



**Speaking notes by Bernard MARQUET,
Vice-Chairperson of the PACE Committee on Social Affairs, Health and Sustainable
Development,
participating in the UNICRI-UNEP Conference on
Environmental Crime - Current and Emerging Threats
in Rome on 29-30 October 2012**

Contribution as facilitator during the work of **Expert Group 1 “Environmental crime in the current international legal framework: current flaws and possible steps ahead”**
Monday 29 October 2012 (2:30 - 6 p.m.)

Ladies and Gentlemen,

I am pleased to launch the discussions of the working group on “Environmental crime in the current international legal framework: current flaws and possible steps ahead”. I shall speak in my double capacity - as the Chair of the Environmental Committee of the Monegasque Parliament and the Vice-Chair of the Council of Europe’s Parliamentary Assembly Committee on Social Affairs, Health and Sustainable Development.

To start our brainstorming, I wish to share with you some preliminary remarks from the European perspective.

The concept of environmental crime

The concept and definition of environmental crime remains a ‘moving target’. We generally understand it as “illegal acts which directly harm the environment”. Absent internationally agreed definition, tackling environmental crime is often a mammoth challenge. Prosecuting such crimes typically involves several countries’ jurisdictions, whereas existing regional and international instruments are patchy and have a limited reach. The latter mainly cover

- illegal trade in endangered species,
- smuggling of ozone-damaging substances,
- dumping of hazardous waste,
- fishing in breach of regional agreements,
- illegal logging.

In addition, some sector-specific legal instruments enable national authorities to protect environmental interests. I notably refer to the *law of the seas* which helps in dealing with serious environmental damages caused by obsolete ships and vessels under flags-of-convenience (*pavillons de complaisance*), as well as some deviant shipping practices such as deliberate oil

emissions in high seas (*dégazages sauvages*).

We also have some regulatory rules, or merely 'codes of conduct', governing mining activities and the extraction of minerals.

At the same time, new technological developments bring about new challenges. Consider, for example, the risks of water pollution due to the rapidly spreading practice of shale gas and oil extraction via "fracking" or the pending exploitation of methane hydrates in the Arctic zone. There is a legal vacuum regarding environmental responsibilities of business actors in these high-risk fields of activity.

What about 'acts which directly harm the environment' - and, by extension, public health - when existing norms fail to adequately take into account evolving development patterns and economic 'modus operandi'? When laws simply do not exist in certain areas, does it mean that harm done to the environment is acceptable and sort of *de facto* 'legal'?

In this context, we should stress the importance of the "polluter pays" principle in the international environmental law. In theory, this principle has been endorsed by the OECD and EU countries. In practice, it remains difficult to enforce, given the broad margin of interpretation due to imprecise definitions and legal frameworks. Also, the bargaining power of guilty enterprises is often stronger than fragmented legal frameworks and the political will of decision-makers.

Clearly, there are serious gaps at all levels (national, regional, international) of environmental legislation, which weakens the system of environmental protection, notably as regards prevention and prosecution of environmental crimes. I think it is urgent and paramount that this conference proposes a clear definition of environmental crime and seek the endorsement of it by governments on the widest possible geographical scale.

Environmental crime versus human rights and public health

At European level, the Council of Europe - now grouping 47 member States - has devised several legal instruments for tackling environmental problems stemming from human activities or natural disasters. Because environmental problems have an increasing impact on human rights, public health, the quality of life and prospects for development, we believe that there is a need to protect the environment more effectively through a transversal and holistic approach.

Indeed, as early as 1972, the Stockholm Declaration recognised the **link between the environment and public health**, with many international initiatives following thereafter. International organisations, such as the *United Nations* had recognised the **right to food, water and sanitation as fundamental human rights**. More recently, the *Parliamentary Assembly* of the Council of Europe has made legislative proposals for a better recognition of the **right to a healthy environment**. This proposal echoes the public concern that environmental degradation - including because of environmental crime - hurts the fundamental human right to life which is enshrined in the European Convention on Human Rights.

Although the European Convention on Human Rights does not cover *explicitly* the right to a healthy environment, a number of judgments by the European Court of Human Rights have given rise to **case-law covering environmental problems** such as pollution. Moreover, another treaty - the European Social Charter - includes the right to protection of health which is interpreted by the Charter's oversight body as covering the right to a healthy environment.

