
SUMMARY OF WORKSHOP: ENVIRONMENTAL OFFENSES: CRIMINAL AND CIVIL

Facilitators: Jose Gonzalez Montero

James Lofton

Rapporteur: John Boyd

GOALS

- Evaluate use of criminal sanctions to enforce environmental requirements;
- Ascertain if and when criminal sanctions are desirable to enforce environmental requirements.

1 INTRODUCTION

Questions presented by facilitators:

- Should nations rely exclusively on criminal enforcement mechanisms for all environmental offenses or use administrative, civil, constitutional and other mechanisms reserving criminal enforcement for the most serious offenses?
- What is the best mechanism to enforce environmental requirements?
- Which mechanisms are more important than others?

2 PAPERS

John C. Cruden and James W. Rubin, *Environmental Compliance and Enforcement at the United States Department of Justice and the Role of Enforcement in Good Governance* (6th Conference Proceedings, Volume 2).

3 DISCUSSION SUMMARY

Mr. Hedayetul Chowdhury of Bangladesh stated that in his country there is concurrent jurisdiction so that both a criminal and a civil suit can be brought in one case. Mr. Antonio Benjamin from Brazil asked how do we define a civil offense or a

criminal offense? Is it possible to have one action or omission considered as both criminal and administrative matters? Is it possible to have triple liability under criminal, administrative and civil headings? Mr. Cesar Luna of USA answered that there are significant differences between the civil and common law systems; each system separates cases differently.

Mr. Rolando Alfaro told that in Guatemala there was only one class taught annually in environmental law. Now there is a growing specialization on environmental law and a growing awareness of the differences between criminal and civil law processes. Mr. Peter Lehner of the United States informed the participants that the primary difference between civil and criminal liability is proof of a criminal intent that will result in a penalty different from the same set of facts without such criminal intent. Thus, in a criminal case, the prosecution usually attempts to prove that the accused planned a result. However, it is possible to have a crime arise from negligence on a specialized and hazardous job.

Dr. Robert Wabunoha of Uganda spoke of how the courts can decide on a remedy such as community service. The prosecutor has discretion in deciding whether to charge an individual, a corporation, or the agent of the corporation. Mr.

Sheik Enayet Ullah of Bangladesh voiced that there can be no universal answer to the questions because the law and customs of countries differ. Even criminal and civil law concepts differ significantly among countries. In response, Mr. Benjamin thought that perhaps we should redraft the first question. The real question deals with proportionality on two levels. (i) is there a bad actor or a negligent actor? (intent) (ii) what is the extent of the damages? (magnitude of the damages). We need a range of enforcement mechanisms so that the penalty fits the crime.

Mr. Lehner felt each country needs environmental enforcement mechanisms to achieve proportionality with respect to the scope and magnitude of the harm as with respect to intent. Mr. Benjamin inquired as to whether it is helpful to add to the criminal law environmental infractions? Protecting the environment deserves the ultimate legal response, but we should not overly rely on criminal law. Some wild cat miners will not listen and will not negotiate while seeking to avoid administrative and civil sanctions. For such wild cat miners, only the criminal law will work. Thus in the industrial area, criminal law sanctions to enforce environmental requirements seems appropriate.

Mr. Wabunoha brought up the issue that one significant problem arises from the fact that a great deal of environmental damage is poverty related. Mr. John Cruden of the US stated that there are three key issues:

- the need to deter;
- proportionality;
- and the need to protect human health.

Mr. Lofton voiced that social concerns grow about the environment, moral issues increase and come to the point of criminalizing actions not previously subject to criminal sanctions. There is a new recognition that environmental issues have a moral component. Mr. Lehner noted that in

the US it is possible to attach a monetary penalty in a civil action, depending on the intent of the defendant. For example, there may be a sanction of a certain amount of money damages for each day of violation. Mr. James said that so long as proportionality is observed, then the full suite of sanctions, including civil and criminal, is appropriate. Mr. Benjamin noted that the US permits far more stringent penalties than in many other countries, so proportionality differs by country. Mr. Wabunoha cautioned that a native may not know that he is committing a crime.

3 CONCLUSION

The twenty participants plus facilitators and rapporteur from Latin America, Bangladesh, Uganda, United States and the United Kingdom agreed upon the following statement of conclusions and recommendations;

“We support promoting environmental compliance through the use of all enforcement mechanisms and options — administrative, civil, and criminal with the possibility of penalties, civil damages, and criminal fines and sentences — to deter effectively environmental offenses, promote environmental compliance, protect public health and the environment, and restore environmental and public damage. We also emphasize the importance of environmental education at all levels, especially in law schools and training for the judiciary.”

The discussion points included analysis of the differences and similarities between criminal, administrative and civil law in common law and civil law jurisdictions, with a focus on the role of criminal law. It was pointed out that the concepts of proportionality and deterrence vary markedly between the United States and other jurisdictions but that protection of human health and the environment is more nearly an absolute. It was also pointed out that

there is full agreement as to the use of all enforcement mechanisms with respect to industrial activity, while damage to the environment which is poverty related and arises from a lack of education requires a different approach from criminal prosecutors.