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## Individual Criminal Responsibility under International Environmental Law

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ملخص البحث:

### جريمة الاتجار بالبشر من منظور شرعي ونظامي د. قاسم بن مساعد بن قاسم الفالح \*

لا تعد الجرائم البيئية قضية جديدة في هذه الأيام، ولكن المشكلة تكمن في زيادتها، الأمر الذي يتطلب من المجتمع الدولي العمل الجاد لحماية الأرض، باعتبار أن هذه المشكلة باتت تهدد مصالح المجتمع الدولي، بحيث أمست واحدة من أهم المشاكل التي تهدد البيئة، ولذا قامت دول عدة بالتوقيع على كثير من معاهدات البيئة، كاتفاقية الأمم المتحدة لقانون البحار، والاتفاقية المتعلقة بشأن الحقوق المدنية المسؤولة عن الأضرار الناجمة عن الأنشطة الخطرة على البيئة، وغير ذلك من معاهدات، لذا بدأت دراسات قانونية عدة بالبحث في هذه القضايا، في محاولة لإيجاد حل قانوني لحماية البيئة، وحاولت هذه الدراسات بيان مدى مسؤولية الدول في القانون البيئي الدولي، في محاولة لتجريم أفعال الدول ضد البيئة، ولكون الأفراد أشد إضراراً بالبيئة من الدول، فإن الهدف من البحث التركيز على الأفراد الذين يرتكبون عن عمد الجرائم البيئية الدولية.

ويظهر مبدأ المسؤولية الجنائية الفردية في القانون الإنساني والجنائي الدوليين، والقانون الدولي بشكل عام. ولكن يظل هذا المبدأ مبهماً في ظل القانون البيئي الدولي، ومع اتفاق الدول على تجريم أفعال الأفراد والدول التي تكون جرائم دولية بموجب القانون الإنساني الدولي، إلا أن الأفراد الذين يرتكبون الجرائم البيئية

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غير مسئولين جنائياً وفقاً للقانون البيئي الدولي، فالدول فقط هي المسؤولة عنها، لذا فإنه لا توجد معاهدات أو اتفاقات دولية تتعامل مع المسؤولية الجنائية الفردية ضد الجرائم البيئية، بخلاف ما عليه الحال في القانون الإنساني أو الجنائي الدولي بشكل عام. ومع ذلك، فإن هناك عدداً من المعاهدات تتضمن بعض المواد المتعلقة بهذا الموضوع، وهذا البحث يؤكد على أن الفرد يجب أن يكون مسئولاً جنائياً بموجب القانون البيئي الدولي، قياساً على المسؤولية الجنائية للفرد في مجال القانون الإنساني الدولي في زمني الحرب والسلم أيضاً، فيعالج المسؤولية الفردية عن الجرائم البيئية وقت السلم، من خلال الحديث عن المسؤولية الفردية في إطار اتفاقية الأمم المتحدة لقانون البحار، المسؤولية الفردية في إطار اتفاقية الحفاظ على الموارد الحية في القطب الجنوبي البحري، المسؤولية الفردية في اختصاص محكمة العدل الدولية، المسؤولية الفردية في إطار الاتفاقية المتعلقة بشأن المسؤولية المدنية عن الأضرار الناجمة عن الأنشطة الخطرة على البيئة، والمسؤولية الفردية بموجب الاتفاقية الدولية بشأن المسؤولية المدنية الناجمة عن التلوث بزيوت الوقود، كما يعالج المسؤولية الفردية عن الجرائم البيئية زمن الحرب، من خلال النظر في المسؤولية الفردية في محكمة نورمبرغ، المسؤولية الفردية بموجب اتفاقية الإبادة الجماعية، المسؤولية الفردية بموجب اتفاقية لاهاي، المسؤولية الفردية بموجب اتفاقية جنيف، والمسؤولية الفردية بموجب نظام روما الأساسي.

