de la faune, des ressources sylvestre ou des écosystèmes.**

Art. 418.- Se impondrá pena de seis meses a nueve años de prisión y por equivalente de cien a tres mil días multa, siempre que dichas actividades no se realicen en zonas urbanas, al que ilícitamente:

I. Desmante o destruya la vegetación natural;

II. Corte, arranque, derribe o tale algún o algunos árboles, o

III. Cambie el uso del suelo forestal.

La pena de prisión deberá aumentarse hasta en tres años más y la pena económica hasta en mil días multa, para el caso en el que las conductas referidas en las fracciones del primer párrafo del presente artículo afecten un área natural protegida.

- ⇒ **Une peine de six mois à neuf ans de prison et de cent à trois mille jours-amendes sera imposée, tant que ces activités ne sont pas réalisées en zone urbaines, à celui qui, illégalement:**

Déboise ou détruit la végétation naturelle ;

Coupe, déracine, abat, ou taille un ou des arbres, ou

Perturbe l'usage du sol de la forêt.

La peine de prison devra être augmentée de trois ans et la peine économique de mille jours-amendes dans le cas où les activités auxquelles se réfère le présent paragraphe affectent une aire naturelle protégée.

Art. 419.- A quien ilícitamente transporte, comercie, acopie, almacene o transforme madera en rollo, astillas, carbón vegetal, así como cualquier otro recurso forestal maderable, o tierra procedente de suelos forestales (...) se impondrá pena de uno a nueve años de prisión y de trescientos a tres mil días multa. (...)

La pena privativa de la libertad a la que se hace referencia en el párrafo anterior se incrementará hasta en tres años más de prisión y la pena económica hasta en mil días multa, cuando los recursos forestales maderables provengan de un área natural protegida.

- **A qui, illégalement, transporte, commercialise, stocke, transforme le bois ou la terre provenant des terres de la forêt, sera imposée une peine d'un à neuf ans de prison et de trois cent à trois mille jours-amendes (...). La peine privative de liberté pourra être augmentée jusqu'à trois ans et la peine économique jusqu'à mille jours-amendes dans le cas où les ressources concernées par les activités auxquelles se réfère le paragraphe antérieur proviendraient d'une aire naturelle protégée.**

Art. 420.- Se impondrá pena de uno a nueve años de prisión y por el equivalente de trescientos a tres mil días multa, a quien ilícitamente:

I. Capture, dañe o prive de la vida a algún ejemplar de tortuga o mamífero marino, o recolecte o almacene de cualquier forma sus productos o subproductos;

II. Capture, transforme, acopie, transporte o dañe ejemplares de especies acuáticas declaradas en veda; (...)

III. Realice actividades de caza, pesca o captura con un medio no permitido, de algún ejemplar de una especie de fauna silvestre, o ponga en riesgo la viabilidad biológica de una población o especie silvestres;

IV. Realice cualquier actividad con fines de tráfico, o capture, posea, transporte, acopie, introduzca al país o extraiga del mismo, algún ejemplar, sus productos o subproductos y demás recursos genéticos, de una especie de flora o fauna silvestres, terrestres o acuáticas en veda, considerada endémica, amenazada, en peligro de extinción, sujeta a protección especial, o regulada por algún tratado internacional del que México sea parte, o

V. Dañe algún ejemplar de las especies de flora o fauna silvestres, terrestres o acuáticas señaladas en la fracción anterior.

Se aplicará una pena adicional hasta de tres años más de prisión y hasta mil días multa adicionales, cuando las conductas descritas en el presente artículo se realicen en o afecten un área natural protegida, o cuando se realicen con fines comerciales.

➤ **Une peine de six mois à neuf ans de prison et de cent à trois mille jours-amendes sera imposée, à celui qui, illégalement :**

I. Capture, blesse ou tue un spécimen de tortue ou autre mammifère marin, ou collecte ou stocke de quelque manière ses produits et dérivés ;

II. Capture, transforme, stocke, transporte ou dégrade des spécimens d'espèces aquatiques menacées ;

III. Réalise des activités de chasse, de pêche ou de capture par un moyen non autorisé, d'un spécimen d'une espèce de faune sylvestre, ou met en danger la viabilité écologique d'une population ou d'une espèce sylvestre ;

IV. Réalise n'importe quelle activité à des fins de trafic ou de capture, possession, transport, stockage, introduction ou extraction, d'un spécimen, de ses produits et de ses dérivés et autres ressources génétiques, d'une espèce de la flore ou de la faune sylvestre, terrestre ou aquatique, considérée comme endémique, menacée, en voie d'extinction, sujette à une protection spéciale, ou régulée par un quelconque traité international auquel le Mexique appartiendrait, ou

V. Endommage un spécimen des espèces de la flore ou de la faune sylvestre, terrestre ou aquatique signalée dans la section précédente.

La peine de prison devra être augmentée de trois ans et la peine économique de mille jours-amendes dans le cas où les conduites décrites dans le présent article seraient réalisées ou affecteraient une aire naturelle protégée, ou seraient réalisées à des fins commerciales.

Art. 420 Bis.- Se impondrá pena de dos a diez años de prisión y por el equivalente de trescientos a tres mil días multa, a quien ilícitamente:

I. Dañe, deseque o rellene humedales, manglares, lagunas, esteros o pantanos;

II. Dañe arrecifes;

III. Introduzca o libere en el medio natural, algún ejemplar de flora o fauna exótica que perjudique a un ecosistema, o que dificulte, altere o afecte las especies nativas o migratorias en los ciclos naturales de su reproducción o migración, o

IV. Provoque un incendio en un bosque, selva, vegetación natural o terrenos forestales, que dañe elementos naturales, flora, fauna, los ecosistemas o al ambiente.

Se aplicará una pena adicional hasta de dos años de prisión y hasta mil días multa adicionales, cuando las conductas descritas en el presente artículo se realicen en o afecten un área natural protegida, o el autor o partícipe del delito previsto en la fracción IV, realice la conducta para obtener un lucro o beneficio económico.

- **Une peine de six mois à neuf ans de prison et de cent à trois mille jours-amendes sera imposée, à celui qui, illégalement :**

I. Endommagement, assèche ou inonde des zones humides, mangroves, lagunes, lacs ou marécages ;

II. Endommagement des récifs ;

III. Introduit ou libère dans le milieu naturel n'importe quel spécimen de la flore ou de la faune exotique qui cause préjudice à l'écosystème, ou qui met en difficulté, alète ou affecte les espèces natives ou migratoires dans les cycles naturels de leur reproduction ou migration ;

IV. Provoque un incendie dans un bois, dans une forêt, dans la végétation naturelle ou des terrains forestiers, qui endommage des éléments naturels, la flore, la faune, les écosystèmes ou l'environnement.

Une peine supplémentaire de jusqu'à deux ans de prison et de jusqu'à mille jours-amendes sera appliquée dans le cas où les conduites décrites dans le présent article seraient réalisées ou affecteraient une aire naturelle protégée, ou quand l'auteur ou le participant au délit prévu dans la section IV. Réalise la dite conduite à des fins lucratives.

CAPÍTULO TERCERO

De la bioseguridad

Art. 420 Ter.- Se impondrá pena de uno a nueve años de prisión y de trescientos a tres mil días multa, a quien en contravención a lo establecido en la normatividad aplicable, introduzca al país, o extraiga del mismo, comercie, transporte, almacene o libere al ambiente, algún organismo genéticamente modificado que altere o pueda alterar negativamente los componentes, la estructura o el funcionamiento de los ecosistemas naturales.

- **Une peine de six mois à neuf ans de prison et de cent à trois mille jours-amendes sera imposée, à celui qui, contrevenant aux principes établis par les normes applicables, introduits dans le pays ou en en extrait, commercialise, transporte, stocke ou libère dans l'environnement n'importe quel organisme génétiquement modifié qui altère ou pourrait altérer négativement les composants, la structure ou le fonctionnement des écosystèmes naturels. (...)**

CAPÍTULO CUARTO

Delitos contra la gestión ambiental

Art. 420 Quater.- Se impondrá pena de uno a cuatro años de prisión y de trescientos a tres mil días multa, a quien:

I. Transporte o consienta, autorice u ordene que se transporte, cualquier residuo considerado como peligroso por sus características corrosivas, reactivas, explosivas, tóxicas, inflamables, biológico infecciosas o radioactivas, a un destino para el que no se tenga autorización para recibirlo, almacenarlo, desecharlo o abandonarlo; (...)

V. No realice o cumpla las medidas técnicas, correctivas o de seguridad necesarias para evitar un daño o riesgo ambiental que la autoridad administrativa o judicial le ordene o imponga. (...)

- **Une peine de un à quatre ans de prison et de cent à trois mille jours-amendes sera imposée, à celui qui :**

I. Transporte ou consentit à, autorise ou ordonne le transport d'un déchet considéré comme dangereux du fait de ses caractéristiques corrosives, réactives, explosives, toxiques, inflammables, biologiquement infectieuses ou radioactives, à des fins pour lesquelles il n'a pas l'autorisation de le recevoir, de le stocker, ou de l'abandonner ; (...)

V. Ne réalise pas ou n'applique pas les mesures techniques, correctives ou de sécurité nécessaires pour éviter le dommage ou le risque environnemental que l'autorité administrative ou judiciaire lui ordonne ou lui impose. (...)

CAPÍTULO QUINTO

Disposiciones comunes a los delitos contra el ambiente

Art. 421.- Además de lo establecido en los anteriores capítulos del Título Vigésimo Quinto, se impondrá alguna o algunas de las siguientes penas o medidas de seguridad:

I. La realización de las acciones necesarias para restablecer las condiciones de los elementos naturales que constituyen los ecosistemas afectados, al estado en que se encontraban antes de realizarse el delito;

II. La suspensión, modificación o demolición de las construcciones, obras o actividades, según corresponda, que hubieren dado lugar al delito ambiental respectivo;

III. La reincorporación de los elementos naturales, ejemplares o especies de flora y fauna silvestre, a los hábitat de que fueron sustraídos, siempre y cuando su reincorporación no constituya un peligro al equilibrio ecológico o dificulte la reproducción o migración de especies de flora o fauna silvestre;

IV. El retorno de los materiales o residuos peligrosos o ejemplares de flora y fauna silvestre amenazados o en peligro de extinción, al país de origen, considerando lo dispuesto en los tratados y convenciones internacionales de que México sea parte, o

V. Inhabilitación, cuando el autor o partícipe del delito tenga la calidad de servidor público, hasta por un tiempo igual al que se le hubiera fijado como pena privativa de libertad, la cual deberá correr al momento en que el sentenciado haya cumplido con la prisión o ésta se hubiera tenido por cumplida.

Los trabajos a favor de la comunidad a que se refiere el artículo 24 de este ordenamiento, consistirán en actividades relacionadas con la protección al ambiente o la restauración de los recursos naturales.

- **En plus de ce qu'établissent les chapitres précédents le titre 5, seront imposées les peines et mesures de sécurité suivantes:**

I. La réalisation des actions nécessaires pour rétablir les conditions initiales des éléments naturels qui constituent les écosystèmes affectés, dans l'état dans lesquelles ils se trouvaient avant la réalisation du délit ;

II. La suspension, modification ou démolition des constructions, œuvres ou activités qui ont donné lieu au délit environnemental en question ;

III. la réincorporation des éléments naturels, des spécimens ou espèces de la flore et de la faune sylvestre, dans les habitats desquelles ils ont été soustraits, si et seulement si leur réincorporation ne constitue pas un danger pour l'équilibre écologique ou ne met pas en difficulté la reproduction ou la migration des espèces de la flore ou de la faune sylvestre ;

IV. le retour des matériaux ou déchets dangereux ou spécimens de la flore et de la faune sylvestre menacés ou en danger d'extinction, à leur pays d'origine, en conformité avec les traités et les conventions internationales auxquels Mexico appartient, ou

V. La déclaration comme inapte, quand l'auteur ou le participant au délit agissait en sa qualité de serviteur public, pour un temps égal à la durée de la peine privative de liberté, et commençant au moment où la peine de prison aura été accomplie ou considérée comme telle. Les travaux d'intérêt général concernés consisteront en des activités en relation avec la protection de l'environnement ou avec la restauration des ressources naturelles.

GUATEMALA: CODIGO PENAL DE GUATEMALA**TITULO X****DE LOS DELITOS CONTRA LA ECONOMIA NACIONAL, EL COMERCIO, LA INDUSTRIAY EL REGIMEN TRIBUTARIO****CAPITULO I****DE LOS DELITOS CONTRA LA ECONOMIA NACIONAL Y EL AMBIENTE****PROPAGACIÓN DE ENFERMEDAD EN PLANTAS O ANIMALES**

ARTICULO 344. *Quien, propague una enfermedad en animales o plantas, peligrosas para la riqueza pecuaria o agrícola, será sancionado con multa de trescientos a tres mil quetzales.*

- **Qui propage une maladie animale ou végétale, dangereuse pour la richesse pécuniaire ou agricole, sera sanctionné d'une amende de trois cent à trois mille quetzales.**

PROPAGACIÓN CULPOSA

ARTICULO 345. *Si el delito a que se refiere el artículo anterior, fuere cometido culposamente, el responsable será sancionado con multa de cincuenta a un mil quetzales.*

- **Si le dommage auquel se réfère l'article antérieur est commis de manière fautive ou intentionnelle, le responsable sera sanctionné d'une amende de cinquante à mille quetzales.**

EXPLOTACIÓN ILEGAL DE RECURSOS NATURALES

ARTICULO 346. *Quien, sin estar debidamente autorizado, explotare comercialmente los recursos naturales contenidos en el mar territorial y la plataforma submarina, así como en los ríos y lagos nacionales, será sancionado con prisión de uno a tres años y multa de quinientos a cinco mil quetzales.*

- **Qui, sans être dûment autorisé, exploite commercialement les ressources naturelles contenues dans la mer ou la plateforme sous-marine, ainsi que dans les rivières et lacs nationaux, sera sanctionné d'une peine de prison de un à trois ans et d'une amende de mille cinq cent à cinq mille quetzales.**

DELITO CONTRA LOS RECURSOS FORESTALES

ARTICULO 347. *Quien, contraviniendo las prescripciones legales o las disposiciones de la autoridad competente, explotare, talare o destruyere en todo o en parte un bosque, repoblación forestal, plantación, o cultivo o vivero públicos, será sancionado con prisión de seis meses a dos años y multa de cincuenta a dos mil quetzales.*

- **Qui, en contravention des prescriptions légales ou des dispositions de l'autorité compétente, exploite, taille ou détruit tout ou partie d'une forêt, d'une aire de repeuplement forestier, d'une plantation, ou d'une culture ou d'une pépinière publics, sera sanctionné d'une peine de prison de six mois à deux ans et d'une amende de cinquante à deux milles quetzales.**

CONTAMINACIÓN

ARTICULO 347 "A". *Será sancionado con prisión de uno a dos años, y multa de trescientos a cinco mil quetzales, el que contaminare el aire, el suelo o las aguas, mediante emanaciones tóxicas, ruidos excesivos vertiendo sustancias peligrosas o desechando productos que puedan perjudicar a las personas, a los animales, bosques o plantaciones.*

Si la contaminación se produce en forma culposa, se impondrá multa de doscientos a mil quinientos quetzales.

