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International liability arising from the violation of the environmental protection rules of international law in time of armed conflict

المسؤولية الدولية الناشئة عن انتهاك قواعد القانون الدولي لحماية البيئة في وقت النزاع المسلح

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Abstract:

The rapid industrialization and technological advancements of modern nations have led to severe environmental degradation. Global and regional agreements and the UN Environment Programme aim to address these issues. While environmental protection is crucial in peacetime, its significance is magnified during armed conflicts. Modern weapons inflict long-lasting damage, jeopardizing the natural systems essential for human and other life. This necessitates international responsibility for safeguarding the environment in all circumstances.

Key words: Violation of environmental protection rules, Armed conflicts, International liability, Environmental damage

الملخص:

أدى تسارع الصناعة والتقدم التكنولوجي في الدول المتقدمة خاصة إلى تدهور بيئي كبير، حيث تهدف الاتفاقات العالمية والإقليمية وبرنامج الأمم المتحدة للبيئة إلى معالجة هذه القضايا. وإذا كانت حماية البيئة

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أمر بالغ الأهمية في وقت السلم، فإن أهميتها تزداد خلال النزاعات المسلحة. فالأسلحة الحديثة تلحق أضرارا طويلة الأمد، مما يعرض النظم الطبيعية الضرورية للحياة البشرية وغيرها للخطر. الامر الذي يتطلب مسؤولية دولية عن حماية البيئة في جميع الظروف.

الكلمات المفتاحية: انتهاك قواعد حماية البيئة، النزاعات المسلحة، المسؤولية الدولية، الأضرار البيئية.

1. Introduction

The civilizational dimension has played a significant role in shaping environmental protection laws. While early legislation and agreements may not have explicitly focused on environmental issues, they indirectly contributed to its protection. Ancient Egyptian and Roman law, as well as Islamic principles, have influenced environmental protection in various regions[1].

Before the 20th century, nations did not emphasize environmental protection or comprehend the connection between humans and their surroundings. The term "ecology" was introduced in the 19th century but lacked a precise definition at that time. The German scientist "Ernst Haeckel" described ecology as the study of how living organisms interact with their environment. The English word "environment" emerged in the late 19th century, and the French equivalent carries a similar meaning[2].

The international community was subsequently made aware of the necessity to defend nature and safeguard the environment through enhanced protection of. its various elements. This interest increased since the beginning of the nineties of the last century, after it was confirmed that environmental protection measures do not constitute an obstacle to economic development, but are a prerequisite for ensuring its achievement. The voices of reformers and utilitarians alike called for an end to the damage and dangers of pollution from environmental imbalance. Global disasters have highlighted the urgency of environmental protection. International law has recognized the need for environmental regulations and holds nations accountable for violating them. So from this stand point, we can wonder:

Have international legal texts resulted a real preservation of the environment during the armed conflicts? What is the responsibility for violating these provisions?

2. Environemental préservation in international law .

The Stockholm Declaration established environmental protection as a global principle. The United Nations created the United Nations Environment Program to address environmental issues, and many countries have created specialized agencies. Since the 1960s, the number of international environmental agreements has increased significantly, with over 150 agreements by 1991. Bilateral agreements as early as 1869 addressed shared water resources, highlighting the complexity of environmental standards and cooperation between neighboring countries[3].

The World Commission on Environment and Development (WCED) was established in 1983 to explore the connection between development and environmental protection. Its 1987 report, titled "Our Common Future," highlighted the importance of sustainable development.. Environmental protection laws often arise from international agreements due to the global nature of environmental threats. Effective environmental conservation requires coordinated international policies[4].

2.1. Environmental préservation in accordance with international environmental law.

The emergence of international environmental law was a reactive response to environmental disasters caused by human activities. The principle of prevention, which emphasizes avoiding environmental problems, is a key principle guiding the formulation of environmental law provisions. This principle aims to address potential negative impacts on the environment even without absolute scientific certainty[5].

The definitions of international environmental law vary. Some define it as a set of rules and principles regulating state activity in

preventing and reducing environmental damage. Others define it as a set of customary rules and agreements aimed at preserving the environment from pollution, preventing, reducing, or controlling pollution across borders, and creating a legal system to repair pollution damage[6].

The dominant economic model, capitalist liberalism, has contributed to significant environmental degradation through the excessive exploitation of non-renewable resources and the unsustainable use of renewable resources. This has led to changes in the earth's chemistry and ecosystem distortion, causing irreparable damage to land, water, and air. Excessive exploitation and destruction are products of modern industrial society, influenced by its value system, beliefs, and political structure[7].

International environmental law is concerned with contemporary issues and addresses environmental problems. It was the first to warn of these problems and called for international action to preserve the environment. This law cannot turn a blind eye to the environment and the dangers that threaten it. At that time, the UNGA convened an International Conference on the Humanitarian Environment to halt the deterioration of this environment, to enact legislation to protect it and to eliminate the root causes of pollution and degradation of its components and natural resources .The 1972 Stockholm Conference resulted in a set of principles and recommendations that formed the foundation of international environmental law[8].

