THE CULPABLE ECOLOGICAL CATASTROPHES – OFFENCES OF INTERNATIONAL CRIMINAL LAW?

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ABSTRACT:
THE SERIOUS DAMAGE CAUSED TO THE ENVIRONMENT NO LONGER REPRESENTS ONLY A MATTER OF NATIONAL CONCERN, WITHIN THE DISCRETION OF EACH COUNTRY, AS IN THE CASE OF ECOLOGICAL CATASTROPES WITH SEVERE REPERCURSIONS TO LIFE GOING ON IN NORMAL CONDITIONS, WITH MULTIPLE CASUALTIES OR SIMPLY AFFECTING LARGE AREAS OF THE PLANET. CONSEQUENTLY, THE ROLE OF THE INTERNATIONAL CRIMINAL LAW SHOULD BE ENHANCED IN PUNISHING THE GUILTY ONES AND IN TAKING OTHER NECESSARY MEASURES FOR THE PROTECTION OF NATURE AND THE PRESERVATION OF A HEALTHY ENVIRONMENT FOR THE PEOPLE AND THE OTHER BEINGS.
KEY WORDS: *ENVIRONMENT, SERIOUS DAMAGE, LIABILITY, INTERNATIONAL CRIMINAL LAW*

INTRODUCTION

Along with other rights (to peace, security and development), the right to a healthy environment is part of the third generation of rights, called „solidarity rights", which appeared directly at the international level, in contrast with the civil, political, economic, social and cultural rights, recognized firstly in the states' law.

The serious degradation of the environment by man's multiple activities causes extremely complex ecological problems, entails disharmony between the environment created by man and the natural one[1], and eventually it leads to the destruction of the ecological balance, with negative consequences for the performance of the social-economic activities, for man's, life[3], as well as for the planet fauna's and flora's life.

As a result, recently, an ample social movement of awareness-raising with regard to environment is taking place, involving the civil society and the public institutions nationally and internationally[2], and leading to the adoption of several international conventions, comprising provisions that guarantee the right to a healthy environment.

In relation with the numerous deeds by which the ecological balance is harmed, the importance of the criminal law should be continuously raised in the accomplishment of environmental protection and nature preservation, and in future the gravity of the penalties

[1]Ioan Mihuț, S*elf-governance and Creativity*, Dacia Publishing House, Cluj-Napoca, 1989, pp. 259.
[2]Dumitra Popescu, Mircea Popescu, *Environmental Law – International Documents and Treaties*, Artprint Publishing House, Bucharest, 2002, pp. 16 and the foll.; Ramona-Gabriela Paraschiv, *International Mechanisms of Human Rights Protection*, Pro Universitaria Publishing House, Bucharest, 2014, p. 225.

should be adapted to the realities that indicate the growth of the danger brought on by the destructive acts for the natural patrimony[4].

THE NECESSITY OF ENHANCING THE ROLE OF THE INTERNATIONAL CRIMINAL LAW IN THE ENVIRONMENTAL PROTECTION BY PENALIZING THE ECOLOGICAL CATASTROPHES

Along history, humanity has witnessed several ecological catastrophes, but due to the lack of a definite legal framework at the international level, not enough measures have been taken for the guilty ones' liability, and especially for the penalization of the culpable physical persons[1].

Thus, the biggest ecological nuclear accident (caused by people's improper activity) occurred in 1986[2], when the reactor 4 of the Chernobyl nuclear power plant in Ukraine, exploded, causing the evacuation of 135 000 people, who were within a 30-km radius of the reactor. The death toll as a result of the radioactive cloud is not precisely known, but it is estimated that over 8000 people who worked on the immediate cleaning of the contaminated area died, and later the death toll rose to over 400.000. In addition, other numerous people who suffered from severe diseases following the contact with the radioactive particles also died.

A big industrial disaster, with disastrous consequences for the environment, took place in Bhopal, India, where a highly toxic gas leak occurred at a pesticide plant, infesting an area of about 30 square miles. As a result, 4000 people died instantaneously. Also, 500 000 more people fell ill, out of which, in time, 15 000 victims deceased[3].

The Chernobyl disaster is considered the worst in history. By the Fukushima event, in 2011, it had been the only one to be classified as a level 7 event by IAEA, the maximum classification, representing a major release of radioactive substances, with effects on people's health and on the environment, requiring planned extended action. The catastrophe got repeated in Japan, when following a destructive tsunami, the Fukushima power plant was seriously damaged.

Another major problem in the nuclear power systems is the storage of the nuclear waste generated by reactors. The latter can seriously contaminate the environment.

The waste is deposited in special containers, placed under ground in abandoned former mines. But, sometimes they are the cause of some serious accidents. In 1957, in Russia at a storage place in the Ural mountains, the waste caught fire and blew up, which led to the death of dozens of people[4].

