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In search of *Ecocide* under EU Law. The international context and EU law perspectives

Alfredo Rizzo
Researcher at the National Institute for Public Policy Analysis (INAPP)[*]

A growing trend is acknowledged towards the construction of a true duty under international customary law forcing the State to keep a safe environment both abroad and inside own national borders[1]. The International Court of Justice[2] established a prohibition under customary law with specific reference to the threat that atomic weapons entail for the natural environment. Same ICJ reached the following conclusions (para. 31 *Legality of Nuclear weapons* opinion): «[…] Taken together, these provisions embody a general obligation to protect the natural environment against widespread, long-term and severe environmental damage (emphasis added); the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals. These are powerful constraints for all the States having subscribed to these provisions». Under relevant international law principles and rules a general duty of compensation has been assessed for cases where behaviors of both public and private actors cause threat or true damages with cross-borders (or beyond-borders) effects[3].

It is also wise bearing in mind that, during the draft of UN Articles on State's international responsibility (in the International Law Commission early works on this[4]), the ban of "massive" pollution had been conceived as an interest for the international

[*] Member of the European Law Institute (ELI). This draft relates to a research on *Ecocide* promoted under ELI auspices: https://www.europeanlawinstitute.eu/projects-publications/current-projects-upcoming-projects-and-other-activities/upcoming-projects/ecocide/.

[1] See, among others, Advisory Opinion of 8 July 1996, *Legality of The Use by A State of Nuclear Weapons* and Judgment of 25 September 1997, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*. See also Judgment of 20 April 2010, *Pulp Mills on the River Uruguay*. For some, the latter decision lacks consideration of pre-emptive aims pursued under the precautionary principle, particularly relevant in cases of environmental damages with trans-boundary characters, F. FRANCIONI, C. BAKKER, *The Evolution of the Global Environmental System. Trends and Prospects in the EU and the US*, in F. FRANCIONI, C. BAKKER (eds.), *The EU, the US and the Global Climate Governance*, New York, 2016, pp. 15 and 31.

[2] Advisory Opinion of 8 July 1996, *Legality of The Use by a State of Nuclear Weapons*.

[3] International conventions exist on the liability for, e.g., pollution or dangerous activities, such as the 1969 Brussels Convention on the Compensation for damages related to hydrocarbons' pollution establishing the International Oil Pollution Compensation Fund, IOPCF CJEU of 24 June 2008, C-188/07, *Commune de Mesquer v Total France SA and Total International Ltd*.). *Ex multis*, N. DE SADELEER, *Liability for Oil Pollution Damage versus Liability for Waste Management: The Polluter Pays Principle at the Rescue of the Victims*, in *Journal of Environmental Law*, 2009, p. 299, N. DE SADELEER, *The Polluter-pays Principle in EU Law – Bold Case Law and Poor Harmonisation*, in *Pro Natura. Festskrift til H.-C. Bugge*, Oslo, 2012, p. 405, J. ADSHEAD, *The Application and Development of the Polluter-Pays Principle across Jurisdictions in Liability for Marine Oil Pollution: The Tales of the 'Erika' and the 'Prestige'*, in *Journal of Environmental Law*, 2018, p. 425.

[4] Report of the International Law Commission on the Work of Its Thirty Second Session, U.N. GAOR, 35th Sess., Supp. No. 10, at 64, U.N. Doc. A/35/10 (1980). According to draft Art. 19(2), international crime is any «internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole" whereas an international delict is "[a]ny internationally wrongful act which is not an international crime».

community as a whole. The breach of such a ban was meant for the first time as a breach of one basic duty under general international law and as a true *international crime*[5].

As regards Treaty law rules, International humanitarian law (IHL) lends some guidance for the definition of an "environmental" wrongful act, based on both general and treaty law rules, though considering how the ICJ expressly stated that relevant sources concerning this branch of law are an expression of «intransgressible principles of customary international law»[6]. 1977 Protocols to the Geneva Convention[7] ban any warfare action causing "superfluous injury or unnecessary suffering" or "widespread, long-term and severe damage to the natural environment", including indiscriminate attacks on civilians and civilian infrastructure, and protects civilian infrastructure critical to the survival of civilian populations. The same concept of "widespread, lasting and serious" damages caused to the environment are also mentioned under Articles 35, para. 3, and 55 of Protocol I to the Geneva Convention.