والخلاصة أن هذه الاتفاقات الدولية ذات الصلة بالقانون البيئي الدولي، تؤكد وجوب أن يكون الفرد مسئولاً جنائياً بموجب القانون الدولي للبيئة، كما هو مسئول في مجال القانون الإنساني الدولي، والقانون الجنائي الدولي بشكل عام. لاسيما وأن العالم يشهد نمواً متزايداً في إطار حقوق الأفراد على المستوى الدولي وعليه فإن القانون الدولي بدأ أيضاً في فرض الجزاءات الجنائية على الأفراد بصفاتهم الشخصية، ومما لاشك فيه أن القانون البيئي الدولي، مثل أي نظام آخر للقانون الدولي، ينظم في نهاية المطاف السلوك البشري الذي يمنح الحقوق ويفرض المسؤوليات، وذلك من خلال العديد من الاتفاقات الدولية البيئية التي تؤكد وجوب فرض المسؤولية الجنائية الفردية على الجرائم الدولية البيئية.

**Summary in English Language:**

The environmental damages problem is not a new issue in these days, but the problem is the increase of these damages, which requires hard work from international community to protect the earth. This problem becomes one of the biggest problems that threaten the environment. Indeed, this problem is global issue, so that international community interests in it, and states have signed many treaties relates to the environment such as United Nations Convention on the Law of the Sea LOS Convention, ۱۹۸۲, and convention on civil liability for damage resulting from activities dangerous to the environment, Laguna, ۱۹۹۳. Recently, legal studies started researching these issues, trying to find legal solution to protect the environment. These studies tried to talk about states responsibility under international environmental law, trying to criminalize states acts against the environment. States can harm the environment, but individuals consider the biggest destroyers for the environment. Therefore, the aim of this paper is to focus on private individuals who commit international environmental crimes intentionally. In fact, individual criminal responsibility needs more studies to find legal solution to prohibit individuals' acts against the earth.

The principle of individual criminal responsibility appears in international humanitarian law, international criminal law, and in international law in general. Indeed, individuals may be sanctioned directly under international law, regardless of any national law that the individual belong. However, this principle is ambiguous under international environmental law. In fact, states have agreed that individuals and states who commit crimes recognize to be sanctioned criminally under international humanitarian law. However, individuals who commit environmental crimes are not responsible, only states are accountable of environmental crimes. In fact, there are no entire treaties or universal declaration deals with individual criminal responsibility against environmental crimes as in international humanitarian law or international criminal law in general. Nevertheless, there are many treaties includes some articles related to this issue. In this paper, I will analyze some of these articles; to emphasize that individual should be criminally responsible under international environmental law.

This paper emphasizes that the individual should be criminally responsible under international environmental law as in international humanitarian law in war time and peace time as well. To reach this theory, this paper analyzes some treaties and conventions under international law that related to the environment. It argues that the environment has rights to protect against individual crimes under international environmental law as it is under international humanitarian law throughout consideration of the

individual responsibility for environmental crimes in the time of peace through the reflection of individual responsibility under United Nations Convention on the Law of the Sea, individual responsibility under the convention for the conservation of Antarctic marine living resource, individual responsibility in jurisdiction of the International Court of Justice individual responsibility under the convention on civil liability for damage resulting from activities dangerous to the environment, and individual responsibility under International Convention on Civil Liability for Bunker Oil Pollution Damage. Also, in the time of war, the paper considers individual responsibility under Nuremberg trial, individual responsibility under genocide convention, individual responsibility under Hague convention, individual responsibility under Geneva Convention, and individual responsibility under Rome Statute. In fact, international conventions related to international environment law emphasize that individual should be criminally responsible under international environmental law as in international humanitarian law, and international criminal law in general. The development of individual rights under international law occurred at the same time that international law began to enforce duties on individuals in their private capacity. The most famous example of this phenomenon was the imposition of criminal responsibility on individuals by Nuremberg tribunals formed by the victorious Allied Powers in World War II.