2.2. Environmental safeguard in international conventions.

The Development and Environment (W C), which was constituted by the (U N in 1983 and issued its report in 1987, prepared a universal announcement for the safeguard of the environment and enacted a set of legal fundamentals for the preservation of the environment.

2.2.1. The fundamentals of environmental law enacted by the World Commission on Environment and Development

These are 22 principles, including :

- All human beings have the right to an environment worthy of their health and well-being.
- States are committed to preserving the environment and natural resources and using them for the benefit of present and future generations.
- States shall cease activities that contravene the international obligation towards the environment.
- Countries ought to safeguard the environmental systems and indispensable operations for the functioning of the biosphere and the preserving of biological diversity.
- Countries put suitable norms for environmental protection, track changes in the use of resources and environmental quality, publish also suitable data on them[9].

2.2.2. International agreements to protect the marine environment from pollution.

- The International Treaty for the Prevention of Contamination of the Sea by Oil was signed in London in 1954 and amended in 1969.
- In 1972, an international treaty was established to prevent contamination of the sea by the dumping of wastes and other materials.
- The Law of the Sea, enacted under the UN Convention in 1982, includes a specific section dedicated to the safeguarding and preservation of the marine environment.
- The Treaty for the Safeguard of the Mediterranean Sea was signed in Barcelona in 1977.
- The International Treaty on Civil Liability for Damage Caused by Contamination of the Sea by Oil was signed in Brussels in 1969.[10]

2.2.3. Protecting the environment through resolutions and international conferences

The international community has recognized the importance of environmental protection and has called for a balanced and integrated approach. The importance of international cooperation in addressing

environmental challenges has been recognized. This concept of international partnership is a key entry point for activating efforts to confront these challenges at global and local levels. International participation and interaction are crucial for addressing these environmental challenges[11].

The Stockholm Conference in 1972 produced the first international declaration on the human environment, establishing key principles for environmental protection. The Hague Declaration, signed by 20 countries in the Netherlands in 1989, connected environmental issues to the human right to life. Importantly, it emphasized that the international community, particularly industrialized nations, has obligations to assist developing countries that are adversely affected by climate change[12]. In addition, The Rio de Janeiro Conference in 1994 recommended including environmental crimes in national penal codes[13].

3. International liability for environmental damage in times of armed conflict

Liability is a fundamental aspect of all legal systems. The effectiveness of a legal system, whether international or national, hinges on the development of clear responsibility rules. These rules apply when states or individuals violate international law, either through positive actions or negative omissions that cause harm to others. International law on liability has deep historical roots, having developed through customary practices before being codified in international conventions through international jurisprudence and arbitration[14].

3.1. Forms of international liability for violating the provisions of environmental preservation during armed conflict

Mohamed Dakkak defines international liability as a legal system that compensates one or more subjects of international law for damages caused by the actions of another subject. Unlike some definitions, this does not require the act to be unlawful or contrary to international obligations. An international legal person can cause harm while exercising its internationally recognized rights, such as a state operating

a nuclear facility near a border. Starke argues for an expanded definition of international responsibility to include state activities that cause damage to other states, particularly in the context of nuclear tests[15]. Whatever the case, the forms of international liability for violating the rules of environmental protection are divided into civil liability and criminal liability.

3.1.1. Civil liability for violating the rules of environmental protection during armed conflicts.

Civil liability, within the scope of international Humanitarian law was established through the issuance of various articles, notably Article 3 of the Fourth Hague Convention of 1907 and Article 91 of Protocol I of 1977. These articles stipulate that "a party to the conflict shall be liable to pay compensation if it violates the provisions of international conventions.... "

The articles on civil liability for violating humanitarian conventions are brief and vague regarding the specific damages caused. While damage is a prerequisite for establishing legal responsibility in international law, the lack of explicit reference to damage in these articles does not mean that liability is established solely by violating the rules. Damage is essential for establishing any legal responsibility, and the reference to compensation implies that damage is required[16].

3.1.2. Criminal liability for violating the provisions of environmental safeguarding time of armed conflicts.

The concept of state criminal responsibility for environmental harm is recognized in contemporary international law. A full acknowledgment of this principle could greatly enhance the effectiveness of international law in preventing environmental damage and protecting the environment[17]. International environmental law primarily focuses on prevention. In the context of armed conflicts, the Hague Conventions outline a specific framework for international responsibility, requiring states to compensate for violations of these conventions and for actions taken by their armed forces. This article

illustrates how international responsibility is established and the subsequent consequences that arise from it[18].

International humanitarian law establishes criminal responsibility for violating its rules. Articles in the Fourth Hague Convention of 1907 (art.03) and Protocol I of 1977 (art.91) state that a belligerent party is responsible for acts committed by its armed forces. The Geneva Conventions of 1949 (art.49, 50k 129, 146) require High Contracting Parties to impose penal sanctions on individuals who commit or order grave breaches of the conventions .The Fourth Geneva Convention of 1949 (art.53 147) considers the excessive use of force not justified by military necessity as a serious violation of international humanitarian law, or war crime. Articles in this convention establish criminal responsibility for such violations, including those that harm the environment. These violations are considered international crimes, automatically imposing criminal responsibility on the violating party[19].