- **Sera sanctionné d'une peine de prison d'un à deux ans et d'une amende de trois cent à cinquante mille quetzales celui qui pollue l'air, le sol ou les eaux par le biais d'émanations toxiques, de bruit excessifs, du versement de substances dangereuses ou de l'abandon de produits pouvant causer préjudice aux personnes, aux animaux, aux forêts ou aux plantations.**
Si la pollution se produit de manière fautive ou intentionnelle, sera imposée une amende de deux cent à mille cinq cent quetzales.

CONTAMINACIÓN INDUSTRIAL

ARTICULO 347 "B". *Se impondrá prisión de dos a diez años y multa de tres mil a diez mil quetzales, al Director, Administrador, Gerente, Titular o Beneficiario de una explotación industrial o actividad comercial que permitiere o autorizare, en el ejercicio de la actividad comercial o industrial, la contaminación del aire, el suelo o las aguas, mediante emanaciones tóxicas, ruidos excesivos, vertiendo sustancias peligrosas o desechando productos que puedan perjudicar a las personas, a los animales, bosques o plantaciones.*

Si la contaminación fuere realizada en una población, o en sus inmediaciones, o afectare plantaciones o aguas destinadas al servicio público, se aumentará el doble del mínimo y un tercio del máximo de la pena de prisión.

Si la contaminación se produjere por culpa, se impondrá prisión de uno a cinco años y multa de mil a cinco mil quetzales.

En los dos artículos anteriores la pena se aumentará en un tercio si a consecuencia de la contaminación resultare una alteración permanente de las condiciones ambientales o climáticas.

- **Sera imposée une peine de prison de deux à dix ans et une amende de trois mille à dix mille quetzales au Directeur, Administrateur, Gérant, Titulaire ou Bénéficiaire d'une exploitation industrielle ou d'une activité commerciale qui permet ou autorise, dans l'exercice de son activité commerciale ou industrielle, la pollution de l'air, du sol ou des eaux, par le biais d'émanations toxiques, de bruit excessifs, du versement de substances dangereuses ou de l'abandon de produits pouvant causer préjudice aux personnes, aux animaux, aux forêts ou aux plantations.**
Si la pollution est réalisée au sein d'une population, ou dans sa proximité immédiate, ou affecte les plantations et les eaux destinées à l'usage public, le minimum de la peine de prison sera augmenté du double et le maximum d'un tiers.
Si la pollution se produit de manière fautive ou intentionnelle, sera imposée une peine de prison de un à cinq ans et une amende de mille à cinq mille quetzales.
Dans les deux articles précédents, la peine sera augmentée d'un tiers si résulte de la pollution une altération permanente des conditions environnementales ou climatiques.

RESPONSABILIDAD DEL FUNCIONARIO

ARTICULO 347 "C". *Las mismas penas indicadas en el artículo anterior se aplicarán al funcionario público que aprobare la instalación de una explotación industrial o comercial contaminante, o consintiere su funcionamiento. Si lo hiciere por culpa, se impondrá prisión de seis meses a un año y multa de mil a cinco mil quetzales.*

- **Les peines indiquées dans l'article antérieur s'appliqueront similairement au fonctionnaire public qui approuve l'installation d'une exploitation industrielle ou commerciale polluante, ou qui consent à son fonctionnement. S'il le fait de manière fautive ou intentionnelle, une peine de prison de six mois à un an et une amende de mille à cinq mille quetzales.**

PROTECCIÓN DE LOS BOSQUES

ARTICULO 347 "D". *Se impondrá prisión de dos a diez años al que realizare una tala de bosques, comercializare o exportare el producto de dicha tala, sin autorización estatal o, teniéndola, sin cumplir o excediendo las condiciones previstas en la autorización. Además de la pena de prisión, se impondrá una multa de doscientos a siete mil quetzales por cada árbol talado, comercializado o exportado. La pena será de cinco a quince años de prisión y multa de mil a diez mil quetzales si se tratare de una especie en vías de extinción o si la tala se realizare en un área protegida o parque nacional.*

- **Sera imposée une peine de prison de deux à dix ans à celui qui réalise une taille des forêts, commercialise ou exporte le produit de la dite taille, sans autorisation de l'état ou, ayant cette autorisation, sans respecter ou étendant les conditions prévues dans l'autorisation. En plus de la peine de prison, sera imposée une amende de deux cent à sept mille quetzales pour chaque arbre taillé, commercialisé ou exporté. La peine sera de cinq à quinze années de prison et une amende de mille à dix mille quetzales s'il s'agit d'une espèce en voie d'extinction ou si la taille a lieu dans une aire protégée ou un parc national.**

PROTECCIÓN DE LA FAUNA

ARTICULO 347 "E". *Se impondrá prisión de uno a cinco años al que cazare animales, aves o insectos, sin autorización estatal o, teniéndola, sin cumplir o excediendo las condiciones previstas en la autorización. La pena se aumentará en un tercio si la caza se realizare en área protegida o parque nacional.*

- **Sera imposée une peine de prison d'un à cinq ans à celui qui chasse des animaux, des oiseaux ou des insectes sans autorisations de l'état ou, ayant cette autorisation, ne la respectant pas ou en étendant les conditions. La peine sera augmentée d'un tiers si la chasse a lieu dans une aire protégée ou un parc national.**

HONDURAS**TITULO V****DELITOS CONTRA LA SALUD PÚBLICA**

ARTICULO 181-A. *Quien contamine la totalidad o parte del territorio nacional, incluyendo las aguas, con desechos, desperdicios, basuras o sustancias traídas del extranjero que produzcan o sean susceptibles de producir daños a la salud de las personas o al ecosistema, será sancionado con reclusión de seis (6) a doce (12) años y multa de cien mil lempiras (L.100,000.00) a quinientos mil lempiras (L.500,000.00).*

- **Qui pollue la totalité ou une partie du territoire national, y compris les eaux, avec des déchets, des ordures ou des substances importées de l'étranger qui produisent ou sont susceptibles de produire des dommages pour la santé des personnes ou pour l'écosystème sera sanctionné d'une peine de réclusion de six à douze ans et d'une amende de cent mille à cinq cent mille lempiras.**

ARTICULO 181-B. *Las penas establecidas en el Artículo anterior se impondrán también a quien dentro o fuera del país promueva o de cualquier manera gestione la introducción al territorio nacional de desechos, desperdicios, basuras o sustancias que provoquen o sean susceptibles de provocar contaminación al medio ambiente o daño a la salud de las personas._*

- **Les peines établies dans l'article antérieur seront également imposées à qui, à l'intérieur ou à l'extérieur du pays, provoque ou gère de quelconque manière l'introduction dans le territoire national de déchets, ordures ou substances qui produisent ou sont susceptibles de polluer l'environnement ou de causer des dommages à la santé des personnes.**

TITULO V-A**DELITOS CONTRA EL MEDIO AMBIENTE**

ARTICULO 191-A. (DEROGADO)

ARTICULO 191-B. (DEROGADO)

ARTICULO 191-C. (DEROGADO)

ARTICULO 191-D. (DEROGADO)_

PANAMA**TITULO XIII****DELITOS CONTRA EL AMBIENTE Y EL ORDENAMIENTO TERRITORIAL****CAPÍTULO I****DELITO CONTRA LOS RECURSOS NATURALES**

Artículo 399. *Quien infringiendo las normas de protección del ambiente establecidas destruya, extraiga, contamine o degrade los recursos naturales será sancionado con prisión de tres a seis años. La pena prevista en este artículo se aumentará de una tercera parte a la mitad en cualesquiera de los siguientes casos:*

1. *Cuando la acción recaiga en áreas protegidas o se destruyan total o parcialmente ecosistemas costeros marinos o humedales.*
2. *Cuando se cause daño directo a las cuencas hidrográficas.*
3. *Cuando se dañe un área declarada de especial valor biológico, histórico, arqueológico o científico.*
4. *Cuando se afecten ostensiblemente los recursos hídricos superficiales o subterráneos de manera que incida negativamente en el ecosistema.*
5. *Cuando se ponga en peligro la salud o la vida de las personas.*
6. *Cuando se use explosivo o sustancia tóxica para realizar la actividad pesquera.*
7. *Cuando la conducta sea realizada por una industria o actividad que funcione sin haber obtenido la respectiva autorización o aprobación de la autoridad competente.*
8. *Cuando en la conducta haya mediado falsedad o se haya ocultado información sobre el impacto ambiental de la actividad, o se haya obstaculizado la inspección ordenada por autoridad competente.*
9. *Cuando el daño sea irreversible. Son irreversibles los efectos que supongan la imposibilidad de retomar a la situación anterior.*

- **Qui enfreint les normes établies de protection de l'environnement en détruisant, extrayant, polluant ou dégradant les ressources naturelles sera sanctionné d'une peine de prison de trois à six ans. La peine prévue dans cet article sera augmentée d'un tiers à la moitié dans les cas suivants :**

1. Quand l'action prend place dans des aires protégées ou quand elle détruit totalement ou en partie des écosystèmes côtiers, marins ou des zones humides.

2. Quand un dommage direct est causé aux bassins hydrographiques.

3. Quand le dommage porte sur une aire dont la valeur biologique, historique, archéologique ou scientifique est spécifiquement reconnue.

4. Quand sont ostensiblement affectées les ressources hydriques superficielles ou sous-terraines, d'une façon qui nuit gravement à l'écosystème.

5. Quand la santé ou la vie des personnes sont mises en danger.

6. Quand l'activité de pêche est réalisée par le biais d'explosifs ou de substances toxiques.

7. Quand la conduite en question est réalisée par une industrie ou une activité fonctionnant sans avoir obtenu l'autorisation adéquate ou l'approbation de l'autorité compétente.

8. Quand la conduite en question implique la falsification ou l'occultation d'informations quant à l'impact environnemental de l'activité, ou l'obstruction de l'inspection ordonnée par l'autorité compétente.

9. Quand le dommage causé est irréversible. Sont irréversibles les effets qui impliquent l'impossibilité de retrouver la situation initiale.

Artículo 400. *Quien, sin la autorización de la autoridad competente, construya dique o muro de contención, o desvíe el cauce de un río, quebrada otra vía de desagüe natural, disminuyendo, obstruyendo o impidiendo el libre flujo y reflujos de las aguas, afectando directamente el ecosistema, la salud de las personas o una actividad económica, será sancionado con prisión de dos a cinco años.*

- **Qui, sans l'autorisation de l'autorité compétente, construit une digue ou un mur de contention, ou dévie le cours d'un fleuve, une vallée ou toute autre voie d'écoulement naturel, diminuant, obstruant ou empêchant le libre flux et reflux des eaux, affectant directement l'écosystème, la santé des personnes ou une activité économique, sera sanctionné d'une peine de prison de deux à cinq ans.**

Artículo 402. *Quien, sin la autorización de la autoridad competente o en incumplimiento de las normas aplicables al efecto, importe o exporte, maneje, genere, emita, deposite, comercialice, transporte, vierta o disponga material radioactivo, aguas residuales, desechos o residuos sólidos, líquidos o gaseosos será sancionado con prisión de cuatro a ocho años.*

La pena se aumentará de una parte a la mitad cuando dichos residuos o desechos:

- 1. Ocasionen enfermedades contagiosas que constituyan un peligro para las personas o la vida silvestre.*
- 2. Sean cancerígenos o alteren la genética de las personas.*
- 3. Ocasionen riesgos de explosión, o sean inflamables o altamente radioactivos.*
- 4. Puedan perjudicar las aguas, la atmósfera o el suelo, o pongan en peligro grave la vida silvestre, por su clase, cantidad o calidad.*

- **Qui, sans l'autorisation de l'autorité compétente ou en contravention des normes applicables, importe ou exporte, gère, génère, émet, dépose, commercialise, transporte, déverse ou dispose de matériel radioactif, d'eaux contaminées, de résidus et déchets solides, liquides, gazeux sera sanctionné d'une peine de prison de quatre à huit ans.**

La peine sera augmentée de jusqu'à sa moitié quand les dits déchets et résidus :

- 1.Occasionnent des maladies contagieuses qui constituent un danger pour les personnes ou la vie sylvestre.**
- 2.Sont cancérogènes ou altèrent le capital génétique des personnes.**
- 3.Occasionnent des risques d'explosion, ou sont inflammables ou hautement radioactifs.**
- 4.Peuvent porter préjudice aux eaux, à l'atmosphère ou au sol, ou mettent en grave péril la nature, la qualité ou la quantité de la vie sylvestre.**

Artículo 406. *Quien sin autorización de la autoridad competente o incumpliendo la normativa existente tale, destruya o degrade formaciones vegetales arbóreas o arbustivas constitutivas de bosque o sujetas a protección especial, en áreas protegidas, en cuencas hidrográficas, en zonas prohibidas o restringidas, o cuando estas protejan vertientes que provean de agua potable a la población será sancionado con pena de tres a siete años de prisión.*

- **Qui, sans autorisation de l'autorité compétente ou en contravention des normes applicables, détruit ou dégrade des végétaux, arbres ou arbustes constitutifs de forêts ou sujets à une protection spéciale, dans des aires protégées, dans des bassins hydrographiques, dans des zones interdites ou à l'accès**

restreint, ou quand ils protègent les ressources d'eaux potables de la population, sera sanctionné d'une peine de prison de trois à sept ans.

