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INTERNATIONAL CRIMINAL LAW OF THE ENVIRONMENT: A MYTH OR REALITY

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ABSTRACT

The process of Globalization, the increasing interconnectedness and interdependence of countries through trade, technology, and culture, in addition to its positive consequences, has also been accompanied by numerous negative consequences, which have violated International Law in general and Environmental Law in particular. As a result, efforts are increasingly being made to create new mechanisms to prevent these violations and prosecute their perpetrators criminally. For example, among others, the creation of the so-called International Criminal Law of the Environment, inter alia, the creation of International Criminal Jurisdictions in the field of the Environment. This is a response to any violation of a criminal nature that it will suffer. The focus of this article is precisely the research into whether, apart from rumors, one can speak today of an international criminal law of the Environment. Or is it just a myth? After all, such a law holds immense potential as the most efficient mechanism for preventing natural disasters caused by man, such as Chornobyl, in the Gulf of Mexico, Eagle Creek Fire, Columbia River, etc. More specifically, this article will address several issues, such as an understanding of International Environmental Law in a positive and doctrinal aspect, the most worrying problems of the Environment today, and national and international mechanisms for protecting the Environment and their inefficiency. To move on to the key points, we will discuss the advantages of creating a new branch of Law, International Criminal Law of the Environment. Also, as far as possible, it is a favorable and doctrinal treatment. That is its identification and analysis. Hermeneutic and interpretative/analytical methods have been used to implement this article. In conclusion, through this article, we aim to stimulate debate among academics of Law in general and Criminal Law in particular and to inspire hope for a better future.

Keywords: Globalization, International Law, International Environmental Law, International Criminal Law, International Criminal Environmental Law.

INTRODUCTION

The process of Globalization, in addition to positive consequences, has also been accompanied by numerous negative consequences, which have violated International Law in general and Environmental Law in particular. As a result, efforts are increasingly being made to create new mechanisms to prevent these violations and prosecute their perpetrators. For example, among others, the creation of the so-called International Criminal Law of the Environment, inter alia, the creation of International Criminal Jurisdictions in the field of the Environment. This is a

response to any violation of a criminal nature that it will suffer. The focus of this article is precisely the research into whether, apart from rumors, one can speak today of an international criminal law of the Environment. Or is it just a myth? We consider such a right the most efficient mechanism for preventing natural disasters caused by man, such as Chornobyl, in the Gulf of Mexico, Eagle Creek Fire, Columbia River, etc.

More specifically, this article will address several issues, such as an understanding of International Environmental Law in the positive and doctrinal aspects, the most worrying problems of the Environment today, and national and international mechanisms for protecting the Environment and their inefficiency. To move on to the key points, we will discuss the advantages of creating a new branch of Law, International Criminal Environmental Law. Also, as far as possible, it is a favorable and doctrinal treatment. That is its identification and analysis. Of course, this is a broad field of Law, and it is sensitive. So, with this article, we do not claim to exhaust every element and provide solutions to every problem it presents today. However, we aim to attract the attention of young legal scholars who want to focus their research and study work on environmental issues. So, to stimulate a debate among academics of Law in general and Criminal Law in particular.

MATERIAL AND METHODS

Hermeneutic and interpretative/analytical methods were used to implement this article.

International Criminal Law of the Environment: a myth or reality?

A short insight

This article aims to discuss International Criminal Law of the Environment. Still, before we move on to its treatment, we must first say a few words about some concepts such as Environment, Environmental science, International Criminal Law of the Environment, etc, which will be treated as much as necessary to achieve our goal. Only after we know about these concepts, mainly of international environmental Law, will we be more comfortable treating international criminal Law of the Environment in a legal-scientific manner. So, do we have one today, and if not, should it exist?

Defining the Environment is both simple and challenging. The sources in this regard are numerous. After a combined reading of these sources, by Environment in the broad sense, we understand everything that surrounds us. In contrast, in the strict sense, the Environment is the totality of natural conditions in which a person or another being lives and develops, an object is located and changes, a phenomenon develops, etc.; everything that surrounds an organism, a phenomenon, etc.; the space or objects that surround us; the Environment (http://www.fjalori.shkenca.org/11.2.2025) (in Albanian) Of course, man's concept of the Environment has not always been what it is today (Kumar., 2019). Man's desire to know the Environment in which he lives and, above all, to influence it gave rise to Environmental Science, which studies the interaction of living and non-living components. This science also studies the impact that human activity has on these components. Therefore, it is dynamic and includes experts from different fields; for example, biologists study biodiversity, ecologists study how plants and animals interact with the Environment, etc. But the Environment is not only studied by the exact sciences; it has been and remains the object of study of economists, sociologists, political scientists, philosophers, theologians, and criminologists, all of these studies to understand how much we value and how we interact with the Environment that surrounds us. In the wake of this, it would be nonsense to think that the Environment is not also an object of Law. This is not only because it is the object of study in many fields but also because of the need for a complete and objective understanding to limit man's ability to use the environment as he wishes. This commitment to a complete and objective understanding drives our exploration of the International Criminal Law of the Environment.