For more information on this issue, I highly recommend to you to read the Council of Europe "**Manual on human rights and the Environment**" (Second edition) that was published in June this year.

I must also say that the Council of Europe faces increasing difficulties in making advances in the protection of the environment through law. There is, however, space for new initiatives on the ground. Expert studies and proposals could push public authorities for more cooperation and action not only at pan-European but also global level. Some European legal instruments could give rise to more comprehensive international instruments.

Four Council of Europe conventions cover specifically environmental challenges and offer some 'food for thought':

- the **Bern Convention** (on the Conservation of European Wildlife and Natural Habitats, ETS No. 104), ratified by 50 States including non-member countries and in force since 1982;
- the **Florence Convention** (or the **European Landscape Convention**, ETS No. 176), ratified by 37 States, signed by 3 States and in force since 2004.

Two other Conventions unfortunately were ahead of their time and never entered into force:

- the **Lugano Convention** (on Civil Liability for Damage resulting from Activities Dangerous to the Environment, ETS No. 150), with 9 signatures but no ratifications since the opening for signature in 1993; it was largely overshadowed by the EU Directive launched at the same time and therefore never entered into force;
- the **Convention on the Protection of Environment through Criminal Law** (ETS No. 172), with 13 signatures and 1 ratification since the opening for signature in 1998 (never entered into force); it is an ambitious instrument 'ahead of its time' that unfortunately never rallied sufficient support from the Council of Europe member States, whilst the EU member States preferred a 'softer' EU Directive.

At European level, there is also a highly successful **Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**, launched by the UNECE (United Nations Economic Commission for Europe) and in force since 2001. Among the signatories features the EU which has incorporated some principles into its legislation, notably the Water Framework Directive.

Finally, it is important to make sure that the existing monitoring and implementation mechanisms of active European conventions should receive sufficient funding.

I am also member of WAITO FOUNDATION (World Anti illicit Traffic Organization) an NGO who is a primary reference on contemporary criminal threats in matters of Counterfeiting-crime©

I am also Président of WAITO Monaco Environment Association who is the régional center of WAITO Foundation .

The aim is to criminalize all attacks on the environment endangering human safety

The general assembly to establish this new centre, comprising criminologists and criminal experts, declared its commitment to fighting counterfeit products endangering the health and safety of consumers.

"States seem to have a major blind spot when it comes to looking for means of effectively fighting counterfeiting and smuggling", WAITO founder, Pierre Delval told Monaco Info, "[Counterfeiting] is a criminal problem and requires a prevention and deterrence policy to combat criminal acts on the basis of criminal law. Today, criminal organizations linked to counterfeiting are developing and generating returns on a par, or even greater than those generated by drug trafficking."

Faced with the danger to health and safety of illicit trafficking, WAITO is sounding the alarm in order to change people's mentalities. Counterfeiting cannot only be fought through intellectual property law, as only 8% of counterfeit products are now copies of luxury products. This global threat is much more serious and finds an ideal environment for its development in globalization and international crises. Tobacco, cosmetics, medicines, spare automobile parts and construction materials, no sector escapes this problem.

The WAITO Foundation is aware of the fact that the crises that are currently affecting populations leave the door wide open to illicit trafficking, and therefore wishes to promote prevention both for consumers and political and economic stakeholders. The fight against counterfeiting is based on an understanding of the threat that it poses, but also on the development of instruments and solutions to respond to the growth in illicit trade.

On 13 July, I explained to the local press that, "the association's aim is to criminalize all attacks on the environment endangering human safety ». The centre in Monaco will focus on the sale of counterfeit medicines and food products which has found a more than lucrative niche among vulnerable populations. One of the most stark examples of this catastrophic situation is the growing sales of under-dosed malaria vaccines, which could eventually lead to a mutation of the virus that would make it resistant to treatment.

I stressed that the location of the new anti-counterfeiting centre had not been chosen at random, "What better place to talk about this problem than Monaco, where the princes of Monaco have been defending the environment for the past 50 years, even before it was given a name." The Association has hit the ground running with the task of drawing up a **report on the development of illicit trafficking in the food and agriculture sector**, which should be published in June 2013.

I now look forward to our discussion this afternoon and shall give the floor to our experts without delay. You all have the description of key topics for our debate and I hope that we shall be able to propose concrete recommendations for action at the end of our discussion.

Thank you for your attention!