On the other hand, private and public law entities' liability (in the widest meaning above, outside the strict meaning of a true *ecocide*) for environmental damages caused in a foreign State can be assessed "internally" by same national judiciaries, those both of the State where such public and private entities have been established and keep their main legal premises and the judiciaries of the State who suffered from those illicit behavior's effects, particularly in the light of the "polluter pays" principle established under UN Rio Declaration[8]. EU's public policies are particularly attentive to environmental issues that, since the Treaty of Amsterdam's reforms at the end of '90s, are one of the major topics under same EU's competences (though if included among competences that the Union "shares" with its Member States, see Art. 4(2)(e) TFEU)[9].

At the international treaties level, with a specific reference to the definition of the precautionary principle as a core component of environmental law and related

[5] Under this meaning, the same draft referred to cases of *massive pollution* of both terrestrial and maritime environment (draft Art. 19(3)(d)).

[6] See p. 79 of Advisory opinion of 8 July 1996, *Legality of The Use by A State of Nuclear Weapons*, as recalled also by advocate general P. Mengozzi, in his opinion of 18 July 2013, on case C-285/12, *Aboubacar Diakité*, ECLI:EU:C:2013:500, at p. 26.

[7] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Bern, Federal Department of Foreign Affairs, 1978) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, Bern, Federal Department of Foreign Affairs, 1978).

[8] United Nations Conference on Environment and Development of 3-14 June 1992, A/CONF.151/26 (Vol. I).

[9] See p. 5 of the Resolution of the Council and of the Representatives of the Governments of the Member States of the EU, meeting within the Council, of 1st February 1993 concerning a Community program of policy and action in favor of the environment and sustainable development - Political and action program of the European Community in favor of the environment and sustainable development (OJ 17 May 1993, C 138, in part. p. 12). Sustainable development is enshrined under principles 3 and 4 of mentioned Rio Declaration and is also mentioned at Articles 3(5) and 21(2)(d) TEU and in the Preamble to the Union's Treaties. For a general overview, A. RIZZO, *L'affermazione di una politica ambientale dell'Unione europea. Dall'Atto unico europeo al Trattato di Lisbona*, in R. GIUFFRIDA, F. AMABILI (eds.), *La tutela dell'ambiente nel diritto internazionale ed europeo*, Torino, 2018, p. 21.

proceedings[10], Articles 4 and 5 of the Aarhus Convention of 25 June 1998[11] compel all public bodies of a State to collect and make environmental information available to those who request it. Aarhus Convention's standards (access to information, participation in decisions-making, access to justice) have been confirmed in the Union's legal order by means of regulation 1367/2006[12].

The Rome Statute on the International Criminal Court (ICC)[13] lists mainly acts forbidden under some existing general international law rules. However, with the view of giving a wider scope and the best applicability to the Statute, many other kinds of acts are listed, some with a more evolutionary character though if always belonging to the *crimes against humanity* group[14]. ICC jurisdiction to prosecute "environmental" crimes is however formally limited to crimes occurring after the Rome Statute was adopted in 1998. At the same time, Article 8(2)(b)(iv) is the only Statute's provision expressly addressing environmental wrongdoings, though if dealing specifically with environmental negative feedbacks of crimes in a warfare scenario.

As far as the European Convention on Human rights and fundamental freedoms is concerned, in one (more limited) category of cases, where a "probable at the limit of certainty" risk for the health of the applicants emerges, the Strasbourg Court connects the right to a healthy environment to the protection of human life (Art. 2 ECHR), as such representing a core standard in the human rights protection system. In other cases, where this risk cannot be considered to have reached such a high rank, the Court nevertheless takes due account of a "probable" or even "presumed" risk to human health and well-being[15]: in this second (more frequent) kind of situation, it is the Court's view that the

[10] Principle 15 of mentioned Rio Declaration and EU Commission Guidelines on the Precautionary Principle, COM(2000) 1, CJEU 22 December 2010, *Gowan*, C-77/09, I-13533, M. MALAIHOLLO, *Due Diligence in International Environmental Law and International Human Rights Law: A Comparative Legal Study of the Nationally Determined Contributions under the Paris Agreement and Positive Obligations under the European Convention on Human Rights*, in *Netherlands International Law Review*, 2021.

