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ENVIRONMENTAL PROTECTION AND ARMED CONFLICTS IN NATIONAL AND INTERNATIONAL REGULATIONS

Alexandru Florin MAGUREANU *, Ioan ȘTEFU **

*Faculty of Juridical and Administrative Sciences, Spiru Haret University, Brasov, Romania, ** Faculty of Juridical and Administrative Sciences, Spiru Haret University, Brasov, Romania

Abstract: *Due to its impact over social life and its effects on the environment, the war has been an important subject of interest for jurists all over the world, as attempts were made to incriminate its devastating impacts. As a result, the conflict phenomenon has become an object of study for international public law, international humanitarian law and international criminal law.*

Keywords: *environmental law, armed conflicts, international law*

1. INTRODUCTION

International law offers a framework in which the relationships between national states take place.

The international framework, meaning the international situation of a country, its relations with the neighbors, with the regional or international communities, have a strong influence over the law, as there is a tendency to harmonize national regulations with international ones, with the signed treaties and conventions and even in unifying law, in some areas [1].

The first recorded use of environmental warfare dates back to 512 B.C., when the Scythians practised a scorched earth policy on their own territory, in order to prevent the Persians from advancing [2]. The rules of war are as old as war itself and the war is as old as life on earth [3].

Ecological protection during armed conflicts refers to the limitation of new and

environmentally dangerous means of war that may cause severe and irreversible damage. The precautionary principle also implies the necessity of international laws which should be able to prevent such damages and also to protect civil population from catastrophic effects and natural calamities during peace time. According to the Rio Declaration (principle 24) warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, as necessary.

2. THE TEXT OF THE PAPER

2.1 Rules on armed conflicts in national and international laws The purpose of the war is to weaken the resistance of the enemy, so that he accepts the will of the victor. As a result, environmental protection is disregarded during armed conflicts. Nevertheless, a new concept was crystalized recently, the ecocide.

Perhaps the oldest ecological law is the one we find in the Bible (Deuteronom 20.19), according to which: "When you besiege a city for a long time, making war against it in order to take it, you shall not destroy its trees by wielding an axe against them. You may eat from them, but you shall not cut them down. Are the trees in the field human, that they should be besieged by you?". War was considered as a legal way of solving disputes between states. Therefore, acts of cruelty were not considered crimes but merely accepted forms of punishments applied to those considered "guilty". Water poisoning, burning of crops, destruction of human settlements were considered common practices during armed conflicts, rules that will lately be latter recognized as positive law, limiting thus the ways armed conflicts are conducted, the seasons when wars were allowed and the means the combat takes place. The ecologic criteria has been recognized as an international humanitarian law principle by the first additional protocol to the four Geneva Conventions of 12 August 1949 regarding the protection of the victims of the international armed conflicts, adopted in 1977 [4]. According to art. 55 of the mentioned protocol, care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. The protection includes the prohibition of using methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Paragraph (2) states that: "Attacks against the natural environment by way of reprisals are prohibited". The final goal of the article seems however to be the protection of human beings and not the environment.

The reference to "widespread, long-term and severe damage" can also be retrieved in the preamble of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Rome Statute Establishing the International Criminal Court).

Similar stipulations can be found in art. 1 of the 1977 Convention on the Prohibition of

Military or Any Hostile Use of Environmental Modifications Techniques.

Also, according to art. 22 of the Hague Regulations, the rights of belligerents to adopt means of injuring the enemy is not unlimited.

According to the New Romanian Criminal Code, art. 443, it is considered crime, punishable with prison from 3 to 10 years, carrying out an attack, knowing that it will cause severe and lasting environmental damages, which would be clearly disproportionate in relation to the actual military advantage, during an armed conflict. Art. 444 of the Code states that it is considered a crime, punishable with prison from 7 to 15 years, the use of poison or poisonous substances as weapons, asphyxiating gases or similar substances, weapons that cause unnecessary physical suffering, during an armed conflict.

The Swiss Criminal Code states that the penalty is a custodial sentence of not less than three years for any person who, in connection with an armed conflict: "launches an attack although he knows or must assume that such an attack will cause loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" [5]. The Belgian Criminal Code contains similar regulations (art. 136, para. 22), as does the Criminal Code of Malta (art. 54D).

The French Criminal Code does not have a similar stipulation, however the balance of the natural surrounding and environment, and the essential elements of its scientific and economic potential are considered as intrinsic part of the "fundamental interests of the Nation" [6].

