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Environmental Damage: Interfaces between International Criminal Law and International Humanitarian Law

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ABSTRACT

In contemporary parlance, the environment and its preservation have emerged as a principal focus and concern for the global populace. This phenomenon is known to escalate during times of armed conflict. Armed conflicts directly impact the environment (such as destroying natural resources or pollution resulting from military operations). The investigation into the ecological destruction inflicted upon the natural world during the two world wars demonstrates that the emphasis on safeguarding the environment is no longer a theoretical notion but a concrete actuality encapsulated within the framework of legal doctrines. The protection of the environment encompasses a diverse array of International Humanitarian Law (IHL) and International Criminal Law (ICL). This study scrutinized the safeguards and preservation of environmental rights in times of armed conflicts, whether domestic or international, through the lenses of ICL and IHL.

Introduction

The ineluctable dependence of humankind on the natural environment makes it vulnerable to war's deleterious and calamitous consequences. Presently, humanity has significantly advanced in the domain of environmental devastation through the development of sophisticated methodologies to accomplish its military objectives. Governments' use of diverse scientific fields to attain specific objectives and outcomes through warfare has been regarded as a strategic imperative by policymakers. However, this approach has had a detrimental impact on the fundamental cornerstone of existence: human survival. In every instance, safeguarding the environment against the substantial impact of modern warfare and sophisticated weaponry necessitates establishing and enforcing laws. The civilian population's

immunity principle, which holds considerable significance in the principles and foundations of humanitarian law, stands as a crucial traditional prohibition mandated by the laws of war. According to this precept, explicit hostilities targeted at non-combatant populace and non-military objectives are proscribed, thereby mandating belligerents to administer wartime circumstances to tactfully preclude detrimental impact on civilians. Undoubtedly, given that harm to the environment has far-reaching implications that extend beyond its immediate impact, it is imperative to note that there are certain circumstances in which such environmental damage is strictly prohibited. Additionally, it should be noted that adverse environmental effects have significant ramifications that extend to the general public. The principle of obligating remediation for environmental harm under customary international law norms on state responsibility has attained recognition as a fundamental tenet for advancing the aims of environmental safeguarding and conservation. The Stockholm Declaration of 1972 and Rio 1992, in their Articles 22 and 13, respectively, stipulate that cooperation among states is necessary for advancing international law on accountability and restitution for victims of environmental harm and pollution.

International criminal law aims to safeguard fundamental principles that hold substantial significance in the eyes of the global society to such an extent that an individual who contravenes or endangers these principles warrants penalization. Examination of international environmental documents reveals an encompassing array of ecologically related values, which extend to the aesthetic appeal of nature and its holistic preservation (McCaffrey, 2008: 1024). The aforementioned issues and notions of restorative justice, intergenerational equity, and sustainable development exemplify the increasingly global scope of environmental peril. International environmental law primarily encompasses preventative measures aimed at safeguarding the environment, thus having a limited focus on criminal elements. Numerous environmental reports acknowledge specific actions that harm the environment, natural resources, and wildlife as criminal offences. However, these documents often delegate the responsibility of prosecuting and penalizing the culprits to the domestic legal framework or necessitate intergovernmental coordination. In contemporary international legal frameworks, the notion of environmental wrongdoing is not yet established as a distinct criminal category that is unequivocally and systematically acknowledged and penalized by international legal instruments (Mistura, 2018: 196). The International Police Strategic Plan for 2009 and 2010 defines environmental crime as an infraction of national or international environmental laws or treaties. Such infringements serve to jeopardize the safeguarding and preservation of the global environment, including the development of natural resources and biodiversity.

Considering the widespread inclination of the global populace towards preventing, managing, and preempting threats to the environment, as well as the potential of such hazards to jeopardize the very sustenance of human societies, the matter of addressing compensation for environmental damages is an inexorable imperative. This article endeavours to provide answers to several queries on the international legal framework governing compensation for environmental damages through an analysis of the principles of international criminal law and international humanitarian law. Specifically,

the article aims to address the following: (1) What are the underlying doctrines and regulations governing compensation for environmental harm under the framework of international legal norms? (2) Can these regulations be considered identical to the standard principles of indemnification in customary international law? And (3) What is international criminal law and international humanitarian law's perspective on environmental damage?

