
CRIMINAL ENFORCEMENT ROLE IN ENVIRONMENT

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GOALS

The sessions addressed the following issues:

- Sanctions and other consequences available through criminal enforcement and how effective they are in achieving compliance.
- The proper role of criminal authorities and sanctions in environmental enforcement. What the relationship should be between criminal and civil enforcement and for what types of violations criminal enforcement (rather than civil enforcement) is particularly well suited.
- Government entities involved in making criminal enforcement successful: how these different groups can be encouraged to work together.
- Training required to support criminal enforcement and training materials available.
- How INTERPOL works. Cooperative efforts among countries to prevent, detect, and prosecute crimes. What works well and what does not work well. What improvements can be made.

1 INTRODUCTION

In two sessions, the second of which only consisted of three persons excluding the facilitators and rapporteurs, several of the indicated topics were addressed. There also were discussions about negotiation versus criminal action, political interest in the brown environment, and environmental cases versus other severe criminality.

2 PAPERS

Six papers were produced on this topic. From China Mr. S. Wang wrote an article about environmental criminal justice in China. Mr. T. Bispham wrote an article about Oregon developing and implementing a state environmental crime program to complement their existing civil enforcement program. Different authors from the Netherlands produced four articles. Two were written on the environmental task of the police. One concerned targeting and criminal enforcement and the other is a manual on investigations of complex environmental offices.

3 DISCUSSION SUMMARY

3.1 How does a country establish laws enabling criminal sanctions?

This is very difficult in countries where the economy has a higher priority than the environment or there is a lack of public awareness about the adverse effects on health and the environment from serious violations. It was also very clear that social, economic, and political matters make the environmental problem a very complex one. It was believed that the first step is to educate the public about the negative impact serious violations can have on public health

and natural resources. Then, public awareness and their demand for strict laws and regulations needs to become a driving force. Education also needs to be elevated to the police, NGOs, prosecutors, judges and politicians. and to develop these entities into driving forces. It was also agreed that is important to publicize environmental scandals as a means of public education and to create a deterrent effect. Publicizing scandals may also result in greater political attention and support. It was a general view that environmental enforcement may take years to develop. It is a long process of training, coordinating efforts and knowledge, developing laws and regulations, setting up permit systems, etc. In countries that seem to be far ahead now, it took years to come to the point where they are now. And the problem of getting and keeping environmental cases high on the priority-list is world-wide: it always has to compete with murder, rape, drugs, etc.

3.2 Training

It was evident that a number of countries are in need of good training programs for investigators and prosecutors, and for judges too. Various networks need to be established to provide this service. The U.S. Environmental Protection Agency and the U.S. regional enforcement project may be able to serve this need to some degree. There is also a very basic need for some countries to have information on what constitutes civil versus criminal crime. In some areas a checklist approach has been found valuable in assisting inspectors to identify an environmental crime. Because of other priorities such as murder and drugs it appears that countries need to develop resources for dedicated environmental prosecutors. This would also be beneficial because many times the crimes are so complex it takes a full-time prosecutor to learn and apply the laws.

It was also very apparent that the most effective and efficient approach to addressing environmental crimes is a cooperative coordinated approach between affected programs like the police, the environment agency, prosecutors, fire and hazardous materials teams, etc. Defining roles, responsibilities and assigning accountabilities are imperative. It was said that in countries where the police are not involved in environmental enforcement but should be, a basic expertise is needed.

3.3 Sanctions

There is a great diversity between countries regarding the nature of the sanctions and the use of sanctions. The sanctions vary from fines to jail time. From China, Mr. S. Wang reported on the recovery of the costs of investigations, repairs or clean up, enforcement notices, preliminary measures (by the prosecutor), external audits and the recovery of profit. There is also a variety of authorities that can impose the sanctions. Especially the fact that civil/administrative sanctions can be imposed not only by a judge, but also by the environmental agency and the local or provincial authorities.

In a number of instances, a country's economics and culture will dictate whether they utilize negotiations or enforcement. It was suggested that one should not overlook the value of equity between sources as a driving force. That is, maintaining a level playing field between sources so that a polluter does not gain an economic advantage over a clean industry. In some instances countries may find support from industry for developing a criminal program if they believe it will promote equity. There was also discussion about the imposing of sanctions on individuals when the situation becomes a serious social problem. This was for instance the case in private owned land use. It was clear that severe sanctions have a preventive effect because of deterrence.

3.4 Role of Interpol

The role of Interpol was explained and the way this network operates. There was much interest to try and coordinate more between the various countries. An additional paper will be produced in which the Interpol-function will be explained. The network covers some 157 countries. In the European region Interpol has a working group established for further concrete information exchange. Until now it was hard to get in contact within Eastern Europe in the Interpol working group, but now there will be extra efforts made to involve this region.

3.5 Different issues discussed

The situation in Estonia recently changed under a new law, which indicates that the Department of Environmental Protection is responsible for the environmental enforcement both green and brown. This used to be a task for the police. The department has no investigatory knowledge so enforcement is a big problem.

In one rapidly industrializing country in Asia a participant observed that environmental enforcement doesn't have a high priority. Economic development comes first. Besides this, the police nor the public prosecutor have skills or knowledge to handle major environmental cases. Only small companies or individuals are prosecuted. Training but also restructuring of the system is needed. According to official reports, the environmental situation is improving, but there are doubts about the trustworthiness of these reports. Public awareness is growing very rapidly and the government is willing to take more action.

China has a criminal code and separate environmental legislation. Criminal prosecution is only possible on environmental laws if this law relates to the criminal code. There are a lot of offenses on which a judicial reaction should have followed, but because of the legal system it is very difficult to prosecute. Besides this, there is a very high priority on economic development. The public has the same view.

Jamaica has a problem with smuggling of endangered species, which are on the brink of extinction. They seek cooperation with the U.S. Customs and the Convention on International Trade in Endangered Species (CITES) organization to give an effective response to this threat.

A major problem in Malaysia is the dislodging of ships in the waters of Malaysia. There is action being taken but it could be more effective if there was information exchange about these kinds of criminal activities and the owners of the ships or the agents internationally.

4 CONCLUSIONS

The general remark was that environmental enforcement and criminality is a complex problem because it is highly related to the political, economic and social situation. In all countries it is hard to get and keep environmental issues high on the priority list.

The role of public awareness is vital to compliance and enforcement: The environment has to be a social issue and much more energy should be spent to educate and inform the public. This could provide a main driving force in all countries.

The effectiveness of sanctions should be seen in repairing of the damage or prevention of further damage. Equity is an important factor both in enforcement and in sanctions.

There was much support for international exchange of criminal information via the INTERPOL-network or otherwise. Information about cases in other countries may strengthen national cases and violators can more effectively be detected.

The conclusions of the third conference were supported: Civil and criminal sanctions can play an important role in environmental enforcement programs and send a strong deterrent message to industry and the public. Effectiveness in enforcement is best reached by cooperation between all agencies involved. Training remains essential to effective enforcement.