[11] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/CEP/43, 25 June 1998, United Nations Economic Commission for Europe).

[12] Regulation of 6 September 2006, on the application to Community institutions and bodies of the provisions of the Aarhus Convention on access to information, public participation in decision-making processes and access to justice in environmental matters. The need of a balance between the Aarhus Convention's provisions and the EU Regulation 1367/2006 was raised by the EU General Court judgment of 14 July 2012, *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v. European Commission*, T-396/09, ECLI:EU:T:2012:301, see *ex multis*, R. MASTROIANNI, *I limiti all'accesso al giudice dell'Unione per l'impugnazione di atti confliggenti con accordi internazionali: una nuova "fortress Europe"?*, in A. TIZZANO (ed.), *Verso i 60 anni dai trattati di Roma. Stato e prospettive dell'Unione europea*, Torino, 2016, p. 179; N. NOTARO, M. PAGANO, *The Interplay of International and EU Environmental Law*, in I. GOVAERE, S. GARBEN (eds.), *The Interface between EU and International Law*, Oxford, 2019, p. 151.

[13] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute], *The States Parties to the Rome Statute*, International Criminal Court. Given the too vast literature on this fundamental text, as an "all-embracing" text see W.A. SCHABAS, N. BERNAZ (eds.), *Routledge Handbook of International Criminal Law*, UK, USA, Canada, 2011.

[14] D. SCHAFFER, *The International Criminal Court*, in W.A. SCHABAS, N. BERNAZ (eds.), *Routledge Handbook*, cit., at p. 70 ff.

[15] ECtHR of 10 January 2012 *Di Sarno e o. v. Italy*, App. 30765/2008, v. C. CONTARTESE, *La sentenza Di Sarno c. Italia: un ulteriore passo avanti della Corte di Strasburgo nell'affermazione di obblighi di protezione dell'ambiente,* in *La Comunità Internazionale*, 2013 p. 135. On the challenging condition of the ILVA industries in the Taranto province (Italy), ECtHR of 26th January 2019 *Cordella et autres c. Italie,* Appl. 54414/13 and 54264/15, *ex multis* A. RIZZO, *La Corte di Strasburgo decide il caso Ilva, ovvero: quando la negligenza dei governi mette a rischio la salute delle persone,* in *L'effettività dei diritti alla luce della giurisprudenza della Corte europea dei diritti dell'uomo di*

harm to human health should be prevented or otherwise stigmatized by tracing the protection of the right to live in a healthy environment under the protection of private and family life pursuant to art. 8 ECHR.

The European Union

In its landmark judgment of 13 September 2005[16], the Court in Luxembourg annulled a framework decision of the European Union on environmental liability adopted on the basis of Articles 29, 31(e) and 34(2)(b) TEU in the pre-Lisbon edition[17], affirming the correctness of the choice of art. 175 TEC (now Art. 192 TFEU) as the legal basis for a subsequent directive. In its reasoning, the Court refers first of all to Art. 47 TEU pre-Lisbon, concerning the establishment of the principle of supremacy of the TEC on the TEU, for the simple reason of precedence of the obligations imposed by TEC on the same parties of both treaties (and this also by way of derogation to relevant rules in the Vienna Convention on the Law of the treaties)[18]. European Commission noted that the approach followed by the Court in this case «is a functional approach (…). The possibility for the Community legislator to provide for measures in the criminal field derives from the need to enforce Community legislation»[19].