1. Principles of Environmental Criminal Law

The protection of environmental rights is of utmost significance, both due to the nature of the guarantees conferred by these rights and their interrelation with economic development concerns. Neglecting such crucial aspects undermines the potential of international criminal law to fulfill its duty of safeguarding the environment and promoting a shift in societal attitudes towards its preservation. Therefore, environmental protection is nothing but an urgent necessity to protect the public interest (El-Khoury, 2011: 3). The features mentioned above may be analyzed along two axes, specifically. The present discourse concerns the prevailing strategy governing the imposition of sanctions concerning environmental offences and the imposition of criminal liability upon juridical individuals. The present assertion warrants emphasis that, dissimilar to numerous domains within the realm of criminal law that have been established and incorporated within societal norms for hundreds of years, environmental law, specifically environmental criminal law, is a recent discipline and possesses intricate intricacies that are distinct from those encountered elsewhere. The objective of citing references is to illustrate the characteristic aspects of environmental offences, which are distinguishable from conventional criminal activities. The field of environmental studies delves into two distinct classifications of environmental offences, namely, primary and secondary environmental crimes. The concept of primary crimes pertains to offences that directly and immediately affect the degradation and depletion of land resources. Examples of such crimes may include the pollution of water bodies and the burning of forests and pastures. In contrast, secondary crimes, which commonly fall under the category of environmental crimes, involve the contravention of environmental legislation and related regulations (South & Beirne, 2006: 67). The environmental penalty framework can be scrutinized from multiple perspectives, including but not limited to social, economic, and deterrent facets. Environmental criminal law aims to proactively deter and mitigate environmental violations recognized by the legislative authority as criminal offences. It has been posited that the objective of achieving successful criminal prosecution is comparatively more attainable in the sphere of environmental offences than in other domains, given that traditional criminal law tends to address the actions of individual offenders. This is because most environmental offences are perpetrated by entities that operate within established frameworks and operate with premeditated motives, often combining cost-benefit analyses of the projected crime results. Thus, it is apparent that within such a setting, the lawmaker may strive towards the preventative objectives of penal sanctions by implementing an appropriate strategy that entails discerning the underlying factors that lead to the commission of criminal acts (Rees, 2001: 10).

The examination of the criminal culpability of corporate entities carries crucial implications for the development of the criminal framework on environmental

safeguarding through two fundamental avenues. One initial factor is that governmental institutions, comprising the most sizeable legal entities, are regretfully the primary contributors to environmental pollution. In numerous nations, governmental bodies assume responsibility for commercial pursuits and emerge as a rival to environmentally conscious initiatives. The scenario mentioned above is often accompanied by a distressing calamity, particularly within impoverished nations. However, it is noteworthy that in developed countries, the circumstance varies. In the context of the nations mentioned above, the dereliction of civic duty demonstrated by the government or state-run entities to environmental compliance does not stem from economic challenges. Rather, the failure to uphold requisite environmental protocols can be attributed to a dearth of public confidence in the imperative of environmental conservation and adherence to relevant laws and regulations. In this scenario, the implementation and steadfastness in enforcing joint criminal liability regarding legal entities and their representatives can potentially have an influential impact on safeguarding the environment and facilitating the advancement of environmental appreciation values.

The second modality pertains to instances concerning the environment, particularly in cases involving offences stemming from biological pollution, whereby the majority of crimes are attributable to legal entities and corporations, as opposed to individual perpetrators. Thus, it is imperative to ensure that all offenders of the aforementioned environmental crimes, including corporate entities, are held accountable under the legal framework's criminal safeguards to achieve comprehensive environmental protection. Excluding corporations and other legal entities from criminal culpability poses a significant risk of failure for the legal system, particularly concerning the protection of the environment. Due to this significant rationale, a growing number of nations have implemented penal regulations that encompass the concept of legal anthropomorphic entities being subject to criminal liability if they perpetrate offences against the environment. The aforementioned nations comprise the Netherlands, Denmark, Canada, and the United States (Situ & Emmons, 1999: 78-90).

Within the realm of international documents, the Statute of the International Criminal Court is a pivotal instrument that recognizes the commission of acts that are harmful to the environment and treats them as criminal offences. Specifically, Article 8 of the Statute, clause "b," paragraph 2, prescribes that a deliberate initiation of attack with knowledge that such an attack would result in the unnecessary loss of life and bodily harm to civilians or civilian objects or the infliction of severe, long-term, and widespread damage to the natural environment that outweighs the foreseeable military advantages, constitutes a war crime. Therefore, destroying the natural environment is a significant component of an attack and must be considered within the scope of war crimes.

2. Environmental Impacts of Armed Conflicts

Living organisms are reliant on their habitat for sustenance. Any detrimental impact on the constituent elements of an ecosystem may trigger an invariable metamorphosis in the plant or animal populations therein. The inescapable interdependence of the various components of an ecosystem, brought about by organic connections, serves as a critical

factor for the sustenance of each entity. This correlation is imperative and cannot be disregarded. The interdependence of water, soil, humans, trees, and animals establishes a cohesive and functional entity. Removal of any element from this intricate system is not a feasible or recommended course of action. Careful maintenance of this entire unit is paramount, as their perseverance is essential for their expansion, well-being, and reproduction. The discontinuation of any constituent will ultimately result in a gradual deterioration of the entire system (Adams, 1998: 252). In recent times, significant strides have been made in the proliferation of weapons of mass destruction, both in terms of their quantity and quality. Unfortunately, despite the extensive backing of the peace process since the conclusion of World War II, these weapons continue to be deployed against humanity and the environment.