International Environmental Law

Environmental law, the standards governments set to manage natural resources and environmental quality, is evolving. As we face increasingly complex ecological issues, there is a growing need for a new branch of law that operates internationally. This new branch, international environmental law, results from multilateral or bilateral agreements between states or the actions of global organizations. To fully understand the urgency and importance of this development, we must analyze the three elements that define international environmental law: law, international law, and the Environment.

Above, we have defined the term environment, but now we will see how this term is defined by law: "The environment is the relationship of man with water, air, land and other biological forms." It is precisely this relationship of man with the Environment that is taken up by law and becomes its object. We must emphasize that changes that the Environment undergoes naturally, not caused by man, such as earthquakes, volcanoes, etc., are outside the scope of international environmental law, which only addresses those environmental changes that man dictates (Bodansky D., 2024). Naturally, the question arises as to what makes an environmental issue international.

In this case, we will answer by taking into account the general principle that an issue becomes an object of international law whenever the interests of several states are affected by a single, specific action, that is, whenever the international public interest is violated due to this action. To illustrate in the case of international environmental law with a simple and hypothetical example, we have a river that passes through the territory of several states (for example, the Danube River passes through Romania, Hungary, and Serbia); if at some point it is polluted as a result of the discharge into it of waste from a factory in State A, absolutely this is not an issue only within the jurisdiction of State A, it becomes the subject of international environmental law. Because an international river has been polluted, the interests of several states (of the citizens of several states) have been violated. For the same logic, acid rain and global warming are the subject of international environmental law because they violate the international public interest. In the wake of this analysis, for many researchers in the vocabulary of international environmental law, the term law is the most problematic because this term implies the existence of mechanisms of force; in other words, if a state violates international environmental law, this entails not only moral or political responsibility but also legal responsibility. These force mechanisms are absent in international environmental law, the standards of which are more moral and political. Of course, we can come to such a conclusion after considering the division of the international legal framework of the Environment into hard law and soft law. Naturally, whether these supra-standards should be called law/law arises. To answer this question scientifically and legally, we must briefly analyze what law/law is and the constituent elements of a legal norm. After reading a series of doctrines in this direction combined, we conclude that law in general and international law, in particular, is a set of norms and legal rules that regulate social relations. We want to single out here the orthodox doctrine that says that international law is defined mainly by its sources, i.e., its issuance, for example, by the United Nations Organization, defines not only its international character but also defines it as a legal norm. Also, the doctrine states that the legal norm elements are hypothesis, provision, and sanction (Omari L., 2007). It is understood that it is not the object of this article to clarify these concepts, but for this analysis, we must emphasize that the sanction, i.e., the element of force, cannot always be an element of the legal norm; it is mainly a defining element of a criminal legal norm. The essential element of a legal norm is the provision.

After this analysis and vertical reading of several international environmental law treaties, we positively answer the question. After this doctrinal overview of international environmental law, it is time to mention some of the main agreements that constitute the complete corpus of standards of this law. It should be noted that the number of such agreements is huge because each part of the environment has its legal regulations, so for this article, we will mention only those classical agreements of a general nature. Their large number is also because we have multilateral and bilateral agreements in regional or international infra (Lang W., 1999). These conventions include Aarhus, Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, 1998. Espoo Convention, 199, Kyoto Protocol, Montreal Protocol, United Nations Convention on Climate Change, etc. Unfortunately, although there are a large number of agreements in the form of conventions, treaties, etc., which constitute the international legal framework to address environmental problems, they are characterized by their incomplete implementation, lack of enforcement mechanisms, and often do not comply with each other; this situation is problematic mainly in developing countries. In the wake of what we discussed above, it would be appropriate to mention some mechanisms created for environmental protection so that the conventions above can be implemented in practice. In this article, the term mechanism will be taken broadly so that we will include not only mechanisms created by international organizations for this purpose. The conventions themselves foresee such mechanisms, including some international courts that deal with environmental issues, but we will also mention what academics do in this regard. Some of these created mechanisms are the International Maritime Organization (IMO) and the Food and Agriculture Organization (FAO), specialized agencies created by the United Nations Organization for Environmental Activities. The United Nations has also created several institutions, such as the United Nations Environment Program (UNEP) and the United Nations Development Program (UNDP). In the latter for the Environment is the Commission for Sustainable Development (CSD).