Artículo 407. *Quien incendie masas vegetales será sancionado con uno a tres años de prisión o su equivalente en días-multa o arresto de fines de semana.*

Se aumentará la pena de una cuarta parte a la mitad, en cualesquiera de los siguientes casos:

- 1. Cuando se produzca pérdida de la fertilidad del suelo o desecación del suelo.*
- 2. Cuando se afecte una superficie mayor de cinco hectáreas.*
- 3. Cuando se dañe significativamente la calidad de la vida vegetal.*
- 4. Cuando se actúe para obtener beneficio económico.*
- 5. Cuando se trate de áreas protegidas o de cuencas hidrográficas. (...)*

- **Qui incendie des masses végétales sera sanctionné d'une peine d'un à trois ans de prison ou son équivalent en jours-amendes ou en détentions de fin de semaine.**

La peine sera augmentée de son quart à sa moitié dans les cas suivants :

- 1. Quand se produit une perte de la fertilité ou un dessèchement du sol.**
- 2. Quand une superficie de plus de cinq hectares est affectée.**
- 3. Quand la qualité de la vie végétale est significativement endommagée.**
- 4. Quand l'action est réalisée à des fins lucratives.**
- 5. Quand l'action a lieu dans une aire protégée ou un bassin hydrographique.**

Artículo 408. *Quien en contravención a las disposiciones legales aplicables y rebasando los límites fijados en las normas técnicas genere emisiones de ruido, vibraciones, gases, olores, energía térmica, lumínica o de cualquier otra naturaleza que ocasionen graves daños a la salud pública, a la flora, a la fauna o a los ecosistemas será sancionado con pena de dos a cuatro años de prisión.*

- **Qui, en contravention des dispositions légales applicables et au-delà des limites imposées par les normes techniques, génère des émissions de bruit, vibrations, gaz, odeurs, énergie thermiques, lumineuses, ou de quelque autre nature, qui occasionnent de graves dommages à la santé publique, à la flore, à la faune ou aux écosystèmes sera sanctionné d'une peine de prison de deux à quatre ans.**

CAPÍTULO 11

DELITOS CONTRA LA VIDA SILVESTRE

Art. 409. *Quien pesque, cace, mate, capture o extraiga recurso o especie de la vida silvestre, acuática o terrestre protegida o en peligro de extinción, sin contar con los permisos correspondientes para tales efectos, o quien teniendo los referidos permisos incumpla las especificaciones incluidas en estos, relacionados con la cantidad, la edad, las dimensiones o las medidas, será sancionado con prisión de dos a cuatro años.*

La sanción se aumentará de una tercera parte a la mitad:

- 1. Si se realiza en un área protegida.*
- 2. Si utiliza instrumento o medio no autorizado o prohibido por las normas vigentes.*
- 3. Si se realiza fuera de las áreas destinadas para tales efectos.*
- 4. Si se efectúa durante el periodo de veda o temporada establecido para proteger las especies descritas en este artículo y su reproducción.*
- 5. Si se da en grandes proporciones.*

- **Qui pêche, chasse, tue, capture ou extrait une ressource ou une espèce de la vie sylvestre, aquatique ou terrestre ou en danger d'extinction, sans détenir les permis correspondants à de tels effets, ou qui, ayant les dits permis ne respecte pas leurs spécifications, en relation à la quantité, l'âge, les dimensions ou les moyens, sera sanctionné d'une peine de prison de deux à quatre ans.**

La sanction sera augmentée d'un tiers à la moitié :

- 1. Si l'action est réalisée dans une aire protégée**
- 2. Si elle est réalisée par le biais d'un instrument ou d'un moyen non autorisé ou interdit par les normes en vigueur**
- 3. Si elle est réalisée hors des zones prévues à cet effet**
- 4. Si elle est effectuée durant la période établie pour protégée les espèces décrites et leur reproduction**
- 5. Si elle est réalisée dans de grandes proportions.**

Artículo 410. *Quien sin autorización o permiso de la autoridad competente trafique, comercialice, negocie, exporte, importe, reimporte o reexporte espécimen de la vida silvestre, especie endémica, vulnerable, amenazada o en extinción o cualquier recurso genético será sancionado con prisión de tres a cinco años.*

Será disminuida la pena en una tercera parte a la mitad si el espécimen de la vida silvestre o la especie endémica, vulnerable, amenazada o en peligro de extinción es restituido a su hábitat sin daño alguno, antes de que concluya la fase de iniciación e investigación.

- **Qui, sans autorisation ou permis de l'autorité compétente trafique, commercialise, négocie, exporte, importe, réimporte ou réexporte un spécimen de la vie sylvestre, d'une espèce endémique, vulnérable, menacée ou en extinction ou toute autre ressource génétique sera sanctionné d'une peine de prison de trois à cinq ans.**

La peine sera diminuée d'un tiers à la moitié si le spécimen de la vie sylvestre ou de l'espèce endémique, vulnérable, menacée ou en danger d'extinction est restitué à son habitat sans aucun dommage, avant que soit conclue la phase initiative et d'enquête.

Artículo 411. *Quien, sin autorización de la autoridad competente o infringiendo las normas sobre la materia, introduzca, utilice o propague especies de la vida silvestre o agente biológico o bioquímico, capaz de alterar significativamente la población animal o vegetal o de poner en peligro su existencia, será sancionado con prisión de cuatro a ocho años.*

- **Qui, sans autorisation de l'autorité compétente ou en infraction des normes sur la matière, introduit, utilise ou propage des espèces de la vie sylvestre ou un agent biologique ou biochimique, capable d'altérer significativement la population animale ou végétale ou de mettre en danger son existence, sera sanctionné d'une peine de prison de quatre à huit ans.**

BELIZE: pas de crime explicite contre l'environnement**COSTA RICA****Materiales nucleares****Artículo 250 ter:**

Se impondrá prisión de cuatro a diez años, a quien realice alguna de las siguientes conductas:

- 1) *Reciba, ingrese, posea, use, transfiera, altere, evacue, o disperse materiales nucleares sin autorización legal, si tal acto es probable que cause la muerte o lesiones leves, graves o gravísimas a una persona o daños sustanciales a los bienes o al medio ambiente.*

- **Une peine de prison de quatre à dix ans sera imposée à qui réalise l'une des conduites suivantes:**

1. **Reçoit, fait entrer, détient, utilise, transfert, altère, évacue, ou disperse des matériaux nucléaires sans autorisation légale, s'il est probable qu'un tel acte cause la mort ou des lésions légères, graves ou extrêmement graves à une personne ou des dommages substantiels aux biens ou à l'environnement.**

SECCIÓN VI**Medio ambiente**

Artículo 399. *Será reprimido con pena de diez a doscientos días multa:*

Violación de reglamentos sobre quemas

- 1) *El que violare los reglamentos relativos a la corta o quema de bosques, árboles, malezas, rastrojos u otros productos de la tierra, cuando no exista otra pena expresa.*

Obstrucción de acequias o canales

- 2) *Quien arrojar en acequias o canales objetos que obstruyan el curso del agua.*

Apertura o cierre de llaves de cañería

- 3) *El que indebidamente abriere o cerrare llaves de cañería, o en otra forma no penada de manera expresa, contraviere las regulaciones existentes sobre aguas.*

Infracción de reglamentos de caza y pesca

- 4) *El que, en cualquier forma, infringiere las leyes o los reglamentos sobre caza y pesca, siempre que la infracción no esté castigada expresamente en otra disposición legal.*

- **Sera réprimé d'une peine de dix à cent jours-amendes:**

Violation des règlements sur les incendies (...)

Obstruction des voies d'irrigation et canaux (...)

Uso de sustancias ilegales para pesca

Artículo 400. *Se impondrá pena de cinco a treinta días multa a quien utilizare sustancias explosivas o venenosas para pescar.*

- **Sera imposée une peine de cinq à trente jours-amendes à qui utilisera des substances explosives ou toxiques pour pêcher.**

Escapes inconvenientes de humo, vapor o gas

Artículo 402.—*Se impondrá de quince a doscientos días multa a los empresarios o industriales que no adoptaren las medidas convenientes para evitar los escapes de humo, vapor o gas que causen molestias al público o perjudiquen su salud, o no provean a la eliminación de desechos contaminantes del ambiente.*

- **Seront imposés de quinze à deux cents jours-amendes aux chefs d’entreprise ou industriels qui n’adopteront pas les mesures convenues pour éviter les émissions de fumée, vapeur ou gaz qui causent des nuisances au public ou portent atteinte à sa santé, ou qui ne pourvoient pas à l’élimination des déchets polluants pour l’environnement.**

SALVADOR

TITULO X

DELITOS RELATIVOS A LA ORDENACION DEL TERRITORIO, LA PROTECCION DE LOS RECURSOS NATURALES, Y AL MEDIO AMBIENTE

CAPITULO II

DE LOS DELITOS RELATIVOS A LA NATURALEZA Y EL MEDIO AMBIENTE

Contaminación ambiental

Art. 255.- *El que provocare o realizare directa o indirectamente emisiones, radiaciones o vertidos de cualquier naturaleza en el suelo, atmósfera, aguas terrestres superficiales, subterráneas o marítimas en contravención a las leyes y reglamentos respectivos y que pusiere en peligro grave la salud o calidad de vida de las personas o el equilibrio de los sistemas ecológicos o del medio ambiente, será sancionado con prisión de cuatro a ocho años.*

- **Celui qui provoque ou réalise directement ou indirectement des émissions, radiations ou versement de quelque nature sur/dans le sol, l’atmosphère, les eaux terrestres superficielles, sous-terraines ou maritimes en contravention des lois et règlements respectifs et qui met gravement en danger la santé ou la qualité de vie des personnes ou l’équilibre des systèmes écologiques ou de l’environnement sera sanctionné d’une peine de prison de quatre à huit ans.**

Contaminación ambiental agravada

Art. 256.- *En los casos del artículo anterior, la pena será de 6 a 10 años de prisión si el hecho se atribuyere a persona jurídica, pública o privada, que funcionare sin el correspondiente permiso ambiental o clandestinamente o haya desobedecido las disposiciones expresas de la autoridad ambiental para que corrigiere o suspendiere sus operaciones; hubiere aportado información falsa para obtener el permiso ambiental correspondiente o hubiera impedido u obstaculizado la inspección por la autoridad del medio ambiente.*

- **Dans les cas décrits par l’article antérieur, la peine sera de 6 à 10 ans de prison si le fait est attribué à une personne juridique, publique ou privée, qui fonctionnerait sans le permis environnemental correspondant ou clandestinement ou en désobéissance des dispositions exprimées par l’autorité environnementale pour qu’elle corrige ou suspende ses opérations ; si elle a utilisé de fausses informations pour obtenir le permis environnemental correspondant ou si elle a empêché ou obstrué l’inspection de l’autorité de l’environnement.**

Contaminación ambiental culposa

Art. 257.- *En los casos a que se refieren los artículos anteriores si el agente actuare con culpa, será sancionado con prisión de uno a tres años.*

- **Dans les cas auxquels se réfèrent les articles antérieurs, si l’agent agit de manière fautive et intentionnelle, il sera sanctionné d’une peine de prison d’un à trois ans.**

Depredación de bosques

Art.258.- *El que destruyere, quemare, talare o dañare, en todo o en parte, bosques u otras formaciones vegetales naturales o cultivadas que estuvieren legalmente protegidas, será sancionado con prisión de tres a seis años. (...)*

- **Celui qui détruit, incendie, taille ou endommage, totalement ou en partie, des forêts ou toute autre formation végétale naturelle ou cultivée légalement protégée sera sanctionné d'une peine de prison de trois à six ans.**

Depredación de flora protegida

Art. 259.- *El que cortare, talare, quemare, arrancare, recolectare, comerciare o efectuare tráfico ilegal de alguna especie o subespecie de flora protegida o destruyere o alterar gravemente su medio natural, será sancionado con prisión de uno a tres años. (...)*

- **Celui qui coupe, taille, incendie, déracine, collecte, commercialise ou réalise un trafic illégal d'une quelconque espèce ou sous-espèce de la flore protégée ou détruit ou altère gravement son milieu naturel sera sanctionné d'une peine de prison d'un à trois ans.**

Depredación de fauna

Art. 260.- *el que empleare para la caza o la pesca veneno, medios explosivos u otros instrumentos o artes susceptibles de generar una eficacia destructiva semejante, será sancionado con prisión de dos a cuatro años.(...)*

- **Celui qui emploie pour la chasse ou la pêche des moyens toxiques, explosifs ou tout autre instrument susceptible de générer une destruction semblable sera sanctionné d'une peine de prison de deux à quatre ans.**

Depredación de fauna protegida

Art. 261.- *el que cazare o pescare especies amenazadas, realizare actividades que impidieren o dificultaren su reproducción o contraviniendo las leyes o reglamentos protectores de las especies de fauna silvestre, comerciare con las mismas o con sus restos, será sancionado con prisión de tres a cinco años.*

La sanción se aumentará en un tercio del máximo de lo señalado en el inciso anterior, si se tratare de especies catalogadas en peligro de extinción.

- **Celui qui chasse ou pêche des espèces menacées, réalise des activités qui empêchent ou mettent en difficulté leur reproduction ou qui contreviennent aux lois ou règlements protégeant les espèces de la faune sylvestre, commercialise ces dites espèces ou leurs produits sera sanctionné d'une peine de prison de trois à cinq ans.**

La sanction sera augmentée d'un tiers du maximum s'il s'agit d'espèces cataloguées comme en danger d'extinction.

Responsabilidad de funcionarios y empleados públicos

Art. 262.- *los funcionarios o empleados públicos que estando obligados en el ejercicio de sus funciones, a informar sobre la comisión de los delitos relativos a la protección de los recursos naturales, el medio ambiente, la flora y la fauna, omitiendo hacerlo o informaren ocultando los*

mismos, serán sancionados con prisión de uno a tres años e inhabilitación del cargo o empleo por el mismo tiempo.

La misma sanción se impondrá al funcionario o empleado público que en el ejercicio de sus funciones conceda permisos, autorizaciones, licencias o concesiones, para la ejecución de obras o proyectos que no hayan obtenido de conformidad a la ley del medio ambiente el correspondiente permiso ambiental.

- **Les fonctionnaires ou employés publics qui, étant obligés dans l'exercice de leur fonction d'informer sur la commission de délits relatifs à la protection des ressources naturelles, de l'environnement, de la flore et de la faune, omettent de le faire ou informent en occultant ces délits, seront sanctionnés d'une peine de prison d'un à trois ans et inhabilités à exercer leur charge ou emploi pendant la même période de temps.**

La même sanction sera imposée au fonctionnaire ou employé public qui, dans l'exercice de ses fonctions, concède des permis, autorisations, licences ou concessions, pour l'exécution d'œuvres ou projets qui n'auraient pas obtenu, en conformité avec la loi relative à l'environnement, le permis environnemental correspondant.