The phenomenon of war is a destructive force that negates the value of human beings and their environment. The deleterious impact of protracted armed conflicts upon all living organisms and ecosystems is undeniable, as they are rendered vulnerable to various weapons systems. In particular, the utilization of chemical weapons has resulted in a plethora of destructive consequences, including the devastation of forests and wildlife, the degradation of soil, and transformations in water systems. The two attributes of the capacity to transport chemical compounds and durability for extended durations may pose a significant threat to the ecosystem. The deployment of chemical weapons in nations such as Vietnam and Cambodia serves as a prominent instance in contemporary history. The utilization of said weaponry has resulted in the annihilation of vast hectares of forested and agricultural lands, incited the propagation of agricultural pests as well as contagions afflicting both animals and humans, caused extensive loss of life, and exterminated countless living creatures, and brought about the ruin of water reserves. The application of herbicides and defoliants in Vietnam during the conflicts between 1961 and 1973 resulted in the devastation of approximately 2 million hectares of southern forests and 200 thousand hectares of forests in the country's northern region. According to the report presented by the representative of Vietnam to the Special Economic-Social Commission of Asia, [1] the utilization of chemical weapons, aerial bombardments, and the clearance of forests for military purposes by the United States and affiliated governmental agents resulted in extensive deforestation throughout South Vietnam for over a decade from 1961 to 1973. As a consequence, the region experienced a substantial loss of vegetation and an increase in poverty. Forests that have undergone contamination by chemical pollutants are presently subject to precarious conditions during droughts, rendering the task of preservation, protection, and restoration exceedingly challenging (Cook & Haverbekke, 1999: 145).

In this article, the adverse effects of military activities on forest ecosystems are explicated as follows: Firstly, the allocation of limited natural resources towards war efforts and subsequent depletion of said resources; Secondly, disruption of conservation sites and forest areas caused by military exercises, training, and other activities that culminate in environmental pollution; Thirdly, the establishment of military facilities and infrastructures in or in proximity to forest regions; Fourthly, exploitation of forest products via illegal hunting and fishing practices, including the utilization of non-eco-friendly equipment like dynamite that risks the destruction of

[1]. ESCAP/ UN/ 1986

forest units under the command of military forces; Fifthly, environmental pollution that affects soil, water, and air quality; Sixthly, the deterioration of biological diversity; Seventhly, the economic and environmental outcomes of war, which result in tourism cessation as a significant source of government revenues; Eighthly, budgetary provisions for the maintenance, expansion, and development of forest ecosystems being redirected to finance war reconstruction ventures; Ninthly, the impact of refugee and war victim settlements on forest environments post-war as resultants of livelihood necessities.

2.1. State Responsibility for Environmental Violations

War denotes an armed conflict between two or more states, which is not bound by any constraints of time or place. The act of engaging in war is aimed at exerting one's dominance over the opposing party through the utilization of coercive measures. During periods of warfare, various regulations that are applied during peaceful times relinquish their effect and are supplanted by the regulations and statutes concerning the military conflict. The legal regime governing armed conflict, commonly referred to as the law of war or the law of international armed conflict, seeks to curtail and mitigate the impact and repercussions of such acts. War has been shown to have detrimental impacts on the environment, resulting in environmental destruction. In recognition of this issue, the laws of war aim to safeguard the civilian population by categorizing the environment as a protected entity, thereby ensuring its preservation and safeguarding the lives of citizens. State obligations to protect the environment during hostilities are mainly stipulated within the rules of international humanitarian law alongside with human protection in general (Afriansyah, 2021: 4). The Protocol Additional to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts encompasses provisions on safeguarding victims of international armed conflicts, including the prohibition of environmental harm in situations that afflict the civilian populace, under specific conditions.[2] As posited by the International Law Commission, the phrase "extensive, long-term, and severe damage" connotes the magnitude or severity of the damage, its enduring nature, as well as the geographical expanse that it affects.

According to the commission's viewpoint, the phrase "long-term" connotes a persistent attribute of the impacts, as opposed to solely a protracted duration. The laws governing warfare ultimately also serve to bolster environmental conservation and protection efforts. The present discussion concerns the first part of Articles 35[3] and 36[4] of the aforementioned protocol, which merits consideration. Invariably, the ramifications of warfare are twofold concerning the environment. Firstly, there are the indirect outcomes arising from the utilization of modern weaponry, including both conventional and non-conventional means, and their impact on the environment. Secondly, there is the intentional targeting of environmental systems for military

[2] . This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

[3]. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

[4]. In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

purposes. Consequently, the exigencies presented in the legislation on international armed conflicts to the abstention of deploying said armaments bear an environmental dimension at present. A critical analysis of treaties on armed conflicts leads to the inference that the provisions outlined within the aforementioned treaties have incorporated safeguards for the preservation of the environment amidst hostile situations, with emphasis placed on countering the various harmful agents. These safeguards are realized through the imposition of limitations and responsibilities that pertain to the conflicting parties, with a primary focus on avoiding substantial harm to the environment (as demonstrated by Article 33 of Protocol No. I). The aforementioned regulations are observed on numerous occasions within the legal framework of conflicts (Hylan, 2012: p. 27).