International environmental law, like any other system of international law, ultimately regulates human conduct which brings rights and imposes responsibilities. Many international conventions emphasize that individual should be responsible for any environmental crimes. Indeed, individuals must be criminally responsible for their environmental crimes, and the international community should find great instrument to prosecute individuals internationally for any damage against the environment.

## **Introduction**

The environmental damages problem is not a new issue in these days, but the problem is the increase of these damages, which requires hard work from international community to protect the earth. This problem becomes one of the biggest problems that threaten the environment. Indeed, this problem is global issue, so that international community interests in it, and states have signed many treaties relates to the environment such as Rome Statute 1998,<sup>1</sup> United Nations Convention on the Law of the Sea LOS Convention, 1982, and convention on civil liability for damage resulting from activities dangerous to the environment, Laguna, 1993.

Recently, legal studies started researching these issues, trying to find legal solution to protect the environment. These studies tried to talk about states responsibility under international environmental law, trying to criminalize states acts against the environment. States can harm the environment, but individuals consider the biggest destroyers for the environment. Therefore, the aim of this paper is to focus on private individuals<sup>۱</sup> who commit international environmental crimes intentionally. In fact, individual criminal responsibility needs more studies to find legal solution to prohibit individuals' acts against the earth.

The principle of individual criminal responsibility appears in international humanitarian law, international criminal law, and in international law in general. Indeed, individuals maybe sanctioned directly under international law, regardless of any national law that the individual belong.<sup>۲</sup> However, this principle is ambiguous under international environmental law. In fact, states have agreed that individuals and states who commit crimes recognize to be sanctioned criminally under international humanitarian law. However, individuals who commit environmental crimes are not responsible<sup>۳</sup>, only states are accountable of environmental crimes.<sup>۴</sup>

For example, in ۱۹۹۷, Beanal an Indonesian citizen brought suit against an American corporation, Freeport McMoran, Inc., a Delaware corporation, who owned subsidiary which operated open pit copper, gold and silver mine in Indonesia.<sup>۵</sup> "Mr. Beanal , a leader of the Amungme tribe, charged Freeport with violating both human rights and environmental law. He alleged that Freeport's security personnel, in conjunction with Indonesian security forces, engaged in acts of torture, extrajudicial murder, unlawful arrests and detention, and all but destroyed the tribe's ecosystem by changing river courses, eroding mountain sides, and dumping chemicals in the riparian system."<sup>۶</sup>

"The United States Court of Appeals, Fifth Circuit found that even if the environmental principles cited had become part of the law of nations; they could only be violated by members of the international community, not non-state actors. In this regard, the court noted that the Restatement Third of Foreign Relations mentions only state obligations and liability in the area of environmental law, not duties of corporations or other non-state actors."<sup>۷</sup>

"The United States ought to urge the international community to develop clear standards of liability for environmental offenses that apply across nations to both state and private actors and address the shortcomings of current remedies available to victims of international environmental abuses."<sup>4</sup> Indeed, many conventions that tried to emphasize individual criminal responsibility could not, in fact, worked out. Therefore, international society needs more work to assert this criminal responsibility against individuals to protect the environment legally.

In fact, there are no entire treaties or universal declaration deals with individual criminal responsibility against environmental crimes as in international humanitarian law or international criminal law in general. Nevertheless, there are many treaties includes some articles related to this issue. In this paper, I will analyze some of these articles; to emphasize that individual should be criminally responsible under international environmental law.

This paper will emphasize that the individual should be criminally responsible under international environmental law as in international humanitarian law in war time and peace time as well. To reach this theory, this paper will analyze some treaties and conventions under international law that related to the environment.