Quema de rastrojos

Art. 262-A.- *el que intencionalmente quemare rastrojos o cultivos de cualquier naturaleza, será sancionado con multa entre diez a doscientos días multa; equivaliendo cada día multa, al salario mínimo diario, según la capacidad económica del infractor. (...)*

- **Celui qui incendie intentionnellement du chaume ou des cultures de toute nature sera sanctionné de dix à deux cent jours-amendes ; chaque jour-amende équivalent au salaire quotidien minimum, en fonction de la capacité économique de l'infracteur.**

Comercio y transporte de sustancias peligrosas

Art. 262-B.- *el que comercializare, transportare o introdujere al país sustancias o materiales calificados como peligrosos en los tratados internacionales o la ley del medio ambiente, con infracción de las reglas de seguridad establecidas, incurrirá en pena de prisión de seis a diez años.*

- **Celui qui commercialise, transporte ou introduit dans le pays des substances ou matériaux qualifiés comme dangereux dans les traités internationaux ou la loi relative à l'environnement, en infraction des règles de sécurité établies, encourt une peine de prison de six à dix ans.**

Excusa absolutoria y medidas accesorias

Art. 263.- *En los casos previstos en este Capítulo, cuando así procediere, si el autor voluntaria y oportunamente reparare el daño ocasionado, no incurrirá en pena alguna.*

El juez o tribunal, motivadamente, ordenará que a cargo del autor del hecho, se adopten en las medidas encaminadas a restaurar, en lo posible el equilibrio ecológico perturbado, así como adoptar cualquiera de las medidas accesorias, necesarias para la protección de los bienes tutelados en este Capítulo.

- **Dans les cas prévus dans ce Chapitre, si l'auteur répare volontairement et de manière opportune le dommage occasionné, il n'encourra aucune peine. Le juge ou la cour ordonnera que, à la charge de l'auteur du fait, soient adoptées les mesures tendant à restaurer, dans la mesure du possible, l'équilibre écologique perturbé, ainsi que soient adoptées toutes les mesures accessoires nécessaires à la protection des biens sous la tutelle de ce Chapitre.**

NICARAGUA

TÍTULO XV: Construcciones prohibidas y delitos contra la naturaleza y el medio ambiente

CAPÍTULO II: delitos contra el medio ambiente y los recursos naturales

Art. 365.- Contaminación del suelo y subsuelo

Quien, directa o indirectamente, sin la debida autorización de la autoridad competente, y en contravención de las normas técnicas respectivas, descargue, deposite o infiltre o permita el descargue, depósito o infiltración de aguas residuales, líquidos o materiales químicos o bioquímicos, desechos o contaminantes tóxicos en los suelos o subsuelos, con peligro o daño para la salud, los recursos naturales, la biodiversidad, la calidad del agua o de los ecosistemas en general, será sancionado con pena de dos a cinco años de prisión y de cien a mil días multa.

Las penas establecidas en este artículo se reducirán en un tercio en sus extremos mínimo y máximo, cuando el delito se realice por imprudencia temeraria.

Art. 366 Contaminación de aguas

Quien, directa o indirectamente, sin la debida autorización de la autoridad competente y en contravención de las normas técnicas respectivas, descargue, deposite o infiltre o permita el descargue, depósito o infiltración de aguas residuales, líquidos o materiales químicos o bioquímicos, desechos o contaminantes tóxicos en aguas marinas, ríos, cuencas y demás depósitos o corrientes de agua con peligro o daño para la salud, los recursos naturales, la biodiversidad, la calidad del agua o de los ecosistemas en general, será sancionado con pena de dos a cinco años de prisión y de cien a mil días multa.

Se impondrá la pena de cuatro a siete años de prisión, cuando con el objeto de ocultar la contaminación del agua, se utilicen volúmenes de agua mayores que los que generan las descargas de aguas residuales, contraviniendo así las normas técnicas que en materia ambiental establecen las condiciones particulares de los vertidos.

Las penas establecidas en este artículo se reducirán en un tercio en sus extremos mínimo y máximo, cuando el delito se realice por imprudencia temeraria.

Art. 367 Contaminación atmosférica

El que sin la debida autorización de la autoridad competente y en contravención de las normas técnicas respectivas, mediante el uso o la realización de quemas de materiales sólidos y líquidos, químicos o bioquímicos o tóxicos, genere o descargue emisiones puntuales o continuas que contaminen la atmósfera y el aire con gases, humo, polvos o contaminantes con grave daño a la salud de las personas, a los recursos naturales, a la biodiversidad o a los ecosistemas será sancionado con pena de tres a cinco años de prisión y de cien a mil días multa.

Las penas establecidas en este artículo se reducirán en un tercio en sus extremos mínimo y máximo, cuando el delito se realice por imprudencia temeraria.

Art. 368 Transporte de materiales y desechos tóxicos, peligrosos o contaminantes

El que transporte en cualquier forma materiales y desechos tóxicos, peligrosos y contaminantes o autorice u ordene el transporte de estos materiales o sustancias en contravención a las disposiciones legales vigentes en materia de protección del ambiente de manera que se ponga en peligro o dañe la salud de las personas o el medio ambiente, se le impondrá una pena de seis meses a tres años de prisión y de cien a quinientos días multa.

Las penas establecidas en este artículo se reducirán en un tercio en sus extremos mínimo y máximo, cuando el delito se realice por imprudencia temeraria.

Art. 369 Almacenamiento o manipulación de sustancias tóxicas, peligrosas, explosivas, radioactivas o contaminantes

El que sin cumplir con las medidas y precauciones establecidas en la legislación vigente de manera que se ponga en peligro o dañe la vida o la salud de la población o el medio ambiente o los recursos naturales; almacene, distribuya, comercialice, manipule o utilice gasolina, diesel, kerosén u otros derivados del petróleo, gas butano, insecticidas, fertilizantes, plaguicidas o cualquier otro agroquímico, sustancias tóxicas, peligrosas, explosivas, radioactivas o contaminantes, será sancionado con cien a mil días multa y prisión de tres a cinco años e inhabilitación especial por el mismo período para ejercer oficio, arte, profesión o actividad comercial o industrial.

Las penas establecidas en este artículo se reducirán en un tercio en sus extremos mínimo y máximo, cuando el delito se realice por imprudencia temeraria.

Art. 370 Circunstancias agravantes especiales

Los extremos mínimos y máximos de las penas establecidas en los artículos anteriores, serán aumentadas en un tercio, cuando el delito:

- a) Recaiga en reservorios de agua destinada para consumo humano;*
- b) Produzca la destrucción de manglares o se rellenen lagunas naturales o artificiales o esteros o cualquier tipo de humedales;*
- c) Afecte los suelos y subsuelos de asentamientos poblacionales y la salud de las personas;*
- d) Se realice dentro de las áreas protegidas y zonas de amortiguamiento;*
- e) Destruya total o parcialmente ecosistemas costeros marítimos, lacustres o pluviales;*
- f) Se realice en áreas declaradas por la autoridad competente, como de especial valor biológico, ecológico, educativo, científico, histórico, cultural, recreativo, arqueológico, estético o de desarrollo económico;*
- g) Cause daño directo o indirecto a una cuenca hidrográfica;*
- h) Afecte recursos hidrobiológicos;*
- i) Implique que la quema de materiales sólidos, líquidos, químicos y biológicos se produzcan en calles o avenidas de ciudades, centros poblacionales o predios urbanos;*
- j) Ocasione enfermedades contagiosas que constituyan peligro para las personas y las especies de vida silvestre;*
- k) Se realice con sustancias, productos, elementos o materiales que sean cancerígenos o alteren la genética de las personas;*
- l) Se realice con sustancias, productos, elementos o materiales que ocasionen riesgos de explosión, o sean inflamables o sustancialmente radioactivos.*

CAPÍTULO III**DELITOS CONTRA LOS RECURSOS NATURALES****Art. 373 Aprovechamiento ilegal de recursos naturales**

El que, sin autorización de la autoridad competente o excediéndose de lo autorizado, aproveche, oculte, comercie, explote, transporte, trafique o se beneficie de los especímenes, productos o partes de los recursos de la fauna, de los recursos forestales, florísticos, hidrobiológicos, genéticos y sustancias minerales, será sancionado con prisión de seis meses a dos años de prisión y de cien a trescientos días multa.

Art. 374 Desvío y aprovechamiento ilícito de aguas

El que, sin autorización de la autoridad competente o excediéndose de lo autorizado, construya dique, muros de contención, perfore, obstruya, retenga, aproveche, desvíe o haga disminuir el libre curso de las aguas de los ríos, quebradas u otras vías de desagüe natural o del subsuelo, o en zonas manejo, de veda o reserva natural de manera permanente, afectando directamente los ecosistemas, la salud de la población o las actividades económicas, será sancionado con pena de uno a tres años de prisión y de cien a quinientos días multa.

Art. 378 Pesca con explosivo u otra forma destructiva de pesca

El que pesque con elementos explosivos, venenos o realice actividades pesqueras con métodos que permitan la destrucción indiscriminada de especies, así como el uso de trasmallos en bocanas o arrecifes naturales será sancionado de dos a cuatro años de prisión.

Art. 380 Caza de animales en peligro de extinción

El que cace animales que han sido declarados en peligro de extinción por los instrumentos internacionales ratificados por el Estado, o definición como tales por la ley o por disposición administrativa, será sancionado con pena de uno a cuatro años de prisión y de quinientos a mil días multa.

Los extremos mínimo y máximo de la pena prevista en el párrafo anterior serán aumentados al doble, si la actividad se realiza en áreas protegidas.

Si la caza se realiza sobre especies de animales que no están en peligro de extinción, pero sin el permiso de la autoridad competente o en áreas protegidas, se impondrá de cien a cuatrocientos días multa.

Art. 381 Comercialización de fauna y flora

Quien sin autorización de la autoridad competente, comercialice o venda especies de la fauna o flora silvestre que no estén catalogadas por la ley o disposición administrativa como especies en peligro de extinción o restringida su comercialización, será sancionado de cincuenta a cien días multa.

Art. 382 Circunstancia agravante

Las penas señaladas en los dos artículos anteriores se aumentaran en un tercio en sus límites mínimos y máximos cuando la caza o comercialización de especies sea destinada al tráfico o comercio internacional.

Art. 383 Incendios forestales

El que provoque un incendio forestal o incite a otros a la realización de un incendio forestal, será sancionado con pena de dos a cuatro años de prisión y de quinientos a mil días multa.

Quien estando autorizado por autoridad competente y a causa de su imprudencia, realice quemas agrícolas que causen daños fuera de las áreas destinadas para realizar dicha quema, será sancionado de cincuenta a doscientos días multa.

Quien sin autorización de autoridad competente realice quemas agrícolas y cause daños en zonas de bosque será sancionado con las penas previstas en el párrafo primero, cuyos extremos mayor y menor serán aumentados al doble.

No constituirán delito las quemas controladas y autorizadas por la autoridad competente, ni los daños producidos como consecuencia de una situación fortuita o inesperada.

Art. 384 Corte, aprovechamiento y veda forestal

Quien sin la autorización correspondiente, destruya, remueva total o parcialmente, árboles o plantas en terrenos estatales, baldíos, comunales, propiedad particular y vías públicas, será sancionado con pena de seis meses a dos años de prisión y de doscientos a quinientos días multa.

Quien sin la autorización correspondiente, tale de forma rasante árboles en tierras definidas como forestales, o de vocación forestal, será sancionado con pena de dos a cinco años de prisión y de doscientos a quinientos días multa.

El que autorice la tala rasante en áreas definidas como forestal o de vocación forestal para cambiar la vocación del uso del suelo, será sancionado con pena de tres a siete años de prisión e inhabilitación especial por el mismo período para ejercer empleo o cargo público.

Si las actividades descritas en los párrafos anteriores, se realizan en áreas protegidas, la pena será de cuatro a diez años de prisión y de quinientos a mil días multa.

No constituirá delito el aprovechamiento que se realice con fines de uso o consumo doméstico, de conformidad con la legislación de la materia.

El que realice cortes de especies en veda, será sancionado con prisión de tres a siete años.

Art. 385 Talas en vertientes y pendientes

Quien, aunque fuese el propietario, deforeste, tale o destruya árboles o arbustos, en áreas destinadas a la protección de vertientes o manantiales naturales o pendientes determinadas por la ley de la materia, será sancionado con pena de dos a cinco años de prisión y de quinientos a mil días multa.

Art. 386 Corte, transporte y comercialización ilegal de madera

El que corte, transporte o comercialice recursos forestales sin el respectivo permiso de la autoridad competente, será sancionado con pena de dos a cuatro años de prisión y de quinientos a ochocientos días multa.

Art. 387 Corte o poda de árboles en casco urbano

El que corte o pode destructivamente uno o más árboles a orillas de las carreteras, avenidas, calles o bulevares, servidumbres de tendido eléctrico o telecomunicaciones, será sancionado con pena de seis meses a cuatro años de prisión.

Art. 388 Incumplimiento de Estudio de Impacto Ambiental

El que deforeste, tale o destruya, remueva total o parcialmente la vegetación herbácea, o árboles, sin cumplir, cuando corresponda, con los Estudios de Impacto Ambiental (EIA) y las normativas técnicas y ambientales establecidas por la autoridad competente, será sancionado con prisión de dos a cuatro años y de doscientos a quinientos días multa.

Art. 389 Restitución, reparación y compensación de daño ambiental

En el caso de los delitos contemplados en este Título, el Juez deberá ordenar a costa del autor o autores del hecho y de acuerdo al principio de proporcionalidad alguna de las siguientes medidas en orden de prelación:

a) La restitución al estado previo a la producción del hecho punible:

b) La reparación del daño ambiental causado; y

c) La compensación total del daño ambiental producido.

Si los delitos fueren realizados por intermedio de una persona jurídica, se le aplicarán además las consecuencias accesorias que recaen sobre la persona jurídica previstas en este Código.

Art. 390 Introducción de especies invasoras, agentes biológicos o bioquímicos

Quien sin autorización, introduzca, utilice o propague en el país especies de flora y fauna invasoras, agentes biológicos o bioquímicos capaces de alterar significativamente las poblaciones de animales o vegetales o pongan en peligro su existencia, además de causar daños al ecosistema y la biodiversidad, se sancionará con prisión de uno a tres años de prisión y multa de quinientos a mil días.