Under the Lisbon reforms, Art. 83(2) TFEU, in particular, highlights that the possibility for the Union to adopt directives establishing minimum measures aimed at defining crimes and related sanctions can emerge only if this proves to be "essential" for the effective implementation of a Union policy in an area subjected to legislative harmonization. In this case, an EU legislative act (directive) aimed at regulating topics with a criminal law meaning can be adopted with the same legislative procedure (ordinary or special) followed to implement the regulatory framework aimed at achieving the aforementioned harmonization in the relevant sector (e.g., the various kinds of "ecological" crimes listed in the directive 2008/99[20], see *infra,* corresponding to issues of environmental protection pursued at EU level by means of *parallel* acts based on the

Strasburgo, https://diritti-cedu.unipg.it/, G. D'AVINO, *La tutela ambientale tra interessi industriali strategici e preminenti diritti fondamentali,* in A. DI STASI (ed.), *CEDU e ordinamento italiano. La giurisprudenza della Corte europea dei diritti dell'uomo e l'impatto nell'ordinamento italiano,* Padua, 2020, p. 709.

[16] Case C-176/03, *Commission v Council*, A. MIGNOLLI, *La Corte di giustizia torna a presidiare i confini del diritto comunitario. Osservazioni in calce alla sentenza C-176/03*, in *Studi sull'integrazione europea*, 2006, p. 327, F. JACOBS, *The Role of the European Court of Justice in the Protection of the Environment*, in *Journal of Environmental Law*, 2006, p. 185; R. PEREIRA, *Environmental Criminal Law in the First Pillar: A Positive Development for Environmental Protection in the European Union?*, in *Energy and Environmental Law Review*, 2007, p. 254.

[17] Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law.

[18] On art. 47 TEU pre-Lisbon reforms see also CJEU of 12 May 1998, C-170/96, *Commission v. Council*, and R. MASTROIANNI, *Art. 47 TUE*, in A. TIZZANO (ed.), *Trattati dell'Unione europea e della Comunità euroea*, Milano, 2004, II ed., p. 167.

[19] See COM(2005) 583 final, Communication from the Commission to the European Parliament and the Council on the consequences of the (abovementioned) Court's judgment of 13 September 2005. Indeed, ever since the *Simmenthal* case (of 9 March 1978, 106/77, ECR 1871) the Court of the European communities evidenced the need that EC law obligations (when stemming from an EC directly applicable act, e.g., a regulation) be implemented at the national level also by means of criminal law acts (C. AMALFITANO, *Art. 83 TFUE*, in A. TIZZANO (ed.), *Trattati dell'Unione europea*, cit., part. at p. 905). CJEU 23 October 2007, case C-440/05, *Commission v. Council*, ECLI:EU:C:2007:625; L. SCHIANO DI PEPE, *Competenze comunitarie e reati ambientali: il "caso" dell'inquinamento provocato da navi*, in P. FOIS (ed.), *Il principio dello sviluppo sostenibile nel diritto internazionale ed europeo dell'ambiente,* Napoli, 2007, p. 463.

[20] Of 6 December 2008, OJ (2008) L 328.

relevant TFEU rules on environmental protection). Some interpretative problems, however, stem from the need to verify the "essential" character of a legal source dealing with criminal law matters in order to "effectively implement" an EU policy[21].

An *emergency brake* and an *accelerator* mechanism foreseen under Articles 82(3) and 83(3) TFEU; respectively, on approximation of some aspects of criminal procedure and on approximation of criminal offences and sanctions in some areas of criminal law listed at Article 83(1)(2). The sensitiveness (both legal and institutional) of those aspects is proven in particular by the mentioned *emergency brake* – that is, the possibility for a Member State to oppose a draft legislative act that would "affect fundamental aspects of its criminal justice system", by submitting the question to the European Council – for which a specific declaration (n. 26) has been adopted in order to allow the Council of the EU to intervene in cases where one Member States decides to opt-out a directive to be adopted according to mentioned TFEU's provisions. Under same declaration, it is also foreseen the chance for any Member State to ask the Commission to examine the situation under Art. 116 TFEU (that is to say, with the chance of adopting a directive aimed at eliminating distortions of competition created by the differences among member states' legislative frameworks)[22].

