



Convention on the Protection of the Environment through Criminal Law

Strasbourg, 4.XI.1998

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of the environment;

Considering that unregulated industrial development may give rise to a degree of pollution which poses risks to the environment;

Considering that the life and health of human beings, the environmental media and fauna and flora must be protected by all possible means;

Considering that the uncontrolled use of technology and the excessive exploitation of natural resources entail serious environmental hazards which must be overcome by appropriate and concerted measures;

Recognising that, whilst the prevention of the impairment of the environment must be achieved primarily through other measures, criminal law has an important part to play in protecting the environment;

Recalling that environmental violations having serious consequences must be established as criminal offences subject to appropriate sanctions;

Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment and desirous of fostering international co-operation to this end;

Convinced that imposing criminal or administrative sanctions on legal persons can play an effective role in the prevention of environmental violations and noting the growing international trend in this regard;

Mindful of the existing international conventions which already contain provisions aiming at the protection of the environment through criminal law;

Having regard to the conclusions of the 7th and 17th Conferences of European Ministers of Justice held in Basle in 1972 and in Istanbul in 1990, and to Recommendation 1192 (1992) of the Parliamentary Assembly,

Have agreed as follows:

Section I – Use of terms

Article 1 – Definitions

For the purposes of this Convention:

- a "unlawful" means infringing a law, an administrative regulation or a decision taken by a competent authority, aiming at the protection of the environment;
- b "water" means all kinds of groundwater and surface water including the water of lakes, rivers, oceans and seas.

Section II – Measures to be taken at national level

Article 2 – Intentional offences

- 1 Each Party shall adopt such appropriate measures as may be necessary to establish as criminal offences under its domestic law:
 - a the discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which:
 - i causes death or serious injury to any person, or
 - ii creates a significant risk of causing death or serious injury to any person;
 - b the unlawful discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water which causes or is likely to cause their lasting deterioration or death or serious injury to any person or substantial damage to protected monuments, other protected objects, property, animals or plants;
 - c the unlawful disposal, treatment, storage, transport, export or import of hazardous waste which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;
 - d the unlawful operation of a plant in which a dangerous activity is carried out and which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants;
 - e the unlawful manufacture, treatment, storage, use, transport, export or import of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, soil, water, animals or plants,when committed intentionally.
- 2 Each Party shall adopt such appropriate measures as may be necessary to establish as criminal offences under its domestic law aiding or abetting the commission of any of the offences established in accordance with paragraph 1 of this article.

Article 3 – Negligent offences

- 1 Each Party shall adopt such appropriate measures as may be necessary to establish as criminal offences under its domestic law, when committed with negligence, the offences enumerated in Article 2, paragraph 1 a to e.

- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article, in part or in whole, shall only apply to offences which were committed with gross negligence.
- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article, in part or in whole, shall not apply to:
 - subparagraph 1 a ii of Article 2,
 - subparagraph 1 b of Article 2, insofar as the offence relates to protect monuments, to other protected objects or to property.

Article 4 – Other criminal offences or administrative offences

Insofar as these are not covered by the provisions of Articles 2 and 3, each Party shall adopt such appropriate measures as may be necessary to establish as criminal offences or administrative offences, liable to sanctions or other measures under its domestic law, when committed intentionally or with negligence:

- a the unlawful discharge, emission or introduction of a quantity of substances or ionising radiation into air, soil or water;
- b the unlawful causing of noise;
- c the unlawful disposal, treatment, storage, transport, export or import of waste;
- d the unlawful operation of a plant;
- e the unlawful manufacture, treatment, use, transport, export or import of nuclear materials, other radioactive substances or hazardous chemicals;
- f the unlawful causing of changes detrimental to natural components of a national park, nature reserve, water conservation area or other protected areas;
- g the unlawful possession, taking, damaging, killing or trading of or in protected wild flora and fauna species.

Article 5 – Jurisdiction

- 1 Each Party shall adopt such appropriate measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention when the offence is committed:
 - a in its territory; or
 - b on board a ship or an aircraft registered in it or flying its flag; or
 - c by one of its nationals if the offence is punishable under criminal law where it was committed or if the place where it was committed does not fall under any territorial jurisdiction.