This paper will argue that the environment has rights to protect against individual crimes under international environmental law as it is under international humanitarian law. In part I, I will consider the individual responsibility for environmental crimes in the time of peace. I will divide this part to five sections. First, I will consider individual responsibility under United Nations Convention on the Law of the Sea. Second, I will consider the individual responsibility under the convention for the conservation of Antarctic marine living resource. In third section, I will consider individual responsibility in jurisdiction of the International Court of Justice. Fourth section will consider individual responsibility under the convention on civil liability for damage resulting from activities dangerous to the environment. Fifth section will consider individual responsibility under International Convention on Civil Liability for Bunker Oil Pollution Damage.

In second part, I will consider the individual responsibility for environmental crimes in the time of war. I will divide this part to fifth

sections. First section will consider individual responsibility under Nuremburg trial. Second section will consider individual responsibility under genocide convention. Third section will consider individual responsibility under Hague convention. Fourth section will consider individual responsibility under Geneva Convention. Fifth section will consider individual responsibility under Rome Statute.

## **Part I**

### **Individual Criminal Responsibility for Environmental Crimes in the Time of Peace**

#### ***Section ۱: Individual Criminal Responsibility under International Law of Sea***

Individual is responsible under the Law of the Sea. This law was codified by the United Nations Convention on the Law of the Sea, ۱۹۸۲. The Convention is important to the earth and the environment. It codifies and develops the international law of the sea for navigation, marine scientific research, and the settlement of disputes, and many other subjects that related to the environment.

The convention prevent any threaten to the environment from any foreign vessel, which made it clear that any act hurt the environment from any individual like oil carriers is prohibited. The convention stated that coastal states may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage.<sup>۱۱</sup>

This convention prohibits individuals from committing crimes against the environment like marine pollution. It deals with the responsibility of individuals who violate international environmental law, because this convention is international convention and contain many articles that related to the environment.

To emphasize this idea we can take a look at article ۱۰۰ which deals with acts of piracy threaten maritime security. These criminal acts may damage the marine environment.<sup>۱۲</sup>

Acts of piracy threaten maritime security by endangering, in particular, the safety and the security of environment and commerce. These criminal acts may result in the loss of life, significant disruptions to commerce and navigation, increased insurance premiums and security costs, increased costs to consumers and producers, and damage to the marine environment.<sup>۱۳</sup>



Therefore the convention prohibits any bad act hurts the environment from any vessel which may be owned by individuals. Since the Convention criminalized the piracy acts against the environment, so international law should criminalize private individuals' acts against the environment as well.

***Section ۲: Individual Criminal Responsibility under Convention for the Conservation of Antarctic Marine Living Resource***

In ۱۹۰۹, many states ratified the Convention on the Regulation of Antarctic Mineral Resources. This agreement fills a significant gap in the Antarctic Treaty System: it provides rules governing the prospecting, exploration, and development of minerals in Antarctica.

Indeed, "the exploitation of oil and mineral resources poses grave threats to the Antarctic environment. Oil spills could contaminate the Southern Ocean and possibly reduce the population of fish, whale, krill, and other environmental life. In fact, the dust from mining operations could cause the continent's snow fields to melt. Dust and pollution could also depleted ozone layer over Antarctica. The continued depletion could lead to irreversible changes in the earth's atmosphere, which would affect all life on our earth. Other threats to the Antarctic environment include those posed by increased human activity, additional waste, and the presence of heavy machinery. The harm to the environment from exploitation is huge."<sup>۱۲</sup>

There are fourteen articles under the Antarctic Treaty. These articles assert a legal framework that governs Antarctica and protects its environment from bad activities, which can appear of individuals like oil companies or any kind of corporations. The main goals of the Treaty are to ensure the use of Antarctica for peaceful purposes and to encourage freedom of scientific investigation. The Treaty prohibits weapons testing, military maneuvers, military bases, nuclear explosions, and nuclear waste disposal in Antarctica.<sup>۱۰</sup>

However, in ۱۹۹۱, the parties established a protocol on environment protection to the Antarctica treaty to improve the protection of the Antarctica environment.<sup>۱۱</sup>