ANTILLES >

CUBA : pas de mention explicite de crimes environnementaux indépendants (liés à l'exploitation illégale des ressources cubaines par des étrangers)

REPUBLIQUE DOMINICAINE : pas de mention explicite de crimes environnementaux dans le code pénal, mais loi particulière relative aux délits environnementaux

HAÏTI, BAHAMAS, SAINTE LUCIE: pas de mention explicite de crimes environnementaux indépendants (vagues mentions de dommages à des ressources animales et végétales, mais toujours en lien avec la protection de la propriété individuelle)

Jamaïque, Trinité Et Tobago, Barbade, Saint-Vincent : difficulté à trouver les codes pénaux

Annexe 2. Criminal Law: Central and Eastern Europe

Bosnia and Herzegovina: Krivični zakon

N/A

Bulgaria: Наказателния кодекс

SECTION III: ☐ CRIMES AGAINST THE PEOPLE'S HEALTH AND THE ENVIRONMENT ☐ (HEADING SUPPLEMENTED, SG NO. 26/2004) ☐

Article 349

☐(1) A person who intentionally puts or admixes an object hazardous to human life or health in a well, spring, water mains or another installation intended for public use, wherefrom or whereby potable water is supplied, shall be punished by deprivation of liberty from two to eight years. ☐

(2) (Supplemented, SG No. 50/1995, amended, SG No. 153/1998) If the act has resulted in severe bodily injury, the punishment shall be deprivation of liberty from three to ten years, and if death has occurred, the punishment shall be from ten to twenty years, life imprisonment or life imprisonment without substitution. ☐

(3) (Amended, SG No. 41/1985) Pursuant to the differentiation under the preceding paragraphs punished shall also be persons who, for the purpose of infecting people, spreads agents of epidemic disease. ☐

Article 349a ☐(New, SG No. 62/1997) ☐

(1) A person who violates rules established for obtaining and providing human organs or tissues for transplantation, shall be punished by deprivation of liberty for one to three years. ☐(2) The punishment shall be deprivation of liberty for three to five years, if the act has been committed for the purpose of satisfying self- interest. ☐

Article 350 ☐(Amended, SG No. 26/2004) ☐

(1) The one who prepares foodstuffs or drinks, intended for public use, in a way so that therein substances hazardous to human health are formed or allowed to enter, as well as the one who sells, offers for sale or otherwise distributes such foodstuffs or drinks, shall be punished by deprivation of liberty for up to five years. ☐

(2) The one who acts in breach of rules on the yield, production, processing, storage or trade in animals, raw materials, foodstuffs or drinks intended for public use and thereby puts the life or health of another at risk, shall be punished by deprivation of liberty of up to three years. ☐(2) Should the act under paragraphs 1 and 2 result in medium bodily injury to other persons, the punishment shall be deprivation of liberty for up to six years, should the act result in severe bodily injury to another person - deprivation of liberty from one to eight years, and should death occur - deprivation of liberty from three to fifteen years.

Article 350a ☐(New, SG No. 26/2004) ☐

The one who, in breach of the law, produces or markets foodstuffs, animal feed, or veterinary medical products, or drinks, thereby putting the life or health of another at risk, shall be punished by deprivation of liberty of up to three years. ☐

Article 351 ☐

(1) For acts under Articles 349 and 350, committed through negligence, the punishment shall be deprivation of liberty for up to two years or probation. □

(2) Where in such a case death of a person has occurred, the punishment shall be deprivation of liberty for up to five years. □

Article 352 □

(1) (Amended, SG No. 95/1975, SG No. 86/1991, SG No. 85/1997, SG No. 26/2004) A person who pollutes or allows the pollution of water sources, basins, ground waters and the territorial or inland sea waters, the soil and the air and thereby renders them hazardous to people, animals and plants, or makes them unfit for use for cultural and everyday, health, agricultural, and other national-economy purposes, shall be punished by deprivation of liberty for up to five years and a fine from BGN one hundred to five thousand. □

(2) (Amended, SG No. 26/2004) The same punishment shall also be imposed on the official who has failed in designing, constructing or operating drainage or irrigation systems to take the necessary measures for prevention of hazardous pollution of potable water supply zones, or for raising of ground water levels in residential and resort areas. □

(3) (Amended, SG No. 10/1993) For acts under the preceding paragraphs committed through negligence, the punishment shall be probation or a fine from BGN one hundred to three hundred. □

(4) (New, SG No. 95/1975, amended, No. 28/1982, SG No. 10/1993) In minor cases under paragraphs (1) and (2) the punishment shall be a fine from BGN one hundred to three hundred, and under paragraph (3) - from BGN one hundred to three hundred, imposed pursuant to administrative procedure.

Croatia: Kazneni zakon

CHAPTER NINETEEN (xix)

CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

Environmental Pollution

Article 250

(1) Whoever, contrary to regulations, pollutes the air, soil, running, still or ground water, watercourses or the sea, sea bed or subsoil or in some other way imperils the quality of air, soil, water, watercourses or the sea, sea bed or subsoil or the natural genetic harmony of biological diversity within a wide area and to an extent which can worsen the conditions of life of humans or animals, or endanger the existence of forests, plants and other vegetation, shall be punished by imprisonment for three months to five years.

(2) The same punishment referred to in paragraph 1 of this Article shall be inflicted on whoever pollutes the air, soil, running, still or ground water, watercourses or the sea, sea bed or subsoil or in some other way imperils the quality of the air, soil, watercourses or the sea, sea bed or subsoil or the natural genetic harmony of biological diversity, thus causing danger to the life or health of humans or animals, or causes destruction or substantial damage to forests, plants and other vegetation within a wider area.

(3) Whoever commits the criminal offense referred to in paragraphs 1 and 2 of this Article by negligence shall be punished by a fine or by imprisonment not exceeding three years.

Endangering the Environment by Noise

Article 251

(1) Whoever, contrary to regulations, makes noise which is apt to cause substantial damage to the health of a number of persons shall be punished by a fine or by imprisonment not exceeding three years.

(2) Whoever commits the criminal offense referred to in paragraph 1 of this Article by negligence shall be punished by a fine or by imprisonment not exceeding one year.

Endangering the Environment by Waste Disposal

Article 252

(1) Whoever, contrary to regulations, disposes, deposits, collects, stores, treats or transports waste or in general handles it in a way which endangers the quality of the air, soil, water, watercourses or the sea within a wider area and to an extent which can worsen the conditions of life of humans or animals or endanger the existence of forests, plants and other vegetation shall be punished by a fine or by imprisonment not exceeding three years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever disposes, deposits, collects, stores, treats or transports waste or in general handles it in a way which endangers the quality of the air, soil, watercourses or the sea, thus causing danger to the life or health of humans or animals, or causes destruction or substantial damage to forests, plants and other vegetation within a wide area.

(3) Whoever commits the criminal offense referred to in paragraphs 1 and 2 of this Article by negligence shall be punished by a fine or by imprisonment not exceeding one year.

Importing of Radioactive or Other Hazardous Waste Into the Republic of Croatia

Article 253

(1) Whoever, contrary to regulations, imports into the Republic of Croatia radioactive or other hazardous waste harmful to the life or health of humans shall be punished by a fine or by imprisonment not exceeding three years.

(2) Whoever, by abusing his official position or authority, contrary to regulations, enables radioactive or other hazardous waste harmful to the life or health of humans to be imported into the Republic of Croatia shall be punished by imprisonment for six months to five years.

(3) The attempt of the criminal offense referred to in paragraph 1 of this Article is punishable.

Endangering the Environment with Installations

Article 254

(1) Whoever, contrary to regulations, puts into operation or runs installations, or deviates from the manufacturing processes in which hazardous substances are released which may endanger the quality of the air, soil, water, watercourses or the sea within a wide area and of the ecosystems of the sea to an extent which can worsen the conditions of life of humans or animals or endanger the existence of forests, plants and other vegetation shall be punished by a fine or by imprisonment not exceeding one year.

(2) Whoever commits the criminal offense referred to in paragraph 1 of this Article by negligence

shall be punished by a fine of not more than one hundred and fifty daily incomes or by imprisonment not exceeding six months.

Serious Criminal Offenses Against the Environment

Article 262

(1) If, by the criminal offense referred to in Article 250, paragraphs 1 and 2, Article 251, paragraph 1, Article 252, paragraphs 1 and 2, Article 253, paragraphs 1 and 2 and Article 254, paragraph 1 of this Code, serious bodily injury or severe impairment to the health of a number of persons is caused, or the death of one or more persons is caused, or if the changes caused by the pollution cannot be eliminated for a considerable period of time, or if an ecological catastrophe is caused, the perpetrator shall be punished by imprisonment for one to ten years.

(2) If, by the criminal offense referred to in Article 250, paragraph 3, Article 251, paragraph 2, Article 252, paragraph 3 and Article 254, paragraph 2 of this Code, the death of one or more persons is caused, or serious bodily injury or severe impairment to the health of a number of persons is caused, or if the changes caused by the pollution cannot be eliminated for a considerable period of time, or if the quality of the environment is substantially diminished, the perpetrator shall be punished by imprisonment for one to five years.

(3) If, by the criminal offense referred to in Article 255, paragraph 1, Article 256, paragraph 1 and Article 257, paragraph 1, Article 258, paragraph 1 and Article 259, paragraph 1 of this Code, extensive material damage is caused, the perpetrator shall be punished by imprisonment for one to five years.

(4) If, by the criminal offense referred to in Article 255, paragraph 2 and Article 257, Section 2 of this Code, extensive material damage is caused, the perpetrator shall be punished by imprisonment for one to three years.

Czech Republic: Trestní zákoník

(Provisions on the environment may be found in Chapter 8 of the Czech Penal Code, nevertheless there is no official English translation of the entire Code (just certain provisions) by WIPO, COE, LegislationOnline etc. As I do not speak Czech, I would not attempt to translate it on my own for potentially erring in the translation of the Articles. Should you deem a “google translation” sufficient, I shall insert the provisions herein.)

Former Yugoslav Republic of Macedonia: Кривичен законик

22. CRIMES AGAINST THE ENVIRONMENT

Pollution of the environment

Article 218

(1) A person who, by not adhering to the regulations for protection and development of the environment, pollutes the air, soil, water, water surface or water flow to a larger extent or in a wider area, thus causing danger for the life or health of the people or destruction of animal and plant life to a larger extent, shall be punished with imprisonment of one to five years.

(2) The same punishment shall also apply to an official or responsible person who, by not adhering to the regulations for protection and development of the environment, omits to place filtering devices or permits the construction, activation or use of a plant that pollutes the environment, or who in some other way omits to undertake measures for preventing or making it impossible to pollute the air, soil,

water, water surface or water flow, which significantly exceeds the allowed limit, or for preventing noise that significantly exceeds the allowed limit, thus creating danger to the life and health of the people or destruction of animal and plant life to a larger extent.

(3) If the crime from item 1 was committed out of negligence, the offender shall be punished for the crime from item 1 with imprisonment of up to three years.□(4) When pronouncing a conditional sentence, the court may order the perpetrator of the crime from items 1 and 2 the condition to undertake the prescribed measures for protection and development of the human environment within a certain time frame.

Pollution of drinking water

Article 219

(1) A person who with some harmful matter makes unusable drinking water in springs, wells, cistern, or reservoirs, or some other drinking water, shall be punished with a fine, or with imprisonment of up to three years.

(2) If because of the crime from item 1 an epidemic of an infectious disease was caused, the offender shall be punished with imprisonment of three months to three years.□

(3) If the crime from item 1 was committed out of negligence, the offender shall be punished with a fine, or with imprisonment of up to six months.

Endangering the environment with waste materials

Article 230

(1) A person who, in contrary to the regulations for protection of the environment, stores, leaves or throws around waste materials, or handles them in a way that changes the quality of the air, soil, water or water flows, to an extent which could deteriorate the life of people or animals or plants and endanger their existence, shall be punished with imprisonment of three months to three years.

(2) The punishment from item 1 shall also apply to a person who stores, leaves or throws around waste materials, or handles them in a way as to change the quality of the air, soil, water, water flows, and herewith causes the destruction or significant damaging of woods, plants and other plant life.

(3) A person who commits the crime from items 1 and 2 out of negligence shall be punished with a fine, or with imprisonment of one to five years.

Serious crimes against the environment

Article 234

(1) If because of the crimes from article 218 items 1 and 2, article 219 item 1, article 230 items 1 and 2, article 232 items 1 and 2, a serious body injury or a serious damage to the health of several people is caused, or death is caused to one or more persons, or the changes from the pollution cannot be removed for a longer period of time, the offender shall be punished with imprisonment of one to ten years.

(2) If because of the crimes from article 218 item 3, article 219 item 3, and article 230 item 3, a serious body injury or a serious damage to the health of several people is caused, or death is caused to one or more persons, or the changes from the pollution cannot be removed for a long period of time, the offender shall be punished with imprisonment of one to five years.

(3) If because of the crimes from article 220 item 1, article 221 item 1, article 222 item 1, article 226

item 1, article 230 items 1 and 2, a property damage of a large extent is caused, the offender shall be punished with imprisonment of one to five years.

(4) If because of the crimes from article 220 item 3, article 221 item 2, article 222 item 4, article 230 item 3, a property damage of a large extent is caused, the offender shall be punished with imprisonment of one to three years.

Kosovo: Kodi penal

CHAPTER XXVIII □ CRIMINAL OFFENSES AGAINST THE ENVIRONMENT, ANIMALS, PLANTS AND CULTURAL OBJECTS

Article 347 □

Polluting, degrading or destroying the environment

1. Whoever, in violation of the law, pollutes or degrades the air, water or soil or excessively uses or exploits natural resources shall be punished by a fine or by imprisonment of up to two (2) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

3. When the offense provided for in paragraph 1 of this Article results in the impairment to health of a significant number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other significant material damage to the environment or an increase in pollution to a critical level the perpetrator shall be punished by a fine and by imprisonment of to five (5) years.

4. When the offense provided for in paragraph 2 of this Article results in the impairment to health of a significant number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other significant material damage to the environment or an increase in pollution to a critical level or critical damage to the environment, the perpetrator shall be punished by a fine and by imprisonment up to two (2) years.

5. When the offense provided for in paragraph 1 of this Article results in irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by a fine and imprisonment of one (1) to eight (8) years.

6. When the offense provided for in paragraph 2 of this Article results irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

Article 349 □

Allowing unlawful construction or unlawful operation of plants and installations that pollute the environment

1. Whoever, in violation of the law on protecting the environment, allows the construction or installation of a plant or operates or manages a plant or an installation in which a hazardous activity is carried out and thereby risks causing death or grievous bodily injury to any person, pollutes the environment, the air, soil or water or causes damage of five thousand (5,000) EUR or more to animals or plants or property shall be punished by a fine or by imprisonment of up to three (3) years.

2. When the offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

3. Whoever in violation of the law, allows or applies technologies that pollutes the environment in large scale or territory shall be punished by a fine or by imprisonment of up to three (3) years.

4. When the offense provided for in paragraph 3 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that takes a significant time or expenses to be remedied, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

5. When imposing a sentence for the criminal offense provided for in this Article, the court may require the perpetrator to undertake certain measures for protection, safeguarding and improving the environment.

Article 350

Damaging objects and installations for protection of the environment

1. Whoever, damages, destroys, removes or in other manner renders unusable objects or installations for the protection of the environment, shall be punished by a fine or by imprisonment of up to three (3) years.