In the realm of international law, there exists a pervasive prohibition that can be categorized into two distinct rules. The first of these involves weaponry that induces unnecessary agony and as such, shall not be expounded upon herein. The latter pertains to weaponry that leads to perilous effects on the environment. Hence, the employment of any technique or approach aimed at producing substantial destruction or potentially causing harm to the environment, regardless of any unintentional outcome, is deemed unlawful and proscribed. The proposed regulation has also been referenced in the St. The document referred to as the Petersburg Declaration, which originates in a historic event that took place on November 23, 1886, shall be rendered academically. The statement posits that the primary objective of warring factions or governments in times of conflict is to diminish the opposition's strengths. This is achieved through the strategic withdrawal of a substantial proportion of combatants from the field of battle. Consequently, using explosive weaponry to eliminate the adversary from the battlefield is prohibited, particularly in circumstances entailing the generation of consequential impacts and excessive utilization. Numerous conventions, including the Hague Convention on Land War in 1899 and 1907, the Fourth Geneva Convention on the Protection of Victims of Armed Conflicts, and the Convention on Cultural Property in War, have established prohibitions against reprisals under circumstances where such actions could have deleterious environmental effects. These bans are designed to function as safeguards for environmental protection. The following statement warrants acknowledgment that the legal constructs governing armed conflict do not ascribe incidental environmental impact due to an unlawful assault, but rather such effects must be intended or reasonably foreseeable.

3. Compensation for Environmental Damages under International Law

In contrast to the overarching principle of international law that a breach of an international obligation is inherently damaging, international environmental law regards physical and measurable harm as a fundamental aspect of international liability for compensation. Hence, in the scrutiny of the regulations dictating remuneration for ecological harm arises an irrefutable imperative to scrutinize the notion and extent of aforementioned damages. The primary hindrance to the progression of compensation for environmental damage in legal cases lies in the absence of a comprehensive delineation of environmental damage within the framework of international law. The implementation of international civil liability for environmental harm would engender monetary penalties

derived from the transgression of international obligations, corresponding to infringements of either customary principles of international law or regulatory statutes specific to environmental conservation on a global scale. The overarching principle governing civil liability pertains to compensatory recourse for harm incurred by third parties as a result of wrongful or unlawful conduct. Hence, the availability of civil liability components for environmental harm shall generate the entitlement for the aggrieved individual to initiate a civil suit and seek appropriate recourse. The delivery of an adequate sentence following a determination of guilt in an instance of corruption may involve the imposition of non-financial restitution. This approach seeks to address the harms caused by wrongful conduct by remedying its effects and restoring the situation to its previous state. The 2001-endorsed proposal on international culpability for acts causing harm (commonly referred to as the "draft on international responsibility for the causes of the international wrongdoer") includes stipulations in Article 34. In this particular article, it is posited that complete redress for any resulting harm due to the actions of the international wrongdoer must be achieved through some combination of restitution, compensation, and satisfaction, either individually or in tandem.

Environmental degradation refers to the harmful effects caused to both the natural habitat and human population by various human activities (Hanqin, 2003: 232). The term "environmental damage" refers to the direct harm inflicted upon the natural surroundings, irrespective of the potential consequent impact on objects and possessions. The establishment of international civil liability concerning such damage is expected to give rise to civil sanctions linked to the transgression of international duties. Article 2 of the 2006 draft principles outlines the concept of damage as a substantial and detrimental impact on persons, property, and the environment. The aforementioned damage encompasses the following specific components:

1) The adverse outcome of mortality or bodily harm.
2) The potential for property loss or damage, inclusive of cultural heritage, exists.
3) The detrimental ramifications resulting from environmental disturbances, leading to loss or damage.
4) The expenses associated with customary actions proposed to reinstate the previous condition of a particular property or environment, encompassing its natural resources, are referred to as restoration costs.
5) The expenses associated with typical reaction approaches (Schwabach, 2006: 2).

The 2006 Plan of Principles makes explicit reference to environmental damage in the initial paragraph of Article 2. It is imperative to acknowledge that the incurred environmental degradation resulted from hazardous conduct, regardless of its potential to cause harm to individuals and assets or its absence thereof. In the assessment of environmental damages, it is imperative to note that a uniform approach for the evaluation of such damages does not exist. Due to the paramount significance of the natural environment, evaluations of environmental harm are regularly scrutinized in conjunction with infringement upon human rights and corresponding reparations. It appears that the assessment of environmental harm is fraught with complexity, and the establishment of specific standards and guidelines that would hold the government liable for the remediation of such harm remains

enshrouded in uncertainty. Unlike a restoration order qualified as an ancillary part of the sentence, the decision to make a suspended sentence conditional on the elimination of the harm caused falls within the discretionary powers of the trial judge (Bernasconi, 2023: 10).