The Protocol to the Antarctic Treaty promises to improve the treaty's protection of the Antarctic environment. The protocol recognizes Antarctica as a natural reserve, dedicated to peace and science,<sup>۱۳</sup> and prohibits all mineral resource activity, except for

scientific studies.<sup>۱۸</sup>

In fact, parties to the protocol are obligated to follow environmental impact assessment procedures when planning to undertake any activity, whether states or individuals in Antarctica.<sup>۱۹</sup> Indeed, the protocol regulates all activity in the Antarctic, doing by states or individuals.

These activities shall be planned and conducted so as to avoid: adverse effects on climate or weather patterns,<sup>۲۰</sup> significant adverse effects on air or water quality,<sup>۲۱</sup> and significant changes in the atmospheric, terrestrial (including aquatic), glacial or marine environments.<sup>۲۲</sup>

Under annex IV, the protocol sets forth a regime to control the pollution of the marine environment of Antarctica by ships operated by governments or individuals. The annex obligates to institute measures regulating discharges from ships flying its flag or supporting its Antarctic operations. The annex also, prohibit the disposal of all plastics and other garbage into the sea. In addition, the annex requires parties to develop contingency plans for marine pollution response, particularly for ships carrying oil. The parties are further required to take emergency response actions in accordance with cooperative procedures, which the parties are directed to develop.<sup>۲۳</sup>

Under the convention and the protocol, individuals are responsible. The convention prohibits many bad acts such as weapons testing, nuclear explosions, and nuclear waste disposal in Antarctica. The protocol, in addition, prohibits individuals from disposal any kind of plastics and other garbage into the sea, or doing anything which may change the atmosphere, water quality, and marine environment. Therefore, International community should consider these acts as crimes against the environment.

### ***Section ۳: Individual Criminal Responsibility in the Jurisdiction of the International Court of Justice***

In ۱۹۹۶, the jurisdiction of the International Court of Justice (I.C.J.) emphasizes the legality of the threat or use of nuclear weapons that includes significant points on the protection of the environment under international law.<sup>۲۴</sup>

In fact, the Court held that a threat or use of force by means of nuclear weapons is unlawful. The court, also, held that a threat or use of nuclear weapons should be compatible with the requirements of the

international law applicable in armed conflict (including international humanitarian law) and specific obligations under treaties and other undertakings expressly dealing with nuclear weapons.<sup>٢٥</sup>

Indeed, the amount of smoke produced by using these weapons would block out sunlight, hurts the earth planets, and produce climate change. It would affect the future of our environment and our life. Any nuclear accident, not only affected health and the environment but could also threaten the survival of humanity through its impact on the food chain.

In fact, the court supports environmental protection of natural resources and clarifies the relationship between international humanitarian law and international environmental law. So, individuals are criminally responsible for any environment damage as in international humanitarian law.

***Section ٤: Individual Criminal Responsibility under convention on civil liability for damage resulting from activities dangerous to the environment, Lugano, ١٩٩٣.***

This convention was adopted by the Council of Europe on June ٢١, ١٩٩٣ in Lugano, Switzerland. It adopted the "polluter pays" principle which imposes strict liability for certain activities that are dangerous to the environment. The Lugano Convention asserts liability to the operator for causing environmental damage from a dangerous activity. The Convention defines the operator as a "person who exercises the control of a dangerous activity."<sup>٢٦</sup> The Convention, indeed, establishes liability of an operator for incidents occurring during his exercise. In fact, the convention prohibits the production, handling, storage, use or discharge of one or more dangerous substances or any operation of a similar nature dealing with such substances.<sup>٢٧</sup> In addition, the convention prohibits the production, culturing, handling, storage, use, destruction, disposal, release or any other operation dealing with one or more:

١-genetically modified organisms which as a result of the properties of the organism, the genetic modification and the conditions under which the operation is exercised, pose a significant risk for man, the environment or property.