Since these agencies and institutions exist and act independently of each other, but above all, without coordinating their work together, their work is generally characterized by inefficiency (Anton D., 2012). INTERPOL plays an important role in this regard. International Judicial Jurisdictions dealing with environmental issues are the International Court of the Sea, the International Criminal Court, the European Court of Justice, and the European Court of Human Rights (Sands P., 2003). It is easily understood that as a result of the complete inefficiency of the mechanisms, as Du Rees expresses (Du Rees, (2006), Can Criminal Law Protect the Environment?, Green Criminology Book, Routledge), but also their large number, which increases the degree of difficulty of cooperation or coordination of work between, the large number of agreements or conventions in this regard, often without having within them force/sanctions mechanisms supra, taking into consideration at this moment the famous phrase of Cicero "Summum ius, summa iniuria"; By analyzing the supra judicial jurisdictions, we can easily understand their limited territorial and subject matter competencies, as well as the fact that their primary purpose is not to address environmental problems, this is only evident if we interpret their name. In the wake of what we said, taking into consideration the numerous problems that the Environment faces today (climate change, clean energy, air and water pollution, biodiversity, and land use, etc.), as well as the problems that international environmental law presents above, make us think that the time has come to think seriously about the creation of a new branch of law or more precisely of a sub-branch within international environmental law, international criminal environmental law.

We emphasize that the idea of creating this new branch of international law, above all, its autonomy from international environmental law, is not only a result of the desire of some researchers to create a new branch of law or a result of the current tendency of Criminal Law to specialize but comes as a result of the numerous problems that the Environment in general and international environmental law, in particular, are facing today that make it necessary to protect the Environment and international criminal (environmental) law (Ndrepepaj N. et al, 2012). Before moving on to the article's main point, we find it appropriate to emphasize the great role that legal scholars have played in creating and consolidating international environmental law with their works, making it a special subject in Law faculties worldwide (Babich A., 2005). There are even master's degrees for this branch of law, scientific research centers, and specific scientific journals in this direction. It is precisely the doctrine that will give movement to the creation and consolidation of international criminal environmental law.

International Criminal Law

In this section, what is most important for this article is to have a clear understanding of the territorial and substantive boundaries of international criminal law. For this, referring to the doctrine, there are several definitions of international criminal law, such as:

- "International Criminal Law is the totality of criminal norms that define criminal offenses with international elements, the mechanisms on which the punishment of their perpetrators is based, and cooperation between states in the fight against international crime (Xhafo J., (2009)."
- Another definition defines it as "the totality of international norms, especially conventions, treaties, statutes that define certain behaviors as international crimes."

So, from a combined reading of these two definitions, we understand that International Criminal Law is a branch of public international law that defines the types of international crimes and the manner of their prosecution (Ochs S., 2020). Let us analyze the Rome Statute, which established the International Criminal Court, which marks the highest stage of development in this direction. For this article, it is of most interest to analyze Article 5 of this Statute, which reads:

- The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court, by this Statute, has jurisdiction over the following crimes: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; (d) the crime of aggression.

The use in Article 5 of the phrase …serious crimes, which are of concern to the international community….cannot be taken in the lato sensu because the article that follows it defines in a taxing manner who is the subject matter competence of the International Criminal Court, this results from a linguistic interpretation of the phrase … has jurisdiction over the following crimes: …, prima facia we see that no Environmental Crime is included here, even though most of them are not only international but also serious. They can also result in environmental catastrophes.

Next, let us analyze Article 6,7,8, mainly their object and objective side, as two elements of the criminal offense that give us information if the protection of the environment is included in the focus of this Statute. However, during the interpretation, we consider that criminal law does not accept overly broad interpretations due to its sensitive character.