The Statute of the International Criminal Court recognizes the intentional launching of attacks that result in widespread, long-term, and severe damage to the natural environment as a war crime. This underscores the court's acknowledgment of the significance of environmental harm in the context of armed conflicts[20]".

3.2. Conditions for the establishment of legal responsibility for violating the rules of environmental protection during armed conflicts.

International responsibility requires harm, defined as prejudicing the legitimate interests or rights of a person under international law. Environmental damage is defined as anything that causes an imbalance in the components of the environment through harmful changes to its physical or chemical health. It can directly harm specific environments, persons, interests, or funds. Environmental damage has distinct characteristics and requires specific conditions that must be met in order to be compensable[21].

3.2.1. The availability of a legal provisions (convention or customary) protecting the environment during armed conflicts.

International jurists divide environmental protection rules during armed conflicts into two categories: direct protection provisions and indirect protection provisions. This distinction is based on the specific intent of the legal texts. While both categories are important, direct protection provisions are specifically aimed at protecting the environment, while indirect protection provisions have other purposes but can still be applied to protect the environment during armed conflicts[22].

Parties to a conflict are not held responsible for environmental damage during armed conflicts unless there are legal rules in international humanitarian law, either directly or indirectly, that criminalize aggression against the environment. This is a fundamental condition for establishing legal responsibility, rooted in the principle of "no crime or punishment except by text" found in all criminal legislation)[23].

3.2.2. Parties in armed conflict who violated environmental protection laws.

Criminalization of environmental violations at the international level has been challenging due to the difficulty of defining and combatting environmental crime. The unique characteristics of environmental crime, such as its continuous and often unspecified nature, make it difficult to criminalize, especially during wartime when laws are silent, evidence disappears, and efforts focus on protecting civilians. This neglect of environmental protection exposes it to severe violations[24].

The second condition for establishing legal liability for environmental damage is a violation of environmental protection rules established under international humanitarian law. Parties to a conflict violate this obligation through acts such as the mass destruction of civilian objects or the burning of vegetation..... so this is the objective element of the internationally wrongful act[25].

3.2.3. The availability of significant environmental harm

The issue of serious environmental violations during wartime has attracted the attention of the international community, through their criminalization and punishment, both through ad hoc justice systems, represented by ad hoc courts, and through permanent justice systems, represented by the ICC and the Permanent Court of Arbitration, which is empowered in the future to consider environmental disputes and punish violations of the protection prescribed for them[26].

To establish legal responsibility under international humanitarian law for environmental damage during armed conflicts, it is not enough for parties to simply violate environmental protection rules. There must be serious damage to both the civil and natural environment for the legal responsibility of these parties to be established[27]. The International Law Commission distinguishes between serious and minor violations. International crimes are considered serious violations. Article 19 defines crimes, including those resulting from serious violations of international obligations fundamental to protecting the human environment[28].

Environmental crime has a unique peculiarity. The activity causing environmental damage may be permitted by law, and the harmful activity may be carried out by the state itself. This complexity is further increased when considering the infringed right, which could be either a private or public right classified as an attack on public interest[29] Especially if it is related to the commission of an international crime, which embodies the requirement of a serious violation or serious harm.

3.2.4. Availability of criminal intent

The requirement for criminal intent is specific to criminal responsibility. Civil liability under international humanitarian law and other criminal legislation arises when parties to a conflict violate environmental protection rules and cause serious environmental damage, regardless of criminal intent. Parties to a conflict are civilly liable for serious environmental damage resulting from their actions, even if they did not intend to cause such damage. It is sufficient that they could have expected the damage to occur (Article (35/3) and (55) of Protocol I

1977). The criminal responsibility of parties to a conflict for environmental harm does not arise unless they deliberately caused such damage (art.44/ 4, 85 of Protocol I). This means they intended to use means and methods of combat that would result in severe, widespread, and long-term environmental damage (art.35/3, 55 of Protocol I)[30].

4. Conclusion:

The international system has struggled to protect the environment, largely due to the absence of stringent international laws banning the use of prohibited weapons. Despite existing international prohibitions, these weapons are still in operation. Environmental protection law is a developing area that demands legal frameworks to govern human behavior concerning the environment. The threats posed by environmental pollution to the planet, human life, and future generations highlight the urgent need for such regulations. From this perspective, we recommend that all relevant international bodies:

- Moral Responsibility: Prioritize environmental issues based on moral responsibility.
- Nuclear Weapons: Prohibit the use of nuclear weapons and encourage all countries to sign agreements preventing their use.
- Strict Laws: Enact strict laws and domestic legislation to prosecute polluters and impose severe penalties.
- Media Awareness: Use media to spread environmental awareness, particularly in developing countries, and increase specialized publications and research.
- Enforcement: Enforce environmental protection laws during armed conflicts and disseminate them domestically

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