Directive 2008/99 [23] sets some common minimum standards throughout the territory of the Union, also with the view of increasing effectiveness to Police' investigative activities across EU Member States' borders, and with the view of providing assistance both within a Member State and at the level of cooperation between States. To achieve those goals, the Directive indicates a series of "illegitimate" conducts to be penalized and on the other hand it introduces the "criminal liability" of legal persons. It foresees therefore a criminal liability as such, leaving no room for choice to the recipient States, regardless of the criminal law system where same Directive must be transposed and implemented. In this perspective, the problem has arisen of compatibility between the criminal liability of legal persons and the criminal systems – such as the Italian one – that follow the *societas delinquere non potest* principle. In fact, the Italian Constitution under its Art. 27(1) stipulates that criminal liability is personal, as such pertaining to individuals and consequently excluding it for legal persons' behaviors.

Apart from the very detailed list of criminal behaviors formally covered by the Directive under its Art. 3, in order for the conduct indicated above to integrate a criminal offense, the coexistence of three elements is required: *a)* the conduct must infringe EU legislation referred to in Annexes A[24] and B[25] of the same directive; *b)* the presence of

[21] In general, L. SALAZAR, *Articoli 82, 83, 84 TFUE*, in C. CURTI GIALDINO (ed.), *Codice dell'Unione europea, operativo*, Napoli, 2012, p. 918, S. PEERS, *Mission accomplished. EU Justice and Home Affairs Law after the Treaty of Lisbon*, in *Common Market Law Review*, 2013, p. 661, C. AMALFITANO, *Articoli 82, 83 TFUE*, in A. TIZZANO (ed.), *Trattati dell'Unione europea*, cit., p. 870.

[22] On this provision, see *ex multis* A. ARENA, *Art. 116*, in A. TIZZANO (ed.), *Trattati dell'Unione europea*, cit., at p. 1274.

[23] Of 6 December 2008, OJ L 328.

[24] Annex A to the directive contains the list of Community legislation adopted on the basis of the TEC (now TFEU) whose violations constitute an offense pursuant to Art. 2.

[25] Annex B lists EU legislation adopted on the basis of the Euratom Treaty, the violation of which constitutes an unlawful act pursuant to mentioned Art. 2(a)(ii). Euratom, formerly EAEC, also assumes exclusive competence,

the psychological element, necessary for the completion of the crime, corresponding to a willful misconduct or to negligence in the form of gross negligence; *c)* the conduct must cause damage or a concrete danger. For example, with the view of coming under same directive's purview, some acts covered by legislation listed under Annex A (dealing, in general, with waste management rules) must cause damage to air quality or death or serious injury to individuals. Therefore, those listed in the directive are no mere danger or conduct crimes, but are concrete danger or true damage crimes, with the punishment extended (pursuant to Art. 4) also to anyone who contributed to such crimes by way of instigation, aiding and abetting.

The second important change is exemplified by Art. 6 of the directive. According to this provision, legal entities can be held responsible for the unlawful conduct (as set out in the directive) committed "to their advantage" by individuals who hold top positions within the same legal person, and, more precisely: «by any person who holds a prominent position within the legal person, individually or as part of an organ of the legal person, by virtue of: *a)* the power of representation of the legal person; *b)* the power to take decisions on behalf of the legal person; or *c)* the power to exercise control within the legal person»[26].

The core provision of the Directive lays in the general requirement (Art. 5) that measures at the national level be effective, proportionate and dissuasive for the aim of fighting the different kinds of crimes listed therein. It is firstly interesting noting the lack, in the EU system, of any reference to the social aim of the criminal legislation as such, that is to say, the general criminal legislation's scope of "educating" criminals in the attempt of granting their social reintegration (Art. 27(3) Italian Constitution). Secondly, the lack of any specification (and the lack of any attribution of competence to the EU institutions for that aim) on the true character of the related penalties (e.g., by indicating a minimum level of the highest penalty) is admittedly based on the need to preserve a principle of *coherence* between the several legislations of EU member States, beside the still less developed institutional framework surrounding EU competence in the relevant field. In fact, notwithstanding the significant changes after the Lisbon Treaty, EU action must still be considered as "required" (see Art. 82(2) TFEU) or "essential" (art. 83(2) TFEU), alternatively, when such an action is aimed at "aiding" mutual recognition of decisions or police cooperation for crimes with a trans-boundary dimension, and where the need arises to made an already existing EU legislation (such as that related to the protection of the environment) truly effective by means of approximation of different national legislations. It is also wise recalling that under art. 83 TFEU, EU has a general competence to adopt acts related to so called *Eurocrimes*, that is to say, crimes with a particularly high standard of gravity and with specific transnational character and effects[27]. It has been proved, inter alia, that though implementing the same directive, Member States keep significant differences among them, due to the «undefined legal

with respect to the Member States, with regard to controls concerning the prohibition of diverting the use of nuclear materials from the civil purposes to which they are intended by the Member States themselves.