٢-micro-organisms which as a result of their properties and the conditions under which the operation is exercised pose a significant risk for man, the environment or property, such as those micro-

organisms which are pathogenic or which produce toxins.<sup>٣٨</sup>

Also, the convention prohibits the operation of an installation or site for the incineration, treatment, handling or recycling of waste,<sup>٣٩</sup> and the operation of a site for the permanent deposit of waste.<sup>٣٠</sup>

The Lugano Convention specifically defines environmental damage as: "loss or damage by impairment of the environment in so far as this is not considered to be damage within the meaning of subparagraphs a or b above provided that compensation for impairment of the environment, other than for loss of profit from such impairment, shall be limited to the costs of measures of reinstatement actually undertaken or to be undertaken".<sup>٣١</sup>

Under the Convention, the environment includes natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors. Also, include: property which forms part of the cultural heritage, and the the characteristic aspects of the landscape.<sup>٣٢</sup>

Under article ٦, the convention states that the operator shall be liable for the damage caused by the activity as a result of incidents at the time or during the period when he was exercising the control of that activity.<sup>٣٣</sup> Also, If an incident consists of a continuous occurrence, all operators successively exercising the control of the dangerous activity during that occurrence shall be jointly and severally liable.<sup>٣٤</sup>

In addition, If an incident consists of a series of occurrences having the same origin, the operators at the time of any such occurrence shall be jointly and severally liable.<sup>٣٥</sup> In fact, if the damage resulting from a dangerous activity becomes known after all such dangerous activity in the installation or on the site has ceased, the last operator of this activity shall be liable for that damage.<sup>٣٦</sup> Indeed, the operator of a site for the permanent deposit of waste at the time when damage caused by waste deposited at that site becomes known, shall be liable for this damage.<sup>٣٧</sup>

Indeed, this convention is important because it impose individual liability directly.<sup>٣٨</sup> Unfortunately, no country has ratified it, even many years after its adoption. Therefore the convention has not entered into force. States may hesitate to participate in international liability schemes, in part because they may require changes to national tort law.<sup>٣٩</sup> So far, only nine states (Cyprus, Finland, Greece, Iceland,

Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, Portugal and the Netherlands) have signed the Convention.<sup>41</sup>

However, this convention gives us a hint that international community is willing to assert that individuals should be responsible for environmental crimes. Environmentalists and international environmental organizations should work together to force governments to ratify conventions like this to make individuals liable for their environmental crimes.

### ***Section 2: Individual Criminal Responsibility under International Convention on Civil Liability for Bunker Oil Pollution Damage***

International Maritime Organization (IMO) adopted the Convention on Civil Liability for Bunker Oil Pollution Damage on May 2001.<sup>42</sup> It came into force in November 2002.<sup>43</sup> This convention fills an important gap in cover for liability for one of the worst aspects of oil pollution in the marine environment.<sup>44</sup> Indeed, it deals with individual liability under international environmental law.

Article 1 states that "a person means any individual or partnership or any public or private body, whether corporate or not, including a state or any of its constituent subdivisions. And Shipowner means the owner, including the registered owner, bareboat charterer, manager and operator of the ship."<sup>45</sup> This asserts that this convention deals with individuals.

In fact, article 2 states that: "the shipowner at the time of an incident shall be liable for pollution damage caused by any bunker oil on board or originating from the ship, provided that, if an incident consists of a series of occurrences having the same origin, the liability shall attach to the shipowner at the time of the first of such occurrences."<sup>46</sup> This article, indeed, asserts that individuals are liable for pollution damage against the environment.

Indeed, "the shipowner is strictly liable for pollution damage caused by bunker oil from his ship. There is therefore no need for claimants to prove fault on the part of the shipowner."<sup>47</sup> Also, there is possibility that more than one person could be liable; "their liability shall be joint and several."<sup>48</sup>

This convention shows us how individuals shall be responsible for their acts against the environment. Many countries suffer from oil pollution such as Saudi Arabia who received many tankers every day.