Article 6, Genocide, does not protect or, more precisely, does not include within its scope environmental crimes, this taking into account the legal and material object of this article; the legal object is the protection of human life and health from violent acts, which becomes a passive subject of this act because of the group to which it belongs. The material object comprises different ethnic, racial, and other groups. The objective side of this article does not say anything expressly in favor of environmental protection. Suppose such an act is committed … Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part… indirectly. In that case, the environment can emerge as a tertiary object protected by this article. The same line of logic and reasoning is used in Article 7, Crimes Against Humanity. These two articles have different material objects: Article 6 is more specific, Article 7 is comprehensive, and the objective side of Article 7 is broader. In Article 8, War Crimes, the situation changes; of course, this article does not explicitly mention the term environment or environmental crime, but logic allows us to give an expanded interpretation to points 2/a/ iv, b, b/xvii, b/xviii of this article. So here, we can talk about environmental protection from the International Criminal Code, but only in times of war. So, international criminal law offers little criminal protection to the environment, only in times of war. The concern increases if we consider Article 17 of the Statute, which provides for the principle of complementarity. This principle means that the Court intervenes only when the state, for objective or subjective reasons, fails to proceed with the case. In environmental protection, the international criminal court will only step in when a state fails to prosecute environmental crimes, leaving a significant gap in the environment's safety at the global level (Rauxloh R., 2011). So, international environmental or criminal law is insufficient for ecological protection. On the other hand, we do not have a set of unique, independent, and integrated rules of an international nature for environmental protection. But let's look at the European Union, which on 11 April 2024 adopted the Directive on the safety of the environment through criminal law (https://environment.ec.europa.eu/law-and-governance/environmental-compliance-assurance/environmental-crime-directive_en), replacing the 2008 Directive on environmental crime. This new Directive aims to address the shortcomings in the effectiveness of ecological criminal law by establishing minimum rules on the definition of criminal offenses and penalties to protect the environment more effectively, as well as measures to prevent and combat environmental crime.

The Directive includes a comprehensive updated list of conduct to be defined as criminal offenses in the national legal order of the Member States, introduces a system of minimum-maximum prison sentences, and includes provisions to improve the effectiveness of all actors, such as investigators and police officers, along the enforcement chain to combat environmental crime.

Criminal offenses: The Directive includes a comprehensive updated list of conduct to be defined as criminal offenses in the national legal order of the Member States. Several new offenses have been introduced, such as illegal ship recycling and water extraction, serious infringements of EU legislation on chemicals and mercury, and placing on the market and exporting relevant goods and products in breach of the Union Regulation against Deforestation.

Penalties: The Directive establishes a system of minimum-maximum prison sentences and introduces two alternative methods of fines for legal persons based on fixed amounts between 24 and 40 million euros and the total annual worldwide turnover of the legal person concerned.

The Directive also includes several provisions that will help improve the effectiveness of all actors, such as investigators and police officers, along the enforcement chain to combat environmental crime, for example, through sufficient resources, specialized training, cooperation mechanisms within and between Member States, and national strategies.

Despite the introduction of the 'Directive on the safety of the environment through criminal law' and other mechanisms created by the EU, such as the Environmental Compliance and Governance Forum and EMPACT (European Multidisciplinary Platform against Criminal Threats), there are still limitations in the protection of the environment at the international level. Due to its limited application in space and persons, there is no such branch of law today: International Criminal Environmental Law. While a step in the right direction, the Directive does not fully address the global nature of environmental crimes and the need for a comprehensive international legal framework for their prosecution.

International Criminal Law of the Environment

In principle, there is no such branch of law today, so here we will join that group of scholars who think that the time has come to create this new branch of public international law as a mixture of international environmental law and international criminal law. The urgency of this matter is underscored by the fact that at the international or European level - the European Union, the Council of Europe, there are legal acts that have as their object environmental crime, or the so-called environmental crime, or the protection of the environment by criminal law, (https://huespedes.cica.es/gimadus/06/THE%20CONVENTION%20ON%20THE%20PROTECTION%20OF%20THE%20ENVIRONMENT%20THROUGH%20CRIMINAL%20LAW.htm).

However, this corpus does not have the status of a separate and independent law. It is also not complete, and it operates in a limited space. For example, even the Convention on Protecting the Environment through Criminal Law (CoE, 1998) does not refer to international return or allude to old problems such as immunity and transboundary pollution. Therefore, creating one means that neither international environmental nor criminal law efficiently provides the environment with the necessary protection. According to European Union statistics, environmental crime is the 4th most significant organized crime activity; 5-7% annual growth rate of ecological crime and €80-230 billion lost annually due to environmental crime. This underscores the urgent need for a new branch of law to address the ecological crisis (*Ibid*).