- 2 Each Party shall adopt such appropriate measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with this Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another Party after a request for extradition.
- 3 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.
- 4 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraphs 1 c and 2 of this article, in part or in whole, shall not apply.

Article 6 – Sanctions for environmental offences

Each Party shall adopt, in accordance with the relevant international instruments, such appropriate measures as may be necessary to enable it to make the offences established in accordance with Articles 2 and 3 punishable by criminal sanctions which take into account the serious nature of these offences. The sanctions available shall include imprisonment and pecuniary sanctions and may include reinstatement of the environment.

Article 7 – Confiscation measures

- 1 Each Party shall adopt such appropriate measures as may be necessary to enable it to confiscate instrumentalities and proceeds, or property the value of which corresponds to such proceeds, in respect of offences enumerated in Articles 2 and 3.
- 2 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it will not apply paragraph 1 of this article either in respect of offences specified in such declaration or in respect of certain categories of instrumentalities or of proceeds, or property the value of which corresponds to such proceeds.

Article 8 – Reinstatement of the environment

Each Party may, at any time, in a declaration addressed to the Secretary General of the Council of Europe, declare that it will provide for reinstatement of the environment according to the following provisions of this article:

- a the competent authority may order the reinstatement of the environment in relation to an offence established in accordance with this Convention. Such an order may be made subject to certain conditions;
- b where an order for the reinstatement of the environment has not been complied with, the competent authority may, in accordance with domestic law, make it executable at the expense of the person subject to the order or that person may be liable to other criminal sanctions instead of or in addition to it.

Article 9 – Corporate liability

- 1 Each Party shall adopt such appropriate measures as may be necessary to enable it to impose criminal or administrative sanctions or measures on legal persons on whose behalf an offence referred to in Articles 2 or 3 has been committed by their organs or by members thereof or by another representative.
- 2 Corporate liability under paragraph 1 of this article shall not exclude criminal proceedings against a natural person.

- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply paragraph 1 of this article or any part thereof or that it applies only to offences specified in such declaration.

Article 10 – Co-operation between authorities

- 1 Each Party shall adopt such appropriate measures as may be necessary to ensure that the authorities responsible for environmental protection co-operate with the authorities responsible for investigating and prosecuting criminal offences:
 - a by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that an offence under Article 2 has been committed;
 - b by providing, upon request, all necessary information to the latter authorities, in accordance with domestic law.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply paragraph 1 a of this article or that it applies only to offences specified in such declaration.

Article 11 – Rights for groups to participate in proceedings

Each Party may, at any time, in a declaration addressed to the Secretary General of the Council of Europe, declare that it will, in accordance with domestic law, grant any group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to participate in criminal proceedings concerning offences established in accordance with this Convention.

Section III – Measures to be taken at international level

Article 12 – International co-operation

- 1 The Parties shall afford each other, in accordance with the provisions of relevant international instruments on international co-operation in criminal matters and with their domestic law, the widest measure of co-operation in investigations and judicial proceedings relating to criminal offences established in accordance with this Convention.
- 2 The Parties may afford each other assistance in investigations and proceedings relating to those acts defined in Article 4 of this Convention which are not covered by paragraph 1 of this article.

Section IV – Final clauses

Article 13 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
 - a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 4 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.

Article 14 – Accession to the Convention

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite any State not a member of the Council of Europe to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 15 – Territorial application

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 16 – Relationship with other conventions and agreements

- 1 This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.
- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international co-operation.

Article 17 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 3, paragraphs 2 and 3, Article 5, paragraph 4, Article 7, paragraph 2, Article 9, paragraph 3 and Article 10, paragraph 2. No other reservation may be made.
- 2 Any State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
- 3 A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 18 – Amendments

- 1 Amendments to this Convention may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to this Convention in accordance with the provisions of Article 14.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Crime Problems and may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 19 – Settlement of disputes

- 1 The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the interpretation and application of this Convention.
- 2 In case of a dispute between Parties as to the interpretation or application of this Convention, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 20 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 21 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 13 and 14;
- d any reservation made under Article 17, paragraph 1;
- e any proposal for amendment made under Article 18, paragraph 1;
- f any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 4th day of November 1998, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to it.