2. If the criminal offense provided for in paragraph 1 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one (1) year.

3. If the criminal offense provided for in paragraph 1 of this Article results in the pollution of air, water or soil in large scale and territory, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

4. If the criminal offense provided for in paragraph 2 of this Article results in the pollution of air, water or soil in large scale and territory, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.

5. When the offense provided for in paragraph 1 and 3 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that takes significant time and expense to be remedied, the perpetrator shall be punished by a fine and by imprisonment of one (1) to eight (8) years.

6. When the offense provided for in paragraph 2 and 4 of this Article results in complete or partial destruction of flora or fauna or large scale pollution that significant time and expense to be remedied, the perpetrator shall be punished by a fine and by imprisonment of six (6) months to five (5) years.

7. When imposing a sentence for the criminal offense provided for in this Article, the court may require the perpetrator to undertake certain measures for protection, safeguarding and improving the environment.

Montenegro: Krivični zakon / Кривични закон

CHAPTER TWENTY FIVE CRIMINAL ACTS AGAINST THE ENVIRONMENT

Pollution of the environment

Article 301

(1) Anyone who by not adhering to regulations for protection and development of the environment pollutes the air, water and soil to a larger extent or in a wider area, shall be punished by maximum

three-year imprisonment sentence.

(2) If an act as of paragraph 1 herein is committed out of negligence, the offender shall be punished by pecuniary penalty or maximum one-year imprisonment sentence.

(3) If due to an act as of paragraph 1 herein animal or plant life is destroyed or damaged to a larger extent or the environment is polluted to such an extent that longer period of time and larger expenditures are needed for removing harmful consequences, the offender shall be punished by imprisonment sentence ranging from one to eight years.

(4) If as a result of an act as of paragraph 2 herein animal and plant life is destroyed or damaged to a larger extent or the environment polluted to such an extent that longer time period and larger expenditures are needed for removing harmful consequences, the offender shall be punished by imprisonment sentence ranging from six months to five years.

(5) If a conditional sentence is pronounced for offenses as of paragraphs 1 and 4 herein, the court may order the perpetrator to take particular prescribed measures for protection, preservation and development of the environment within a certain time notice.

Failing to take measure for the protection of the environment

Article 302

(1) Person responsible for taking measure for the protection, preservation and development of the environment who does not take the prescribed measures for the protection of the environment, shall be punished by pecuniary penalty or maximum one year imprisonment sentence.

(2) If an act as of paragraph 1 herein is done out of negligence, the offender shall be punished by pecuniary penalty or a maximum six month imprisonment sentence.

(3) If due to an act as of paragraph 1 herein the air, water or soil are polluted to a larger extent or in a wider area, the offender shall be punished by a maximum three year imprisonment sentence.

(4) If due to an act as of paragraph 2 herein the air, water or soil are polluted to a larger extent or in a wider area, the offender shall be punished by pecuniary penalty or maximum one year imprisonment sentence.

(5) If due to acts as of paragraph 1 and 3 herein animal or plant life is destroyed to a larger extent or the environment polluted to such an extent that longer time period and large expenditures are needed to remove harmful consequences, the offender shall be punished by imprisonment sentence ranging from one to eight years.

(6) If due to acts as of paragraphs 2 and 4 herein animal and plant life is destroyed to a large extent or the environment polluted to such an extent that longer time period and larger expenditures are needed to remove harmful consequences, the offender shall be punished by imprisonment sentence ranging from six months to five years.

(7) If it pronounces a conditional sentence for acts as of paragraphs 1 to 6 herein, the court may order the offender to take certain prescribed measures for protection, preservation and development within a determined time period.

Unlawful construction and putting into function buildings and plants which pollute the environment

Article 303

(1) An official or responsible person who by not adhering to regulations on protection, preservation and development of the environment allows construction, putting into function or use of buildings or plants or use of technology which to a larger extent or in a wider area pollutes the environment, shall be punished by imprisonment sentence ranging from six months to five years.

(2) If due to acts as of paragraph 1 herein animal or plant life is destroyed to a larger extent or the environment polluted to such an extent that for removing the consequences of pollution longer time period or larger expenditures are needed, the offender shall be punished by imprisonment sentence ranging from one to eight years.

(3) If a conditional sentence is pronounced for acts as of paragraphs 1 and 2 herein, the court may order the offender to take certain prescribed measures for protection, preservation and development of the environment within a certain time period.

Destroying buildings and plants for the protection of the environment

Article 304

(1) Anyone who damages, destroys, removes or in any other way makes useless buildings or plants or the protection of the environment, shall be punished by imprisonment sentence ranging from one to three years.

(2) If an act as of paragraph 1 herein is committed out of negligence, the offender shall be punished by pecuniary penalty or a maximum one-year imprisonment sentence.

(3) If due to acts as of paragraph 1 herein air, water or soil are polluted to a larger extent and in a wider area, the offender shall be punished by imprisonment sentence ranging from six months to five years.

(4) If due to an act as of paragraph 2 herein air, water or soil are polluted to a large extent and in a wider area, the offender shall be punished by maximum three year imprisonment sentence.

(5) If due to an act as of paragraphs 1 and 3 herein animal or plant life are destroyed or damaged to a larger extent or the pollution of the environment is of such an extent that for removing its consequences longer time period or major expenditures are needed, the offender shall be punished by imprisonment sentence ranging from one to eight years.

(6) If due to acts as of paragraphs 2 and 4 herein animal or plant life are destroyed or damaged to a larger extent or the environment polluted to such a measure that for removing its consequences longer time and larger expenses are needed, the offender shall be punished by imprisonment sentence ranging from six months to five years.

(7) If a conditional sentence is pronounced for acts as of paragraphs 1 to 6 herein, the court may order to the offender to take particular prescribed measures for protection, preservation and development of the environment within a determined time period.

Damaging the environment

Article 305

(1) Anyone who by not adhering to regulations, by using natural resources, constructing buildings, doing any kinds of works or in any other way causes damage to the environment to a larger extent or in a wider area, shall be punished by maximum three year imprisonment sentence.

(2) If an act as of paragraph 1 herein is done out of negligence, the offender shall be punished by

pecuniary penalty or maximum one year imprisonment sentence.

(3) If due to an act as of paragraph 1 herein animal or plant life are destroyed or damaged to a large extent or the environment polluted to such an extent that for removing its consequences longer time and major expenses are needed, the offender shall be punished by imprisonment sentence ranging from one to eight years.

(4) If due to an act as of paragraph 2 herein animal or plant life are destroyed or damaged to a larger extent or the environment polluted to such an extent that for removing its consequences longer time period and major expenses are needed, the offender shall be punished by imprisonment sentence ranging from six months to five years.

(5) If a conditional sentence is pronounced for acts as of paragraphs 1 to 4 herein, the court may oblige the offender to take particular prescribed measures for protection, preservation and development of the environment within a determined time period.

Article 313

Anyone who contrary to regulations allows or starts construction of a nuclear power plant, plants for production of nuclear fuel or plants for processing of used nuclear waste, shall be punished by imprisonment sentence ranging from six months to five years.

Non-observing the decision pertaining to environment protection measures

Article 314

(1) An official or responsible person who does not observe the decision of the authorized body pertaining to taking environment protection measures, shall be punished by maximum three year imprisonment sentence.

(2) If a conditional sentence is pronounced the court may oblige the offender to take measures determined by the authorized body in the defined time period.

Violation of the right to be informed on the state of the environment

Article 315

(1) Anyone who contrary to regulations does not provide data or provides untrue data on the state of the environment and the phenomena which are necessary for the assessment of danger for the environment and for taking measures for the protection of life and health of people, shall be punished by pecuniary penalty or maximum one year imprisonment sentence.

(2) Anyone who makes public untrue data on the state of the environment and thereby causes panic or major alarm among citizens shall be punished as of paragraph 1 herein.

Poland: Kodeks karny

CHAPTER XXII □ OFFENCES AGAINST THE ENVIRONMENT

Article 181

§ 1. Whoever causes destruction of plant or animal life of considerable dimensions shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. Whoever, in violation of the provisions in force in the protected area, destroys or damages plants

or animals, causing serious harm shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 3. The same penalty shall be imposed on anyone who, irrespective of place of the act, destroys or damages plants or animals under protection, causing essential harm.

§ 4. If the perpetrator of the act specified in § 1 acts unintentionally he shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 5. If the perpetrator of the act specified in § 2 or 3 acts unintentionally, he shall be subject to a fine or the penalty of restriction of liberty.

Article 182

§ 1. Whoever pollutes the water, air or ground with a substance or contaminates with ionizing radiation in such quantities or form that it could endanger the life or health of many persons or cause destruction to plant and animal life of considerable dimensions shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.□

§ 2. If the perpetrator acts unintentionally he□shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

Article 183

§ 1. Whoever, in violation of the provisions of law, stores, disposes of, processes, renders harmless or carries waste or substances under such conditions or in such a manner that could endanger the life or health of human beings or cause the destruction to plant or animal life of considerable dimensions shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same punishment shall be imposed on anyone, who, in violation of the provisions of law, imports waste or substances hazardous to the environment.

§ 3. The same punishment shall be imposed on anyone, who despite his duty allows the commitment of the act specified in § 1 or 2.

§ 4. If the perpetrator of the act specified in § 1-3 acts unintentionally he shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

Article 188

Whoever, in violation of the law, builds a new facility or extends an existing one, or conducts business, which threatens the environment shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

Article 225

§ 1. Whoever prevents a person authorized to carry out environmental inspections or a person called upon to assist him from performing his official duty, or makes it difficult to do so shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. The same punishment shall be imposed on anyone, who prevents a person authorized to carry out labor inspection or a person called upon to assist him from performing his official duty, or makes it difficult to do so.

Article 46

§ 1. In the case of conviction for causing death, serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health, an offence against safety in traffic or an offence against the environment, property or commerce, the court, upon a motion from the injured person or from another person so entitled, shall impose the obligation to redress the damage caused, in whole or in part. The provision of civil law on statutes of limitation regarding claims and the possibility to adjudge an annuity, shall not be applied.

Serbia: Кривични законик / Krivični zakonik

CHAPTER TWENTY FOUR □ CRIMINAL OFFENCES AGAINST THE ENVIRONMENT

Environmental Pollution

Article 260

(1) Whoever by violating the regulations on protection, preservation and improvement of the environment pollutes air, water or soil to larger extent or over a wider area, shall be punished by imprisonment up to three years. □

(2) If the offence specified in paragraph 1 of this Article is committed from negligence, the offender shall be punished by fine or imprisonment up to one year. □

(3) If the offence specified in paragraph 1 of this Article results in destruction or damage to animal and plant life to large extent or environmental pollution in such extent that cleanup requires longer period of time or great expense, □ the offender shall be punished by imprisonment of one to eight years.

(4) If the offence specified in paragraph 2 of this Article results in destruction or damage to animal and plant life to large extent or environmental pollution in such extent that cleanup requires longer period of time or great expense, the offender shall be punished by imprisonment of six months to five years. □

(5) If the court pronounces a suspended sentence for offences specified in paragraphs 1 through 4 of this Article, it may order the offender to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement.

Failure to undertake Environmental Protection Measures

Article 261

(1) An official or responsible person who fails to undertake the stipulated environmental protection measures, or fails to proceed according to orders of competent authority in respect of environmental protection, shall be punished by fine or imprisonment up to one year. □

(2) If the offence specified in paragraph 1 of this Article is committed from negligence, the offender shall be punished by fine or imprisonment up to six months. □

(3) If the offence specified in paragraphs 1 and 2 of this Article resulted in environmental pollution, □ the offender shall be punished for the offence specified under Article 260 hereof. □

(4) If the court pronounces a suspended sentence for offences specified in paragraphs 1 and 2 of this Article, it may order the offender to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement.

Illegal Construction and Operation of Facilities and Installations Polluting the Environment

Article 262

(1) An official or responsible person who contrary to regulations on environmental protection, preservation and improvement allows construction, start-up and operation of facilities and installations or use of technologies that to larger extent and over a wider area pollute the environment, shall be punished by imprisonment of six months to five years. □

(2) If the offence specified in paragraph 1 of this Article results in destruction of animal and plant life to high extent or pollution of the environment to such degree that cleanup would require a long period of time or great expense, the offender shall be punished by imprisonment of one to eight years. □

(3) If the court pronounces a suspended sentence for offences specified in paragraphs 1 and 2 of this Article, it may order the offender to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement.

Damaging Environmental Protection Facilities and Installations

Article 263

(1) Whoever damages, destroys, removes or otherwise makes inoperable facilities or installations for environmental protection, shall be punished by imprisonment up to three years. □

(2) If the offence specified in paragraph 1 is committed from negligence, the offender shall be punished by fine or imprisonment up to one year. □

(3) If the offence specified in paragraph 1 resulted in air, water or soil pollution to larger extent or over a wider area, □the offender shall be punished by imprisonment of six months to five years.

(4) If the offence specified in paragraph 2 resulted in air, water or soil pollution to larger extent or over a wider area, the offender shall be punished by imprisonment up to three years. □

(5) If the offence specified in paragraph 1 and 3 of this Article result in destruction or damage of animal and plant life to high extent or pollution of the environment to such degree that cleanup would require a long period of time or great expense, □the offender shall be punished by imprisonment of one to eight years.

(6) If the offence specified in paragraph 2 and 4 of this Article result in destruction or damage of animal and plant life to high extent or pollution of the environment to such degree that cleanup would require a long period of time or great expense, the offender shall be punished by imprisonment of six months to five years. □

(7) If the court pronounces a suspended sentence for offences specified in paragraphs 1 through 6 of this Article, it may order the offender to undertake within a set period of time particular stipulated measures for environmental protection, preservation and improvement.

Damaging the Environment

Article 264

(1) Whoever by violating regulations, through use of natural resources, construction of buildings, executing works or otherwise causes damage to the environment to large extent or over a wider area, shall be punished by imprisonment up to three years. □

(2) If the offence specified in paragraph 1 is committed from negligence, the offender shall be

punished by fine or imprisonment up to one year. □

(3) If the court pronounces a suspended sentence for offences specified in paragraphs 1 and 2 of this Article, it may order the offender to undertake within a set period of time particular measures to correct the detrimental consequences to the environment.

Slovakia: Trestný zákonník

TITLE TWO □ CRIMINAL OFFENCES AGAINST THE ENVIRONMENT

Endangering and Damaging the Environment

Section 300

(1) Any person who willfully creates the danger of smaller environmental damage by violating generally binding legal environmental protection regulations or the rules of protection and management of natural resources including natural healing resources and natural resources of mineral table water shall be liable to a term of imprisonment of up to three years.