3.1. The Concept of State Sovereignty - Judicial Review

The advancement of the concept of governmental sovereignty and its restriction within the framework of international environmental law has emerged as a prominent attribute and merit of its development. This progress can be attributed to the influence of international judicial opinions and procedures that have paved the way for a refined understanding of the limitations of sovereignty in the context of international environmental law. The principle of sovereignty remains a significant and enduring feature within the realm of public international law. This principle confers the exclusive and inherent authority to act as the highest power within a given territory, enabling the enactment of legally binding rights therein. The development of the concept of Sovereignty is followed by Article 2 [5] of the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Poorhashemi, 2023: 4). The emergence of international relations was accompanied by a notable shift in the traditional notion of sovereignty, wherein its steadfastness was eroded by the growing relevance of international law. This led to a curtailment of the once-absolute authority of sovereignty in favor of the principles of international law. By the 1990s, the modicum of absolute sovereignty became the favored approach. In the realm of international environmental law, the concept of sovereignty constitutes a fundamental principle in environmental matters. In the traditional understanding of sovereignty, natural resources are regarded as lawful assets subject to government jurisdiction. The aforementioned principle has demonstrated its efficacy in the realm of environmental governance, specifically concerning the exploitation of shared fishery resources and animal species migration. These are prominent examples of environmentally relevant matters that extend beyond territorial boundaries and challenge the conventional notion of state sovereignty in the domain of international environmental law. The present argument posits that the principle of exclusive jurisdiction of governments dictates that the environment within a given nation-state ought not to suffer adverse consequences stemming from activities taking place beyond its borders, which fall under the purview of a separate governmental authority. Governments possess the legitimate authority to exercise exclusive jurisdiction over their natural resources. Nevertheless, such jurisdictional proceedings shall not inflict environmental detriments upon neighboring countries or regions lying beyond the government's ambit.

The international legal framework governing environmental protection endeavors to safeguard the environment by recognizing its global dimensions. Because of this, the exercise of domestic sovereignty in environmental matters may have far-reaching and irreversible repercussions on humanity. The Chornobyl disaster evinced the incapability of governments in preventing calamities that transcend their territorial boundaries. The occurrence that

[5]. To ensure that transboundary waters are used in a reasonable and equitable way, taking into particular account their transboundary character, in the case of activities which cause or are likely to cause transboundary impact.

transpired on April 26th, 1986 within the confines of the Soviet Union stands as the foremost unforeseen calamity to have befallen humanity. This occurrence provided initial evidence that the ramifications of a nuclear mishap are not constrained to a singular location, but rather, will disseminate to proximate nations and potentially elicit global repercussions. Consequently, after the warning issued regarding the potential for environmental catastrophes to extend beyond national borders, the prevailing concept of environmental governance as an exclusive internal matter subject to the authority of a particular government has proven inadequate in addressing this concern. Consequently, the principle of state sovereignty within this domain has been circumscribed. International environmental law, as espoused in the 1941 Trail Smelter case [6] that involved a bilateral dispute between Canada and the United States, represents a critical component of the underlying principles of jurisdiction and sovereignty that govern contemporary legal systems. Additional information on this topic may be necessary to fully elucidate its significance (Bratspies & Russell, 2006: 73). According to the pronouncement of the arbitration court, it is impermissible for any government to utilize its land or afford permission for the utilization of its land in a manner that causes the discharge of perilous gases resulting in adverse effects on the land and/or individuals. "And thus, they are subject to acquisition or possession by foreign nations." The aforementioned ballot affirmed the provisions outlined in Article 21 of the Stockholm Declaration of 1972. In the Lotus case of 1927, the concept of absolute national sovereignty was recognized. However, in contemporary international environmental law, a guiding principle introduced during the prominent Stockholm Conference from June 5th to 16 under the auspices of the United Nations is the principle of caution. This principle urges governments to exercise caution in the exercise of their rights and freedoms to prevent harm to the environment of other states. The principle of the rational and reasonable use of land was subsequently introduced in the Rio Declaration two decades following its inception.

In numerous instances, national tribunals have rendered decisions referencing United Nations resolutions as one of the categories of international law enumerated in Article 38 of the International Court of Justice's Statute. The Lotus case, which refers to a legal dispute between France and Turkey, resulted in a pronounced ruling from the Permanent Court of International Justice. The aforementioned Court decreed that jurisdiction over the French falls upon Turkish courts, as determined by the principles of state sovereignty and the jurisdiction of the affected entity. [7] The Court's rationale was predicated upon the notion that during the period in question, established international norms necessitated the recognition of the jurisdiction of the legal authorities of the state experiencing harm. It is evident that the judicial process constitutes a fundamental aspect of state authority, and through the issuance of this verdict, the Court has advanced closer to complete jurisprudence and supreme power.

[6]. The Trail Smelter dispute was a trans-boundary pollution case involving the federal governments of both Canada and the United States, which eventually contributed to establishing the harm principle in the environmental law of transboundary pollution. The dispute aroused due to the release of sulfur dioxide into the air as a by-product of the smelting process carried on by the Consolidated Mining and Smelting Company of Canada Ltd.