Most researchers of international environmental law acknowledge this in their studies, where they emphasize that the time has come for this law to be equipped with enforcement mechanisms (Watanabe K., et al, 2010), but without addressing the legal nature of these mechanisms. We support this group of researchers when they conclude that the time has come for international environmental law to be strengthened. Still, we criticize them for being silent about the legal nature of this enforcement. At this point, we join the group of researchers who are increasingly discussing the so-called international criminal environmental law. So, in our opinion, this force must also have a criminal legal nature. We emphasize once again that we do not say this simply from our desire as researchers of criminal law supra or from the desire to create an ius novum, supra, but from the significant problems that the environment has today supra, which directly violate our fundamental freedoms and rights to water, air and a clean environment, in respect of the large and ever-increasing number of victims of environmental crimes, as well as from the need for someone to be held criminally accountable for environmental crimes (White R., 2010). Our thesis is supported not only by these social and moral factors but also by formal and legal criteria. For example, let's take the terms international environmental crime and international criminal law; we will not dwell on the latter because what we have said above applies; from a combined reading of several sources, we understand environmental crime as a violation of environmental law, and that is intended to protect the environment, of course including the international character, interesting is the definition of this concept by INTERPOL: environmental crime is a serious, ever-growing international problem that appears in various forms. Taking into account the classical understanding of criminal law as the law that provides for the types of crimes, the measures and types of punishments for their perpetrators, as well as the types of environmental crimes, which undoubtedly require, in our opinion, exceptional discovery and investigation procedures due to their complex character, but also the trial due to their perpetrators in many cases, powerful states or corporations added, and everything we have discussed above makes the need for the existence of a text of international environmental criminal law immediate, with all that accompanies this process, because the other two rights analyzed during this article have in vacuo in this regard in principle supra. Let us not forget the importance of the maxim nullum crimen, nulla poena sine lege. At the end of this analysis, will these international environmental crimes be subject to national or international jurisdiction? In the latter's case, on what principle will it be based: the principle of superiority or complementarity? This question needs more in-depth analysis because the principle of sovereignty intervenes at this moment, which is very sacred. As mentioned above, we favor international jurisdiction due to the nature of these crimes and their perpetrators. Of course, in this case, bringing into focus again the nature of environmental crimes, their perpetrators, and how urgent the situation in which the environment is today is, making a simple balance between the sovereignty of a state and the international public interest, in our opinion, the latter prevails (Megret F., 2010).

Therefore, we think the International Environmental Court should be created as a permanent court, according to the model of the International Criminal Court, or to expand the subject matter jurisdiction of the latter to serious international environmental crimes. But taking into account the fact that the term environment is inclusive and complex, we are in favor of the creation of an international environmental court, which should be based on the principle of complementarity, not only as a sign of respect for the principle of sovereignty, but also for the fact of

the successful discovery, investigation, and trial of these crimes, because evidence is discovered, collected, and analyzed better and more simply in the place where the crime occurred. The International Environmental Court intervenes when this process fails where the crime occurs or has consequences. Bringing once again to mind the hypothetical case cited at the beginning of this article, we emphasize that any eventual problem that may arise during investigative or judicial procedures can be resolved through international criminal judicial cooperation mechanisms. Successfully prosecuting international environmental crimes will require substantial international cooperation and coordination.

CONCLUSIONS

- As a result of the processes of Globalization, the environment is increasingly becoming an international problem, necessitating the emergence of international environmental law, which, despite its developments in both the positive, institutional, doctrinal, and academic aspects vis a vis the numerous problems that the environment has today, especially with the increase in quality and quantity of the so-called international environmental crimes, is not justifying itself, it does not have the appropriate mechanisms of force to provide a solution to these problems/crimes. Not even international criminal law has the proper mechanisms to combat international environmental crime.
- As a result of the shortcomings that these two branches of public international law exhibit, researchers are increasingly talking about creating a new branch of public international law, international criminal environmental law. As a right that stands between international environmental law and international criminal law but is autonomous from them. We emphasize that the idea of creating this new branch of international law, above all, its autonomy from international environmental law, is not only a result of the desire of some researchers to create a new branch of law or a result of the current tendency of Criminal Law to specialize but comes as a result of the numerous problems that the environment and international environmental law face today, which make it necessary to protect the environment and international criminal law (of the environment).
- It is time to protect our environment more “hard.” Therefore, through this article, we aim to attract the attention of young legal researchers to focus their research and study work on environmental issues. Secondly, I want to be one more voice for creating International Criminal Environmental Law as an independent and separate branch of law.

Conflict of Interest. The author declare that they have no conflict of interest.

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