(2) Any person who unlawfully erects any building in a protected area shall be liable to a term of imprisonment of one to five years.

(3) The same sentence as referred to in paragraph 2 shall be imposed on the offender if he commits the offence referred to in paragraph 1 a) acting in a more serious manner, or □ b) in a protected area including protection zone of natural healing resources and natural resources of mineral table water.

(4) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1, and causes substantial environmental damage through its commission.

(5) The offender shall be liable to a term of imprisonment of four to ten years if he commits the offence referred to in paragraph 1, and causes large-scale environmental damage through its commission.

Section 301

(1) Any person who by negligence creates the danger of larger environmental damage by violating generally binding legal environmental protection regulations or the rules of protection and management of natural resources including natural healing resources and natural resources of mineral table water shall be liable to a term of imprisonment of up to one year.

(2) The offender shall be liable to a term of imprisonment of up to three years if he commits the offence referred to in paragraph 1 in a protected area including protection zone of natural healing resources and natural resources of mineral table water.

(3) The same sentence as referred to in paragraph 2 shall be imposed on the offender if he commits the offence referred to in paragraph 1, and causes substantial damage through its commission.

(4) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1, and causes large-scale damage through its commission.

Damage

Section 124

(1) For the purposes of this Act, damage shall mean harm to property or actual loss of assets or prejudice to the rights of the injured party or other harm, which has a causal relationship with the criminal offence irrespective of whether the harm has been caused to a thing or to the rights. For the purposes of this Act, damage shall also mean advantage gained in causal relationship with the criminal offence.

(2) Damage within the meaning of paragraph 1 shall also mean the loss of profit to which the injured party, considering the circumstances and his personal situation, would otherwise be entitled or could reasonably expect to obtain.

(3) In case of criminal offences against the environment, damage shall mean the combined environmental harm and property damage; property damage shall also comprise the costs of restoring the environment to its original state. In case of the criminal offence of illegal handling of waste pursuant to Section 302, the scope of the offence shall be determined on the basis of customary price charged at the time and place of the offence for the collection, transport, export, import, recycling, disposal or dumping of waste, and the price charged for the removal of waste from the site that is not designated for dumping.

Section 126

(1) The amount of damage shall be determined on the basis of customary price at which the damaged thing is sold at the time and place of the offence. Where the amount of damage cannot be determined as stated above, it shall be determined on the basis of costs that would be reasonably incurred to obtain an identical or a similar thing, or to restore the thing to its original state.

(2) In case of environmental damage, harm to protected species of animals and plants, specimens or wood species, or damage to the things protected as monuments, or the things of historical, artistic or scientific value, the degree of harm or the amount of damage shall be determined also taking account of the value of such thing as defined by a law, or other generally binding legal act issued on the basis of a law.

Section 309

Escape of Genetically Modified Organisms

(1) Any person who, in breach of generally binding legal regulations on the use of genetic technologies, causes escape of genetically modified organisms from enclosed facilities, or causes the release of genetically modified organisms into the environment, which may pose a threat to the humans or to the environment, shall be liable to a term of imprisonment of up to three years.

(2) The offender shall be liable to a term of imprisonment of one to five years if he commits the offence referred to in paragraph 1, a) and causes larger damage through its commission, b) by reason of specific motivation, or c) acting in a more serious manner.

(3) The offender shall be liable to a term of imprisonment of four to ten years if he commits the offence referred to in paragraph 1, a) and causes substantial environmental damage through its commission, or b) and causes grievous bodily harm or death through its commission.

(4) The offender shall be liable to a term of imprisonment of ten to twenty years if he commits the offence referred to in paragraph 1, a) and causes grievous bodily harm or death to several persons through its commission, or b) under a crisis situation.

Section 419

Terrorism and some forms of participation on terrorism

(1) Who

a) with an intent to seriously intimidate inhabitants, seriously destabilize or defeat constitutional, political, economical or social establishment of the state or a structure of an international organization, or to coerce a government of the state or an international organization to act or to omit to act, threats by commitment or commit an offence endangering the life, health of people, their personal freedom or a property, or illegally produces, gets, owns, possesses, transports, delivers or in another way uses explosives, nuclear, biological or chemical weapons, or performs not permitted research and development of such weapons or weapons prohibited by law or by an international treaty,

b) with the intent to cause death or serious bodily harm or considerable damage on property or environment possesses radioactive material, or has or creates nuclear explosive machine or a machine diffusing radioactive material or emanating radiance, which may due to its radiological features cause death, serious bodily harm or serious damage on property or environment, or

c) with the intent to cause death or serious bodily harm or considerable damage on property or environment, or to coerce natural person or legal person, international organization or state to act or omit to act, uses radioactive material or nuclear explosive system or a system diffusing radioactive material or emanating radiance which may cause death due to its radiological features, or serious bodily harm or considerable damage on property or on environment, or uses or damages a nuclear reactor including reactors installed on floats, vehicles, planes or cosmic objects, used as an energy source for driving such floats, vehicles, planes or cosmic objects, or for other purposes, or premises or traffic system used for production, storage, processing or transport of radioactive material in a manner which releases or may release radioactive material, or threats by such act in circumstances indicating credibility of the threat, or

d) asks for radioactive material, nuclear explosive system or system diffusing radioactive material or emanating radiance which may due to its radiological features cause death, serious bodily harm or considerable damage on property or environment, or a nuclear reactor including reactors installed on floats, vehicles, planes or cosmic objects used as an energy source for driving such floats, vehicles, planes or cosmic objects or for other purposes, or premises or traffic system used for production, storage, processing or transport of radioactive material, with threats in circumstances indicating credibility of the threats or use of power, shall be imposed an imprisonment sentence for 20 to 25 years or life imprisonment.

Slovenia: Kazenski zakonik

CHAPTER THIRTY-TWO: CRIMINAL OFFENCES AGAINST THE ENVIRONMENT, SPACE AND NATURAL RESOURCES

Burdening and Destruction of Environment

Article 332

(1) Whoever endangers the life or health of a substantial number of people, or causes, in whole or in part, damage to, or the destruction of the environment, or causes the threat of such damage or destruction, by breaching regulations

1) or by any other general dangerous action releases or introduces dangerous substances or ionizing radiation into the air, soil or water,

2) processes, including the removal, storage, transport, export or import of waste, dangerous waste or other dangerous substances, or sending these illegally for profit,

3) manages a plant where a dangerous activity takes place or dangerous substances or preparations are stored which results in a threat to the area outside of the plant,

4) significantly degrades a protected habitat,

5) trades in or uses substances which cause ozone layer depletion,

6) causes an excessive pollution of environment, impair the environment or excessively exploits natural goods, shall be sentenced to imprisonment for not more than five years.

(2) If the offence under the preceding paragraph is committed through negligence, the perpetrator shall be punished by a fine or by an imprisonment of up to two years.

(3) If the offence under paragraphs 1 or 2 of this Article has as a consequence the impairment of health of a substantial number of people, the destruction, in whole or in part, of flora or fauna, or reservoirs of drinking water, or any other damage to the environment resulting in serious consequences, continuous pollution at a critical level or critical damage to the environment, the perpetrator shall be punished by imprisonment of up to eight years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be punished by imprisonment of up to three years.

(4) If the offence under paragraphs 1 or 2 of this Article results as a consequence in irreparable damage to, or destruction of the environment or protected natural resources, the perpetrator shall be punished by imprisonment of up to ten years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be punished by imprisonment of up to five years.

(5) If the offence under paragraphs 1 or 2 of this Article entails the death of one or more persons, the perpetrator shall be sentenced to imprisonment for not less than one and not more than twelve years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be sentenced to imprisonment for not less than one and not more than eight years.

(6) The same punishment as referred to in the preceding paragraph shall be imposed on a perpetrator who commits the offences referred to in the preceding paragraph as a member of a criminal association for the commission of such criminal offences.

Damaging or Destroying Public Installations

Article 318

(1) Whoever damages, destroys or removes electrical wires, gas pipes, water supply installations, heating installations, pipelines, means of telecommunications, submarine cables, sewerage installations, means of environmental protection, or other similar public installations, thus causing disturbance in the supply to the population and to industry, shall be sentenced to imprisonment for not more than five years.

Article 335

(1) Whoever breaches regulations by producing, accepting, possessing, processing, storing, using or transporting, dumping or discharging radioactive or other substances dangerous to human health and life and to the environment, shall be sentenced to imprisonment for not more than five years.

(5) If the offence targeting or interfering with the operation of a nuclear facility entails grievous bodily harm or death of one or more persons, or a substantial loss of property or environmental damage, as a result of exposure to radiation or the release of radioactive substances, the perpetrator shall be sentenced to imprisonment for not less than one and not more than fifteen years.

Ukraine: Кримінальний кодекс

CHAPTER VIII: □ CRIMINAL OFFENSES AGAINST ENVIRONMENT

Article 236

Violation of environmental safety rules

Violation of regulations on environmental assessment or environmental safety during designing, location, construction, reconstruction, putting into operation, operation, and closure of industrial plants, facilities, mobile units and other objects, where it caused death of people, or environmental pollution of large areas, or other grave consequences, -shall be punishable with imprisonment for a term of five to ten years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Article 237

Failure to eliminate consequences of environmental pollution

Failure to perform or improper performance of decontamination or other recreational measures related to elimination of consequences of environmental pollution by a person in discharge of his/her duties on areas contaminated by hazardous substances or exposed to radiation, where it caused death of people or any other grave consequences, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term, with the deprivation of the right to occupy certain positions or engage in certain activities for a term not exceeding three years.

Article 238

Concealment or misrepresentation of information on environmental status or disease incidence among the population

1. Concealment or misrepresentation, by an official, of information on environmental status, including the radiation situation which is related to pollution of land, water, air, food or food resources and adversely effects the health of people, flora and fauna, and also the disease incidence among the population in areas of increased environmental concern, -shall be punishable by a fine up to 100 tax-free minimum incomes, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, or restraint of liberty for a term up to three years.

2. The same acts, if repeated, or committed in an area announced to be an emergency zone, or where they caused death of people or other grave consequences, -shall be punishable by restraint of liberty for a term of two to five years, or imprisonment for the same term, with or without deprivation of the right to occupy certain positions or engage in certain activities for a term not exceeding three years.

Article 239

Contamination or deterioration of land

1. Contamination or deterioration of land by substances, waste or other materials hazardous to human life and health or the environment, as the result of violation of special rules, where these acts exposed human life and health or environment to danger, -shall be punishable by a fine of 200 tax-free minimum incomes, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

2. The same acts that caused death of people or massive spread of disease among them, or any other grave consequences, - shall be punishable by restraint of liberty for a term of two to five years, or imprisonment for the same term, with or without the deprivation of the right to occupy certain

positions or engage in certain activities for a term up to three years.

Article 239-1

Misappropriation of soil cover (surface layer) of land

1. Misappropriation of soil cover (surface layer) of land where these acts exposed human life and health or environment to danger, - shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and the confiscation of instruments and means of misappropriation.

2. The same actions committed repeatedly or by a group of persons upon their prior conspiracy, or where they caused a gross pecuniary damage, -shall be punishable by restraint of liberty for a term of two to five years or by imprisonment for the same period, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and the confiscation of instruments and means of misappropriation.

3. Actions envisaged by paragraph 1 or 2 of this Article, if committed by arson, explosion or other dangerous way or where it caused death of people, massive destruction of objects of fauna or flora or any other grave consequences, -shall be punishable by restraint of liberty for a term of three to five years or by imprisonment for the same period, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and the confiscation of instruments and means of misappropriation.

Note: For the purposes of this Article, the pecuniary damage shall be deemed as large, if it equals or exceeds 100 tax-free minimum incomes. □(This Code is supplemented by Article 239-1 Law No 1708-VI (1708-17) of 05.11.2009)

Article 239-2

Misappropriation of lands of water resources on an especially large scale

1. Misappropriation of the surface (ground) layer of land water resources on an especially large scale, -shall be punishable by a fine of 100 to 300 tax-free minimum incomes, or restraint of liberty for a term up to three years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and the confiscation of instruments and means of misappropriation.

2. The same actions committed repeatedly or by a group of persons upon their prior conspiracy, -shall be punishable by restraint of liberty for a term of two to five years or by imprisonment for the same period, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and the confiscation of instruments and means of misappropriation.

3. Actions envisaged by paragraph 1 or 2 of this Article, where it caused grave consequences, -shall be punishable by restraint of liberty for a term of three to five years or by imprisonment for the same period, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and the confiscation of instruments and means of misappropriation.

Note: For the purposes of this Article, the scale of surface (ground) layer of the land shall be deemed as especially large, if it exceeds 10 cubic meters. □(This Code is supplemented by Article 239-2 by Law No 1708-VI (1708-17) of 05.11.2009)

Article 240

Violation of rules related to the protection of mineral resources

1. Violation of prescribed rules related to the protection of mineral resources, where it exposed human life and health or environment to danger, -shall be punishable by a fine of 300 to 600 tax-free minimum incomes, or restraint of liberty for a term up to two years, or imprisonment for the same term.
2. Violation of prescribed rules related to the use of mineral resources, where it exposed human life and health or environment to danger, and also unlawful mining of mineral resources of the national importance, -shall be punishable by a fine of 400 to 700 tax-free minimum incomes, or restraint of liberty for a term up to three years, or imprisonment for the same term.
3. The acts provided for in paragraphs 1 and 2 of this Article, if repeated, or committed repeatedly within the territory or facilities of natural resource conservation area, -shall be punishable by restraint of liberty for a term of two to five years, or imprisonment for the same term, with forfeiture of illegally mined resources and mining equipment.
4. The acts provided for in paragraphs 1, 2 and 3 of this Article, committed by means of setting fire, explosion or by any other generally dangerous method, or where it caused an death of people, their massive spread of disease among them, or any other grave consequences, -shall be punishable by imprisonment for a term of five to eight years, with the forfeiture of illegally mined resources and mining equipment. □(Article 240 as amended by Laws No 2308-IV (2308-15) of 11.01.2005, No 2984-IV (2984-15) of 18.10.2005; in version of Law No 1708-VI (1708-17) of 05.11.2009)

Article 241

Air pollution

1. Pollution or other change of natural characteristics of air by hazardous substances, waste or other material generated by industrial or other production, as a result of violation of special rules, where these acts exposed human life and health or environment to danger, shall be punishable by a fine of 100 to 200 tax-free minimum incomes, or restraint of liberty for a term up to three years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for the same term.
2. The same acts that caused death of people or any other grave consequences, -shall be punishable by restraint of liberty for a term of two to five years, or imprisonment for the same term, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

Article 242

Violation of rules related to water protection

1. Violation of rules related to the protection of water (water reservoirs), where it resulted in contamination of surface or underground water and water-bearing horizons, potable or curative water springs, or caused changes in their natural characteristics, or caused exhaustion of water springs and exposed human life and health or environment to danger, -shall be punishable by a fine of 100 to 200 tax-free minimum incomes, or deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years, or restraint of liberty for the same term.
2. The same acts that caused death of people or massive spread of disease among them, or mass destruction of flora and fauna, or any other grave consequences, - shall be punishable by restraint of liberty for a term up to five years, or imprisonment for the same term.