[26] Under Art. 2 of the directive a legal person is «any legal entity possessing this status under the applicable national law, with the exception of States or public institutions exercising public powers and public international organizations».

[27] See recently, L. DANIELE, *Diritto del Mercato Unico europeo e dello Spazio di libertà, sicurezza e giustizia*, Milano, 2021, p. 514.

terms included in the definitions of the criminal offences, combined with the leeway given to Member States when it comes to the liability of legal persons»[28]. For this, the same Commission has stressed the need of a common understanding of what a criminal conduct is for the sake of same directive's aims and with the view of properly improving judicial cooperation across EU.

Under both international and EU law several general principles (e.g. precautionary principle, polluter pays) are well established and shared. In some cases, a debate between the General Court of the EU and the CJEU has proved how such criteria could improve environmental protection at EU level: e.g. the need of a balance between the Aarhus Convention's provisions and the EU Regulation 1367/2006 was raised by the EU General Court[29]. This could prove, on the one hand, an increased awareness and readiness at the international and EU levels to improve environmental protection under mentioned general standards, and, on the other hand, the need to carefully consider if a stronger defense of such standards by means of e.g. a strict liability criterion under same EU law would meet the sufficient support at the level of each single government and political actor involved in the decision-making process.

Though if the Union would be able at making some advancement also thanks to what might come from the political debate in the European Parliament (EP), one should consider the following specificities of current Union's competence for the definition of an *Eurocrime*:

- under Art. 83 TFEU, the EP and the Council are put on an equal footing according to the legislative procedure applicable in this case: this implies per se that relevant views of the governmental side expressed in the Council will play a definite role in the whole legislative procedure;
- the Council, in the scenario under indent above, will adopt its decisions under the majority voting criterion. This is obviously of some support to a shift proceeding in the same Council;
- same Art. 83 TFEU foresees the chance that one EU member State makes recourse to an *emergency break*: in a worst case scenario, this might lead to a substantial stalemate and negative outcome of the legislative proceeding as a whole. Under same Art. 83 TFEU it is anyway foreseen the chance for some Member states to initiate a strengthened cooperation on the topics of same legislative act that had not been approved in the Council: in this case, if at least nine EU Member states are in favor, the same cooperation might be considered as automatically authorized.

It should then be accurately pondered if at least the mentioned number of national governments (and related political representatives in the EP) would be ready to make recourse to a strengthened cooperation whenever an emergency brake proceeding had been successfully activated. For this, a selection should be made between, on one hand, a EU act on Ecocide inspired to a broader standard (such as the one indicated by the same International Court of Justice Advisory Opinion on the *Legality of The Use by a State of*

[28] European Commission Staff Working Document of 28 October 2020, SEC(2020) 373 final - SWD(2020) 260 final, at page 43.

[29] CJEU of 14 July 2012, *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v. European Commission*, T-396/09, ECLI:EU:T:2012:30.

Nuclear Weapons), and, on the other hand, a EU Ecocide inspired to a strict liability criterion: the choice essentially depends on several factors, including the recent suggestions from the Commission supporting a review of same directive 2008/99 with the aim that a common understanding of ecocide at EU level be reached as swiftly as possible.

Thanks to the international context above, Ecocide might also be regulated autonomously in a specific directive which might set a crime stand-alone in the Union. Beyond questions of effectiveness linked to the still limited scope of the Union's competence pursuant to Art. 83 TFEU, an opportunity such as this would support harmonization and cooperation between the Union and the international arena in the prosecution of serious environmental offenses. At the same time, while not suited at forcing EU Member States to choose the relevant sanctions, an EU act would in any case push towards closer cooperation between national authorities in criminal prosecution as well as in investigative activities aimed also at preventing relevant offenses committed inside the EU.

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