[7]. Lotus Case (France v. Turkey). 7 September 1927, Permanent Court of International Justice. Series A no. 10, ICGJ 248. Available at: www.icj-cij.org/pcij/

3.2. Prosecuting Environmental Crimes under the ICC Statute

Contemporary ecological calamities, namely deforestation, pollution of natural resources, heightened carbon dioxide emissions, and the disproportionate depletion of natural resources serve as a stark indication that the well-being and health of present and future human generations are gravely imperiled. The incorporation of environmental protection into international law was first recognized in 1977 through the incorporation of the prohibition of harm to the environment within the initial appendage to the four Geneva Conventions. However, it is important to note that this provision specifically pertains to environmental devastation during times of armed conflicts. The limited scope of international humanitarian law with regard to safeguarding the ecosystem may be attributed to its primary objective, which pertains to the safeguarding of non-combatant individuals in the context of armed conflict. Notwithstanding the potential deterrent effect of the penalization of environmental harm, the realm of international law has yet to adequately address the question of international criminal liability for such harms, which typically possess transboundary and international qualities. International criminal law entails the establishment of an unequivocal and stringent prohibition concerning illicit activities (termed as crimes); in contrast, international environmental law is frequently characterized by precautionary and cooperative duties, which take on the form of soft law.

During the discussions on the creation of the statute of the International Criminal Court, the offence of environmental harm was subjected to scrutiny among the twelve offences duly presented. However, within the concluding version of the statute, the aforementioned crime, alongside seven additional crimes, was eliminated. Subsequently, solely four crimes, namely genocide, war crimes, crimes against humanity, and crimes of aggression, were subjected to the jurisdiction of the Court. Notwithstanding, the Rome Statute remains inadequate in addressing the adverse impact inflicted upon the environment in times of peace. The protection of the environment is regarded as a significant priority by the Court in its mandate to address crimes that pose a threat to global peace, security, and prosperity. The current inquiry pertains to the viability of prosecuting offenders of Ecocide in a court of law through the utilization of associated offences stipulated within the appropriate statutory mandates, given the grave implications and detrimental ramifications of said offences. Upon initial examination, it may be perceived that the expansion of criminal offences outlined in the statute to encompass actions that have comparable effects is impeded by the principle of the "legality of offences" as delineated in Article 22 of the said statute. Notwithstanding, a more precise response to the inquiry posits that the Court can prosecute environmental harm as instances of genocide and crimes against humanity, subject to specific delineations. The deliberate destruction of the natural environment is employed as a tool or mechanism to perpetrate genocide and other crimes against humanity rather than being regarded as an autonomous offence within the purview of the Court (Lehman, 2017: 5).

The degradation of the natural environment may be deemed a tangible constituent of section c in Article 6 of the statute governing genocide. As per the assertions presented in paragraph c, the deliberate imposition of certain living circumstances upon a particular national,

ethnic, racial, or religious community which culminates in their complete or partial annihilation, would be deemed as an act of genocide. The criminality lies in the actions perpetrated against individuals rather than those harming the environment. The conclusion in question has been substantiated by the procedural trajectory of the Court in the Omar al-Bashir case on the state of affairs in Sudan. Omar al-Bashir, the former president of Sudan, was accused of overseeing a government that deliberately contaminated the wells and water pumps in the regions where target groups and tribes resided. This allegation was among the charges that led to his arrest in 2009. It is incumbent upon the government to establish settled communities within these areas, as per his encouragement. Under the verdict of the pre-trial division of the Court in 2010, as expounded in paragraph 58, the act of water contamination is purposefully designed to advance a comprehensive policy on perpetrating acts of genocide, with a particular emphasis on imposing unsustainable habitation conditions upon ethnic groups such as the "For", "Masalit" and "Zaghawa", thereby resulting in their eventual physical decimation.

The recognition of Ecocide as a punishable offence alongside four other crimes delineated in the statute of the Court represents a significant development in efforts to mitigate environmental harm and prevent its occurrence. This acknowledgment underscores the gravity of the issue and indicates the concern expressed by the international community. Including Ecocide as an offence within the jurisdiction of the Court offers the benefit of not only penalizing those responsible for such actions but also providing the opportunity to seek reparations for economic damages under Article 75 of the statute. Furthermore, empirical evidence on offences beyond Ecocide substantiates that implementing Ecocide as a punishable act within the legal framework of a court would catalyze the establishment of corresponding nationwide criminal legislation, thus reinforcing accountability for ecological harm. This is due to the potential application of jurisdiction by domestic courts to environmental crimes through the provision of global jurisdiction by national laws. This trend is consistent with the existing criminalization of certain international offences through similar legal frameworks.

4. The Role of Governments in Environmental Protection

Regarding establishing and demonstrating governmental responsibility, an onus to provide restitution for damages incurred is engendered. In the 2001 draft of the International Law Commission on the "international responsibility of states for internationally wrongful acts", Article 34 outlines the general methods of compensation in international law. These methods include full restitution, compensation, satisfaction of the injured party, and cessation of the wrongful act. The precedence of restoring the status quo ante, as established by the Permanent Court of International Justice in the Kurzov factory case, is further reinforced. The Court affirmed that reparation ought to eliminate traces of the unlawful act, restoring the situation to the state that would have existed had the act not taken place. Consequently, it can be inferred that restoring the prior situation is the most fundamental and optimal means of compensation (Greife & Maume, 2020: 5). It is imperative to acknowledge that the reinstatement of the preexisting scenario is bounded by certain constraints, including its unfeasibility from material and legal standpoints as well as the inadequacy of the transgressing government to execute it. The unfeasibility of providing

material restitution may stem from the irrevocable deterioration or loss of the item in question. Legal impossibility may arise as a result of both domestic and international legal impediments. Securing the satisfaction of the aggrieved party is an alternative form of compensation that is frequently applicable in instances of non-tangible or intangible harm to the government's personality. This type of redress serves to achieve three overarching objectives:

1. Acknowledging any mistakes or expressing remorse for any wrongdoing;

2. Legal prosecution or punishment of the guilty person;

3) Implementing strategies to avoid the recurrence of that detrimental behavior.