There is large possibility that these tankers can pollute the sea and hurt the environment. Therefore, shipowner shall be liable for the damage caused by his ship against the environment.

## **Part II Individual Criminal Responsibility for Environmental Crimes in War Time**

### ***Section ۱: Individual Criminal Responsibility under Nuremburg Trial***

After World War II, it was clear that individual is responsible against any crime during the war time. The Nuremberg trial judged war criminals of the European Axis. The trial punished persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed Crimes Against Peace, War Crimes, and Crimes Against Humanity.<sup>۴۸</sup>

Indeed, individuals who act criminally without the authority or sanction of their government are accountable. These war crimes are not legitimate acts of war and are consequently punishable according to the nature of the offense committed. During war, looting and burning a civilian house are acts of robbery and unlawful destruction of property. Killing an enemy or a civilian, except perhaps under circumstances of self defense, would both be acts of murder. The perpetrators of such deeds are committing unlawful acts. They are robbers and murders, and should be punished.<sup>۴۹</sup>

Relating to the environment, the United Nations War Crimes Commission determined that nine of ten German civil administrators could be considered war criminals for cutting down Polish timber,<sup>۵۰</sup> and scorched-earth policies<sup>۵۱</sup> were considered war by the International Military Tribunal in Nuremberg.<sup>۵۲</sup> In another case, the U.S. Military Tribunal in Nuremberg considered a charge against General Rendulic of war crimes based on his use of scorched-earth tactics in Norway.<sup>۵۳</sup>

It is clear that during war times, individuals are held responsible for war crimes under the international humanitarian law. Also, individuals who commit environmental crimes during war times must be held responsible as well.

### ***Section ۲: Individual Criminal Responsibility under Genocide Convention***

Article ۱ of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide emphasizes that the

contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.<sup>54</sup>

The most important thing is that article 4 which asserts that persons committing genocide shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.<sup>55</sup> Therefore, genocide convention found individuals responsible under the international humanitarian law.

Regarding to the environment, genocide convention deals with crimes against humankind likewise punishing individual for their environmental crimes under international environmental law. It seems that there is no relationship between genocide and the environment, but destruction the environment could lead to destruct one group of people.

The difficulty to convicting individuals guilty of genocide environmental degradation is the element which demands that the acts be committed 'with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such. Though it is not difficult to imagine a transnational corporation knowingly discharging pollutants into a water source which may displace, injure, sterilize, or even kill an indigenous population, the evidentiary hurdle of proving the specific intent to destroy the group as such is significant.<sup>56</sup>

For example, "In 1990, the Sierra Club Legal Defense Fund filed a petition before the Inter-American Commission on Human Rights alleging that oil exploration and development in the Ecuadorian Amazon would destroy the environment and lead to genocide of indigenous peoples living in the area. The Commission has never recognized the petition. However, the Commission did issue a report in 1997 that asserting potential violations of fundamental human rights arising from oil exploration and stating that there were more than 30 billion gallons of toxic and crude oil into the waterways and onto the land. The Commission did consider at length the potential threats to life, health, and culture posed by the oil exploration."<sup>57</sup>

Therefore, this convention asserts that individual is criminally responsible under international environmental law for an environmental crime so that individual must be also responsible for other similar actions that hurt the environment.

### ***Section ۳: Individual Criminal Responsibility under The Hague Conventions***

The Hague convention which adopted in ۱۸۹۹ codified some principles related to the environment. This convention established specific prohibitions against certain actions under international environmental law.

Indeed, article ۲۳ prohibited some actions such as: employing poison or poisoned weapons. So, any individual employ poison or any kind of poisoned weapons is liable under this convention and under international environment law as well.