On the night of 2nd December 1984, a new accident caused by human error at a pesticide plant of the Union Carbide in Bhopal, India, resulted in the release of 45 tons of cyanide gaseous derivative.

In a few hours, before taking rescue measures, a few thousand workers died. In the following months, many other thousands of people died, the death toll being over 15 000 people.

[1]Ina Raluca Tomescu, Flavius Cristian Mărcău „European Policies and strategies for combating cross-border criminality. implications for the internal legal system", in *International Conference "New Criminal Legislation - important phase in the development of Romanian law",* Bologna (Italy), Medimond, pp. 291-296

[2] Flavius Cristian Mărcău, „Central and Eastern Europe – necessary stages of democracy construction", *Research and Science Today,* No. 2(8)/2014, November 2014, pp. 93-102

[3]https://alegediferenta.wordpress.com/2010/05/03/accidente-celebre-care-au-dus-la-poluarea-mediului/

[4]https://activitatescoala30.wikispaces.com/file/view/Accidente+celebre+care+au+dus+la+poluarea.doc

Moreover, 500 000 people suffered from various diseases that mutilated them, especially at the level of the skeletal and muscular system. Hundreds of children, born after the accident, had serious irreversible motor neuron diseases or they were born blind. At the same time, dozens of normal newborns were affected and developed severe motor neuron disabilities. Bhopal remains one of the worst disasters in history, and the negative effects of the catastrophe still persist[1].

Over time, numerous oil spills have occurred, with catastrophic effects on the environment and people, for example, vast areas of water being affected, with the degradation of the specific flora and fauna, in the year 1978, in Brittany, France, approximately 230 000 tons of oil getting into the English Channel, and in the year 1989, in Alaska, a surface area of 132 000 square meters was affected by the oil spill from the Exxon Valdez oil tanker[2].

Although significant efforts have been made and are still being made to adapt the prevention measures of the ecological catastrophes to the particularities of environmental protection and to gradually build a specific liability form for the damage caused to the environment[3], the international law is still quite reluctant to accept and especially, materialize the idea of international criminal liability of the states for the prejudices caused to the environment.

As in the other fields, the legal liability for the deeds affecting the environment has a normative nature, and cannot exist without a legal regulation, whether it be legal rules of compliance or penalization of some conducts considered illicit, the purpose of liability being that of preserving the social values in the field[4].

Commencing with the 1990's the formulation of a content of the *ecocide* offense was attempted, consisting of the damage caused intentionally to the environment in order to destroy an ethnic or racial group or aboriginal communities[5]. This construction would enable appealing to the expertise of the International Criminal Court, considering that a crime against humanity has taken place, aiming at the situations beyond the acts committed in the context of war or armed conflict[6].

The crimes against humanity have been defined for the first time by the art. 6 letter c) of the Statute of the Nürenberg Tribunal, which tried and held criminally responsible the Nazi criminals of the Second World War. Subsequently, these crimes have been included in the Statute of the International Criminal Court for the former Yugoslavia. In the art. 5 of the Statute of the International Criminal Court is foreseen the punishment of the persons responsible for the following deeds, "when they are committed in an international or national armed conflict and are aimed at the civil population: a) murder; b) extermination; c) slavery; d) deportation; e) detention; f) torture; g) rape; h) persecution based on political, racial or religious reasons; i) other inhumane acts". The acts are considered crimes against humanity, according to the Statute of the International Criminal Court, provided they are committed as part of a systematic attack or spread against the civil population based on national, political, ethnic, racial or religious reasons. They are also foreseen in the Statute of the International Criminal Court for Rwanda; in the art. 3, whereby these crimes are regulated, they are considered crimes against humanity even though

[1]http://www.ziare.com/social/poluare/cele-mai-mari-catastrofe-ecologice-1015945

[2]https://alegediferenta.wordpress.com/2010/05/03/accidente-celebre-care-au-dus-la-poluarea-mediului/

[3]Mircea Duțu, *Environmental Law*, ediția 3, C.H. Beck Publishing House, Buchurest, 2010, pp. 221-222.

[4] Nicolae Popa, *The General Theory of Law,* All Beck Publishing House, Bucharest, 2002,p. 281.

[5]M. A. Gray, *The International Crime of Ecocid* (1995 – 1996) 26 California Western International Law 215 s.