Concerning the feasibility of such techniques, it is important to note that, similar to traditional international law, the preliminary drafts of the International Law Commission concerning the accountability of sovereign states also stipulate the necessity for complete compensation for the losses sustained as a result of an internationally illicit act in the shape of restitution. Regarding the harm inflicted by unbridled governmental actions, it must be asserted that the evaluation of such harm can be a daunting task and often fails in reinstating the former condition. Nuclear activities may result in enduring impacts on health and sanitation, with apparent symptomatic manifestations emerging even after a considerable number of years. Ascertaining a causal relationship between the observed damages and nuclear activities is a challenging task, and may even be deemed unfeasible (Hübschle & Faull, 2017: 3). For the aforementioned reasons, in a majority of instances, the disbursement of recompense supplants the implementation of restitution measures. It is arguable that within the realm of international non-prohibited actions, the notion of damages compensation is a circumscribed one. The overall strategy envisions exclusively the establishment of negotiations for a system of regulation and indemnity in the event of adherence to the expected allocation of responsibilities by the parties. Furthermore, it should be noted that there exists no unequivocal obligation to refrain from persisting in the detrimental actions to reinstate the previous equilibrium or to redress the resultant harm fully. State and local governments also address environmental crimes, often in the context of state regulations that are linked to parallel federal statutes. In many instances, the same actions may be violations of federal, state, and local laws. In order to conserve resources and improve the efficiency of environmental enforcement efforts, organizational attorneys have often helped assemble environmental crimes task forces. The respective obligations of nations do not exhibit significant dissimilarities and are typically remunerated through the means of pecuniary compensation. It is imperative to consider the potential material damages when assessing the appropriate compensation for any incurred harm. Henceforth, the remuneration encompasses any detriment that can be quantified monetarily. The matter of compensation payment is marked by significance and polarizing perspectives, with an additional contentious issue being the dearth of precise mechanisms to evaluate the harm and consequently arrive at a definitive compensation amount. The issue is considerably more tangible concerning non-economic losses. To ascertain the appropriate level of compensation, a commonly used approach involves the determination being reached through mutual agreement between the involved parties

following the involvement of a mixed commission or arbitration courts. The principal standard for evaluating reparation is the extent of harm incurred by the plaintiff whose entitlements to property have been breached.

Conclusion

The preservation of the environment has become a prominent issue of utmost significance for humanity (in conjunction with the attainment of worldwide peace and security). Despite considerable advancements in environmental preservation and conservation within international law, particularly in recent times, the absence of adequate compensation for environmental harm remains a significant deficiency in the existing regime of international environmental law. Currently, there exists a plethora of documents that have been sanctioned at both regional and international levels. However, most of these documents are primarily restricted to particular domains, encompassing nuclear activities, oil pollution, and the transference of hazardous waste into the sea. Furthermore, a magnanimous amount of fundamental and efficacious concepts on environmental compensation, notably minimum standards and environmental accountability, are portrayed in a hazy and enigmatic fashion within the framework of the universal environmental landscape. Governments are obliged to indemnify damages inflicted by either natural or legal persons. If these actors cannot offer compensation, alternative measures, including financial reimbursement, should be carefully examined. The main impediment to compensating for ecological harm is rooted within the framework of contemporary international legal regulations. Conversely, in the context of international armed conflicts, it is an inherent international obligation for all governments to safeguard and conserve the environment. A deviance from this obligation would consequently invoke international responsibility of the pertinent government.

Through an examination of the principles governing the international responsibility of states concerning the degradation of the natural environment within the realm of international criminal law, it can be posited that the endeavour to implicate the infringement of international norms on environmental conservation in the context of international wartime hostilities has arisen as a product of the recent eleven-year progression. A specialized international court dedicated solely to addressing environmental degradation has yet to be established, thereby creating a notable void within the realm of environmental law. However, to mitigate the ongoing destruction of the environment, particularly in international armed conflicts, implementing penal measures stands out as an expedient tool for safeguarding environmental protection. The influence exerted by public opinion in advocating for the implementation of criminal measures represents a crucial approach to ensuring adherence to environmental protection obligations in the context of international armed conflicts. This approach is characterized by adopting criminal prosecution procedures, coupled with establishing enforceable criminal sanctions within the international territory, thereby achieving favourable outcomes through the mitigation or cessation of environmental destruction. The outcome will entail holding any government accountable for their intentional infliction of significant, long-lasting, and profound harm to the ecosystem during international military conflicts. Such governments shall be subject to criminal liability and mandated to compensate for