According to the Albanian Criminal Code, environmental distribution of hazardous substances may be considered act with terrorist purpose (art. 230). Art. 394 of the Armenian Criminal Code incriminates "Ecocide", as the crime of "mass destruction of flora or fauna, poisoning the environment, the soils or water resources, as well as implementation of other actions causing an ecological catastrophe"



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(punishable with imprisonment from 10 to 15 years). The Canadian Criminal Code incriminates the possession of nuclear material, radioactive material or device. The person that, with intent to cause death, serious bodily harm or substantial damage to property or the environment, makes a device or possesses, uses, transfers, exports, imports, alters or disposes of nuclear material, radioactive material or a device or commits an act against a nuclear facility or an act that causes serious interference with or serious disruption of its operations, is guilty of an indictable offence and liable to imprisonment for life (art. 82.3).

According to art. 41, para. (3) of the Russian Criminal Code, "Risk shall not be regarded as justified if it was known to involve a threat to the life of many persons, or a hazard of environmental or societal disaster".

There is a tendency lately, in international criminal law, to incriminate terrorism, including its effects over the environment, and also the war against terror. Military organizations are compelled to protect and conserve natural resources and to act in a responsible manner in all situations, to evaluate the effects that military actions have over the environment.

2.2 Military actions as a risk factor for the environment The military cannot be excluded from the category of risks factor for the environment due to the following considerations:

-transformations that take place in the military sector, where equipment and

technologies that generate pollution are being used;

-the impact of the training process over the environment is significant;

-the insufficiency of the financial resources allocated environmental actions and programs;

-the serious and severe damages that armed conflicts can bring to the environment;

Such harmful effects can consist in:

-contamination and deterioration of the soil and infrastructure;

-the burning of forestry fund and of vegetation;

-contamination of water;

-producing an important quantity of waste, including nuclear and chemical waste;

-phonic and chemical pollution of air;

- various damage to fauna and flora.

During the course of military actions, the military has the obligation to take all necessary measures in order to protect the environment. The entire personnel must have knowledge of the way daily activities are being carried out, the way military activities or training affects the environment.

War can generate not only loss of human life and cultural values but also can serious affect the environment. During the operations that took place in 1999, NATO forces attacked chemical plants and other industrial sites in Yugoslavia, and also significant damage was done to reservations such as the national parks in Serbia and the Skadar Lake in Montenegro. Also, as a result of the attacks, important quantities of toxic materials were spilled in the Danube River. The exact impact to the environment is in fact impossible to be

evaluated correctly. NATO bombings against Taliban fighters have destroyed most of the Afghanistan forests, and in 2003 oil wells were set on fire by Iraqi forces [7]. The conflict from Lebanon caused, in 2006 the spilling of 10.000-15.000 tons of fuel into the Mediterranean.

In the doctrine [8] was suggested that in order to remedy the inadequate standards in the international law of environmental warfare, a separation would be required, between active environmental warfare, which requires the “use” of the environment as a weapon of waging armed conflict, and passive environmental warfare, which includes acts not specifically designed to “use” the environment for a particular military purpose, but that have a degrading effect on the environment. Passive environmental warfare violates international law only when it produces effects that are widespread, long-term and severe.

3. Conclusions

The classic role of the international law, that of stopping or preventing armed conflicts between states, has developed into much more, as it often implies new tasks that the international organizations have accepted, tasks that imply an increasingly stronger limitation of nationhood, of state sovereignty, reaching even the point where we can seriously ask ourselves about the future of the structure that we now call a state. On one side the international organizations are imposing more and more limitations to the national legislations, even without a global government.

The fact that there are still no general rules able to incriminate military actions that damage the environment (nor institutions that can apply sanctions), poses an ever greater threat for the environment in case of future conflicts. Also, most of the international rules prevent only the use of a specific type of weapon, therefore they cannot be considered general regulations.

It is clear, at this moment, that the international juridical frame that aims to protect the environment in case of military conflicts, is either too vague or insufficient for an effective protection. The signing of a new convention on environmental protection during armed conflict would be, in our opinion, a necessary step (but not sufficient) in the prevention of environmental degradation through military actions. Such a Convention should clearly define notions such as: environment, active environmental damages and passive (or collateral) environmental harm; types of weapons allowed in order to protect the environment; type of actions that are prohibited expressly. Even more important, such a Convention should clearly stipulate means of monitoring military activity even during peace time, by international organisms and severe and clear penalties for any violations (no matter who the perpetrator is, whether it is a state, an organization or an individual).

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