[6]P. Sharp, *Prospects for EnvironmentalLiability in the International Criminal Court* (1999) 18 VirginieEnvironmental Law Journal 217 s.

they are not committed in the context of an armed conflict. The article 7 of the ICC Statute includes in the category of *crimes against humanity* one of the following deeds, when it is committed within the context of a generalized or systematic attack against a civil population and in good conscience: murder; extermination; subjection to slavery; population deportation or forced displacement; confinement or other forms of deprivation of physical liberty, with the infringement of the fundamental provisions of the international law; torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of such a gravity; the persecution of any group or identifiable collectivity, for political, racial, national, ethnic, cultural, religious or sexual reasons, according to the art. 7 paragraph 3 of the ICC Statute, or for other reasons universally known as unacceptable in the international law, in correlation with any crime within the jurisdiction of the Court; forced abduction of people; the crime of apartheid; other inhumane deeds of analogous character, intentionally causing great sufferance or severe damage of the physical integrity or physical and mental health.

The concept of ecocide is blamed to be rather unrealistic, primarily because as per its international character, it implies that the damage caused to the environment should be aimed at the extermination of a community, of an ethnic or racial group, and then, because it calls for extermination, as a purpose[1].

An involuntary ecocide offence, which would punish "extermination by negligence" would better fit reality. Moreover, in this way the extension of results would be justified regarding some communities' displacement from their land for ecological reasons, etc.

CONCLUSIONS

The institution of liability in the international environmental law is based on the principle of the *state's liability* for the ecological prejudices, which was consecrated in the Rio principle Declaration in 1992 (the principle 21)[2]. The states have the obligation, in accordance with the written law and custom, to act in such a manner as to avoid affecting the rights of other states in this field, and this principle is also emphasized in the international jurisprudence with regard to the environmental law. Thus, for example, by the arbitral judgment of 11th March 1941, regarding the Trail Smelter Case (USA against Canada), the International Court of Justice considered that, based on the principles of the international law and on those of the USA law, no state has the right to use its territory or to allow its use in such a way that the smoke can damage the territory of another state or the properties of the people within that state, in case of serious consequences and if the prejudice is proved by clear and convincing evidence[3]. The Arbitral Jurisprudence of the International Court of Justice on the environment is yet limited by the almost nonexistent coercive means, being at the same time subordinated to the states' sovereign will.

[1]Mircea Duțu, Andrei Duțu, *Liability in th Environmental Law*, The Romanian Academy Publishing House, Bucharest, 2015, p. 315.

[2] Along with the states, the liability can be incumbent to other subjects of public international law, too.

[3]In this respect, see the case *TerritorialJurisdiction of the International Commission of the River Oder* (The United Kingdom of Great Britain and Northern Ireland, The Czechoslovak Republic, Denmark, The French Republic, The German Empire and Sweden angainst the Polish Republic), the decision dated 10th September 1929, PCIJ, Series A, No. 23 (http://www.icjcij.org/pcij/serie_A/A_23/74_Commission_internationale_de_l_Oder_Arret.pdf).

Each state is bound to make sure its environment is respected, and also the environment of other states or areas outside a national jurisdiction, irrespective of the activity performed, according to the requirements of the international environmental law.

The multiple and complex accomplishments of science and technology development, within the context of the economic development should be taken into account when formulating new rules of environmental protection, which should enrich the existing regulations.

Internally, new regulations of maximum generalization should be formulated with a view to extending the criminal liability over other deeds, too, by which the environment is severely damaged, and which are not incriminated by any law yet.

So, in order to penalize the deeds that are not incriminated yet (in spite of severely damaging the environment), committed while performing one's work duties, the content of the offences of abuse of office and dereliction of duty, foreseen by the new Penal Code at art. 297 and art. 298, can be completed in this respect.

In the Penal Code should be included new general incriminations, allowing the penalization of the deeds committed outside work relations, intentionally or involuntarily, by which serious damage is caused to the environment.

Facing these realities, people should be aware of the future perils, and the states should cooperate in order to establish at the international level, the best measures aimed at the protection and development of the environment, implying not only material and organizing efforts, but also the development of some scientific outlooks regarding this new attitude towards the environment, based on man's reconciliation with nature [1].

The apparition of some active subjects of the ecological offences, such as the multinational companies, raises the issue of the asymmetry between the capacity of the legal systems of most of the states to prosecute or judge them and of the multinational companies being outside the scope of any type of effective control.

Therefore, such a reality requires major development and individualizing of the criminal liability regime of the legal persons within the international context for damage caused to the environment[2].

The international criminal environmental law must play a significant role in promoting the process of harmonization with realities, meant to result in the creation of offences within the jurisdiction of the International Court, starting from the international relevant conventions and from the necessity to complete them in accordance with the new realities.

[1] N. N. Constantinescu, *The Protection of the Natural Environment – Intrinsic Requirement of a Modern Economic Development*, in „The Economist", no. 180 of 3rd-6th April 1992, p. 5.

[2]Mircea Duțu, Andrei Duțu, *Liability in the Environmental Law*, The Romanian Academy Publishing House, Bucharest, 2015, p. 315.