environmental degradation. The international community ought to make a concerted effort toward establishing efficient mechanisms to implement legally sanctioned measures to safeguard the environment. Based on these cases, it appears that international criminal law holds a more robust and enforceable authority in addressing environmental protection during times of conflict compared to international environmental law. This observation underscores the urgent need to prioritize this issue in contemporary international policy and legal frameworks. Given the international community's heightened awareness and heightened sensitivity towards environmental preservation and protection, coupled with the emergent concerns regarding the redress of ecological harm under international law, it is conceivable that the establishment and articulation of a legal regime for environmental compensation are imminent. Indeed, the regulations mentioned above, under the tenets of international law, are well-suited to the exceptional characteristics of the environment and the ensuing impairment it suffers. Hence, they can foster the international community's efforts toward amicably resolving global environmental conflicts and fortifying and safeguarding the global environment.

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REFERENCES

Adams, D. (1998), *Relationship among Human Rights and Environment*, London: Martinus Nijhoff Publishers.

Afriansyah, A. (2021). Environmental protection and state responsibility in international humanitarian law, *Indonesian Journal of International Law*, Vol. 7, No. 2, pp. 242-295.

Bernasconi, Costanza (2023). Favor Reparationis in Environmental Criminal Law, *European Journal of Comparative Law and Governance*, Available at: https://brill.com/view/journals/ejcl/aop/article-10.1163-22134514-bja10048/article-10.1163-22134514-bja10048.xml#fn0026.

Bratspies, Rebecca M., Russell A. Miller (2006), *Transboundary Harm in International Law (Lessons from the Trail Smelter Arbitration)*, Cambridge: Cambridge University Press.

Bryner, Gary (2001), Cooperative instruments and policy making: assessing public participation in US environmental regulation, *European Environment journal*, Vol. 11, No. 1, pp. 49-60.

Cook, D., Haverbekke, D. (1999). *Trees, Shrubs and Landforms for Noise Control*, Oxford: Oxford University Press.

Deegan, C. (2002). The legitimizing effect of social and environmental disclosures – a theoretical foundation, Accounting, *Auditing & Accountability Journal*, Vol. 15, No. 2, pp. 282-311.

Eden, Sally (1996), Public participation in environmental policy: considering scientific, counter-scientific and non-scientific contributions, *Public Understanding of Science*, Vol. 5, No. 3, pp. 183-204.

El-Khoury, Janane (2011). Environmental criminality Field and legal study, *Energy Procedia*, Vol. 6, No. 1, pp. 704-710.

Greife, M.J., Maume, M.O. (2020). Stealing Like Artists: Using Court Records to Conduct Quantitative Research on Corporate Environmental Crimes, *Journal of Contemporary Criminal Justice*, Vol. 36, No. 3, pp. 451-469.

Hanqin, Hue (2003). *Transboundary Damage in International Law*, Cambridge University Press.

Heller, Kevin J. (2017), "What Is an International Crime? (A Revisionist History)", *Harvard International Law Journal*, Vol. 58, No. 2, pp. 1-71.

Hübschle, A., Faull, A. (2017). Organized environmental crimes: Trends, theory, impact and responses, *South African Crime Quarterly*, No. 60. http://dx.doi.org/10.17159/2413-3108/2017/i60a2770

Hylan, Heval (2012). "Protection of the Environment as a Result of the Use of Chemical Weapons: Analysis of the Relevant Law". Available at: www.kurdistanica.com/halabja/ en/ articles/article-009.pdf, 2012.

INTERPOL, ENVIRONMENTAL CRIME PROGRAMME: STRATEGIC PLAN 4 (2009–2010).

Lehman, Alessandra (2017), "ICC to focus on environmental crimes: a landmark move for International Environmental Law", *Energy and Environment Expert Guides*, pp. 59-60.

McCaffrey, Stephen C. (2008), "*Criminalization of Environmental Protection*", in: M. Cherif Bassiouni (ed), International Criminal Law; Sources, Subjects, and Contents, Martinus Nijhoff Publishers, pp. 1013-1035.

Mistura, Alessandra (2018), "Is There Space for Environmental Crimes under International Criminal Law? The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the Current Legal Framework", *Columbia Journal of Environmental Law*, Vol. 43.1, pp. 181-226.

Poorhashemi, Abbas (2023). Principles of International Environmental Law, *CIFILE Journal of International Law*, Vol. 4, No. 7, pp. 80-106.

Rees, Helena. (2001). "Can Criminal Law Protect the Environment?", *Journal of Scandinavian Studies in Criminology and Crime Prevention*, Vol. 2, No. 2, pp. 109-126.

Schloenhardt, Andreas (2005), "Transnational Organized Crime and the International Criminal Court; Developments and Debates", *The University of Queensland Law Journal*, Vol. 24, pp. 93-122.

Schwabach, Aaron (2006). *International Environmental Disputes* (Contemporary World issues), ABC-CLIO (publishing).

Situ, Yingyi and Emmons, David (1999). *Environmental Crime: The Criminal Justice System's Role in Protecting the Environment*, SAGE Publications.

South, N. and P. Beirne (2006). *Green Criminology*, London: Ashgate Publication.