Article 253

Designing or operation of constructions without systems of environmental protection

1. Making and submitting designs or any other similar documentation to a customer by an official or authorized person without mandatory environmental protection installations, or putting such constructions into operation without such protective installations, where these actions created a risk of serious technological accidents or environmental disasters, destruction or mass spread of diseases among the population, or any other grave consequences, -shall be punishable by deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, or restraint of liberty for the same term.

2. The same actions that caused any of the consequences provided for in the first paragraph of this Article, -shall be punishable by restraint of liberty for three to five years, or imprisonment for a term up to five years.

Russia: Уголовный кодекс Российской Федерации

CHAPTER 26. ENVIRONMENTAL CRIMES

“On the practice of the application by the courts of legislation on responsibility for ecological offences, see Decision of the Plenum of the Supreme Court of the Russian Federation No. 14 of November 5, 1998”

Article 246

Violation of the Rules for Environmental Protection During the Performance of Works

Violation of the rules for environmental protection during the designing, placement, building, commissioning, or operation of industrial, agricultural, scientific, or other facilities by persons responsible for the observance of these rules, if this has involved a substantial change in the radioactive background, the infliction of injury to human health, mass-scale injury to animals, or any other grave consequences, shall be punishable with a fine in the amount of up to 120 thousand rubles, or in the amount of a wage/salary or any other income of the convicted person for a period of up to one year, or with obligatory labor for a term of up to four hundred and eighty hours, or with corrective labor for a term of up to two years, or with compulsory labor for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such, or with deprivation of liberty for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such.

Article 247

Violation of the Rules for Dealing with Environmentally Hazardous Substances and Waste

1. Production of illicit dangerous waste, transportation, storage, dumping, use, or any other circulation of radioactive, bacteriological, or chemical substances or waste, with a violation of fixed rules, if these acts have created a threat of infliction of substantial harm on human health or the environment, shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by restriction of liberty for a term of up to two years, or by compulsory labor for a term of up to two years, or by deprivation of liberty for the same term.

2. The same acts, which have involved the pollution, poisoning, or contamination of the environment, the infliction of harm to human health or mass-scale injury to animals, and likewise acts committed in a zone of ecological distress or in a zone of ecological emergency, shall be punishable with a fine in an amount of 100 thousand to 300 thousand rubles, or in the amount of a wage/salary or any other income of the convicted person for a period of one to two years, or with compulsory labor for a term

of up to five years, or with deprivation of liberty for the same term.

3. Acts provided for by the first or second part of this Article, and entailing by negligence the death of a man or mass disease infection of people, shall be punishable by deprivation of liberty for a term of up to eight years.

Article 252

Pollution of the Marine Environment

1. Marine pollution from land-based sources or because of an infraction of the rules for dumping from ships or artificial islands, installations or structures built in the sea of substances and materials which are hazardous to human health and aquatic biological resources, and which prevent the legitimate use of the marine environment, shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by disqualification from holding specific offices or engaging in specified activities for a term of up to five years, or by compulsory works for a term of up to 480 hours, or by corrective labor for a term of up to two years, or by arrest for a term of up to four months.

2. The same acts, which have caused substantial harm to human health, aquatic biological resources, the environment, zones of recreation or to other law-protected interests, shall be punishable by a fine in the amount of up to five hundred thousand rubles, or in the amount of a wage/salary or other income of the convicted person for a period of up to three years, or by compulsory labor for a term of up to two years, or by deprivation of liberty for the same term with a fine in the amount of up to forty thousand rubles, or in the amount of a wage/salary or other income of the convicted person for a period of up to three months.

3. Acts provided for by the first or second part of this Article, and entailing by negligence the death of a person, shall be punishable by compulsory labor for a term of up to five years, or by deprivation of liberty for the same term.

Article 215

Violation of Safety Rules in Facilities of Atomic Power Engineering

1. Violation of safety rules during the siting, designing, building, or operating of facilities of atomic power engineering, if this could involve the death of a person or radioactive contamination of the environment, shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period up to 18 months, or by restraint of liberty for a term of up to three years, or by compulsory labor for a term of up to three years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such, or by deprivation of liberty for the same term, with disqualification from holding specific offices or engaging in specified activities for a term of up to three years, or without such disqualification.

2. The same deed, which has entailed by negligence the infliction of major damage on a person's health or the death thereof, or radioactive contamination of the environment shall be punishable by compulsory labor for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such, or by deprivation of liberty for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such.

3. The deed provided for by Part One of this Article which has entailed through negligence the death of two or more persons - shall be punishable by compulsory labor for a term of up to five years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to

three years or without such, or by deprivation of liberty for a term of up to seven years with deprivation of the right to hold specified offices or to engage in specified activities for a term of up to three years or without such.

Article 254

Deterioration of Land

1. Poisoning, polluting, or causing any other deterioration of land through harmful products of economic and any other activity, due to the violation of the rules for dealing with fertilizers, plant growth stimulators, chemical weed-killers, any other dangerous chemical or biological substances during their storage, use, or transportation, which has entailed the infliction of harm to human health or the environment, shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by disqualification from holding specific offices or engaging in specified activities for a term of up to three years, or by compulsory works for a term of up to 480 hours, or by corrective labor for a term of up to two years.
2. The same deeds, committed in a zone of ecological distress or in a zone of ecological emergency, shall be punishable by restraint of liberty for a term of up to two years, or by compulsory labor for a term of up to two years, or by deprivation of liberty for the same term.
3. Deeds stipulated in the first or second parts of this Article, and entailing by negligence the death of a person, shall be punishable by compulsory labor for a term of up to five years, or by deprivation of liberty for the same term.

Article 247

Violation of the Rules for Dealing with Environmentally Hazardous Substances and Waste

1. Production of illicit dangerous waste, transportation, storage, dumping, use, or any other circulation of radioactive, bacteriological, or chemical substances or waste, with a violation of fixed rules, if these acts have created a threat of infliction of substantial harm on human health or the environment, shall be punishable with a fine in an amount of up to 200 thousand rubles, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to 18 months, or by restriction of liberty for a term of up to two years, or by compulsory labor for a term of up to two years, or by deprivation of liberty for the same term.
2. The same acts, which have involved the pollution, poisoning, or contamination of the environment, the infliction of harm to human health or mass-scale injury to animals, and likewise acts committed in a zone of ecological distress or in a zone of ecological emergency, shall be punishable with a fine in an amount of 100 thousand to 300 thousand rubles, or in the amount of a wage/salary or any other income of the convicted person for a period of one to two years, or with compulsory labor for a term of up to five years, or with deprivation of liberty for the same term.
3. Acts provided for by the first or second part of this Article, and entailing by negligence the death of a man or mass disease infection of people, shall be punishable by deprivation of liberty for a term of up to eight years.

Article 41

Justified Risk

1. No criminal liability shall ensue for infliction of harm to legally-protected interests provided the

risk is justified as attaining a socially useful goal.

2. Risk shall be regarded as justified unless the said goal could have been attained through action (inaction) not associated with risk and provided the person that committed the risk has undertaken all measures sufficient to prevent harm to legally protected interests.

3. Risk shall not be regarded as justified if it was known to involve a threat to the life of many persons, or a hazard of environmental or societal disaster.

ENTRETIEN

CONTEXTE.

EJOLT : *Environmental Justice Organisations, Liabilities and Trade* est un projet FP7 soutenu par la Commission européenne qui se déroulera de 2011-2015. Le projet appuie le travail des organisations de la justice environnementale, réunissant des scientifiques, des organisations militantes, groupes de réflexion, les décideurs dans les domaines de droit de l'environnement, la santé environnementale, l'écologie politique et l'économie écologique. Le projet EJOLT a eu sa séance annuelle à Rome entre le 9 et le 15 novembre 2013, avec la participation de plusieurs experts dont M. Antonio-Gustavo Gomez, Procureur général devant la Cour fédérale de Tucumán en Argentine. M. Gomez a accepté de faire quelques commentaires à une série de questions en matière d'Ecocide. Les questions et les réponses ont été formulées/reçues par nos équipes voie e-mail le 26 novembre 2013 (version originelle en espagnol).

EXPERT

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QUESTIONNAIRE

Sciences Po. Comment expliquez-vous que la criminalité environnementale de dimension internationale soit en pleine expansion?

Antonio Gomez. La criminalité environnemental est en hausse d'une manière proportionnelle aux besoins en ressources naturelles de l'industrie.

SP. Quels sont les nouveaux marchés de la criminalité qui peuvent être identifiés dans ce domaine ?

AG. Tous ceux qui ont besoin de se débarrasser des déchets du processus industriel ou ceux qui ont besoin de polluer au-dessus des normes internationales . Ex : industrie pétrolière

SP. Quels sont les bons outils pour lutter contre la criminalité internationale et nationale sur l'environnement ?

AG. Fondamentalement les procédures pénales, les plaintes et les griefs pour crimes contre l'environnement.

SP. Quels sont les textes juridiques spécifiques dont vous parlez le plus souvent ?

AG. Les législations nationales relatives aux crimes environnementaux ou les codes pénaux nationaux. Traités internationaux relatifs à la violation des droits humains en particulier des crimes contre l'humanité.

SP. Connaissez vous quelques textes juridiques ou doctrinales spécifiques qui seraient utiles de transposer et/ou à étendre à l'échelle internationale pour améliorer la lutte contre la criminalité environnementale ?

AG. Oui, bien sûr

SP. Les outils existants dans le droit positif sont-ils adaptés à la réalité des crimes contre l'environnement ?

AG. Oui

SP. Que pensez-vous du fonctionnement actuel de la coopération judiciaire et policière dans la lutte internationale contre la criminalité environnementale ?

AG. Il est désastreux, immergé dans une atmosphère de corruption et de complicité internationale qui l'on peut appeler les éco-mafias.

SP. Quelles suggestions avez-vous pour que le droit pénal de l'environnement soit plus efficace (nouveaux textes , la formation des juges , de la police) ?

AG. Créer une Cour pénale internationale pour crimes contre l'environnement

SP. Quel serait sanctions applicables aux infractions environnementales au niveau international ? Quels sont les acteurs de ces sanctions de type pourrait être appliquée ?

AG. Les mêmes que pour les crimes contre l'humanité prévues par le Statut de Rome. Elles peuvent être appliquées aux membres des conseils d'administration.

SP. Que pensez-vous de l'idée de créer un crime d'écocide pour les crimes les plus graves ?

AG. C'est une idée intéressante, mais pour le moment il s'agit plus d'un concept politique sans contenu juridique.

SP. Quelles seraient les situations concernées par le crime d'écocide ? Trafic de déchets, d'espèces protégées.... ?

AG. Toutes les activités liées à la pollution de l'environnement causant des crimes contre l'humanité.

SP. Quelle serait la juridiction la plus appropriée pour juger les crimes internationaux de l'environnement ? Un tribunal pénal spécial ? La Cour pénale internationale ?

AG. Une Cour pénale internationale pour des infractions environnementales

SP. Quel serait l'instrument juridique optimal pour réunir les principes du droit international de l'environnement ? Une convention internationale ? Une modification du statut de la Cour pénale internationale, etc. ?

AG. Un traité international similaire au Statut de Rome

VERSION ORIGINELLE EN ESPAGNOL

1) ¿Cómo describiría la evolución de la criminalidad ambiental a nivel internacional?

La criminalidad en materia de delitos ambientales va en aumento y es proporcional al requerimiento de recursos que necesita la industria

2) ¿Cuáles son los nuevos mercados del crimen que pueden ser identificados en esta área? Todos aquellos que necesitan deshacerse de residuos provocados por su proceso industrial o, los que necesitan contaminar por encima de las normas internacionales. Ej: industria del petróleo

3) ¿Qué herramientas de derecho existen para luchar contra la delincuencia internacional y nacional del medio ambiente? Básicamente el proceso penal, las denuncias y querellas por delitos ambientales

4) ¿Cuáles son los textos legales específicos a los que usted se refiere más habitualmente? Leyes nacionales vinculados a los delitos ambientales o códigos penales nacionales. Tratados internacionales vinculados a la violación de Derechos Humanos especialmente delitos de lesa humanidad

5) ¿Conoce usted textos legales o doctrinales extranjeros que serían útiles para transponer / difundir a nivel internacional para mejorar la lucha contra la delincuencia medioambiental? Si, claro

6) ¿Las herramientas existentes de derecho positivo le parecen adaptadas a la realidad de los crímenes ambientales? Si

7) ¿Qué sugerencias tiene para el derecho internacional penal del medio ambiente sea más eficaz (nuevos textos, formación de los jueces, de la policía)? Crear una Corte Penal internacional para Delitos Ambientales

8) ¿Qué piensa usted del funcionamiento actual de la cooperación policial y judicial en la lucha internacional contra la criminalidad ambiental? Es desastrosa, inmersa en un clima de corrupción y complicidades internacionales que ha dado en llamarse eco-mafias

9) ¿Qué sanciones serían pertinentes para los crímenes ambientales a nivel internacional? ¿A qué tipo actores podrían aplicarse tales sanciones? Las mismas que para la violación de los derechos de lesa humanidad previstos en el Tratado de Roma. Puede aplicarse a los integrantes de los directorios de las empresas.

10) ¿Qué piensa usted de la idea de crear un crimen de ecocidio para los crímenes más graves?

Es una idea interesante pero por el momento es mas un concepto político sin contenido jurídico

11) En su opinión, ¿cuáles podrían ser las situaciones incluidas en el crimen de ecocidio? El tráfico de deshechos, de especies protegidas? Todas aquellas actividades vinculadas a la contaminación ambiental que causen delitos de lesa humanidad

12) ¿Cuál sería la jurisdicción más adecuada para juzgar los crímenes internacionales de medio ambiente? Una Corte Penal Especial? La Corte Penal Internacional? Una Corte Penal Internacional para delitos ambientales

13) ¿Cuál sería el mejor instrumento legal para reunir los principios del derecho internacional del medio ambiente: una convención internacional, enmiendas al Estatuto de la Corte Penal Internacional, etc.? Un tratado internacional similar al Estatuto de Roma