For example, in Iran-Iraq war, ۱۹۸۰-۱۹۸۸, poison weapons effect significant risks to human health and the environment. Using these weapons in Halabja area caused large damages to the soil and the plants which produce foods to animals and human beings.<sup>۵۸</sup> Iraqi's leaders as individuals must be responsible for these environmental crimes. International society and international tribunals must prosecute these individuals. They must use this article to criminalize their acts.

Furthermore, through this article, pillage is formally forbidden by Article ۴۷. Also, when occupying enemy territory, the occupying force is required to administer the real estate, forests and agricultural estates of the occupied nation, and safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. This places a responsibility on occupying forces to care for the natural resources of the occupied territory.<sup>۵۹</sup> Therefore, this convention shows that individual responsibility under international environmental law for an environmental crime so that individual must be also responsible for other similar actions that hurt the environment.

### ***Section ۴: Individual Criminal Responsibility under Geneva Conventions***

The fourth Geneva Convention which adopted in ۱۹۴۹ codified some doctrines related to the environment. This convention states that, "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative



organizations, is prohibited."<sup>11</sup> Indeed, this convention applies to international law, and this article specifically applies to international environmental law.

In fact, the environment contains many things such as fields, trees, and farms. These things considered property, because they can be owned by individuals or states. So, destroying this kind of environment is prohibited under article 13. For example, in time of the Gulf War, Kuwait has rights over the marine resources fields on beach damaged by the Iraqi oil spill, so these aspects of the environment could be considered property and protected under article 13, because these aspects is Kuwaiti's properties.

Indeed, during the Gulf War, the international society considered establishing an international tribunal to judged Iraqi leaders for war crimes, including those arising from the environmental devastation produced by Iraqi troops in Kuwait. While an international criminal tribunal did not come to pass, the U.N. Security Council created the United Nations Compensation Commission to adjudicate civil claims for damages against Iraq arising from the war, including claims for environmental damage and depletion of natural resources, which owned by Kuwait government.<sup>11</sup>

In addition, Protocol I of Geneva conventions, article 35, (3) states that: "it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment."<sup>12</sup>

And article 17 of this protocol states that: "care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of 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. And any attacks against the natural environment by way of reprisals are prohibited".<sup>13</sup>

These articles criminalized any actions of individuals against any environmental destruction. These articles prohibit any attacks against the natural environment. Also, it prohibits any extensive damage to the natural environment, or any destruction to the environment, so individuals should be liable for acting such these activities.

### ***Section ٢: Individual Criminal Responsibility under Rome Statute of the International Criminal Court***

Rome Statute deals with environmental crimes committing by individuals during war time. The statute was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on ١٧ July ١٩٩٨. Article ٧ (١) deals with crime against humanity such as murder, extermination, enslavement, deportation or forcible transfer of population.<sup>١٤</sup>

Article ٨, recognize that any "extensive destruction and appropriation of property is prohibited"<sup>١٥</sup>. Destruction of property is destruction of the environment because the property is kind of the environment. For example, people may own trees which considered kind of the environment, so destruction those trees are destruction of the environment so that destruction of the environment is prohibited under international law. Therefore, individual is criminally responsible under this article.

In addition, "Employing poison or poisoned weapons"<sup>١٦</sup> against people, or "employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices"<sup>١٧</sup> is unlawful under this convention, because these actions considered destruction of the environment. Indeed, these poison weapon may caused great damages to the soil and the plants which produce foods to animals and human beings.<sup>١٨</sup> Therefore, any individual is responsible of doing these acts.

In fact, the most important provision in this article is provision (iv) which stated that "intentionally launching an attack in the knowledge that such attack will cause incidental 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".<sup>١٩</sup> This provision protects the environment directly by prohibiting any kind of damage to the natural environment.

Indeed," to be actionable, damage must be "widespread," "long-term," and "severe." These terms have these definitions: "widespread" means encompassing an area on the scale of several hundred kilometers; "long-lasting" means lasting for a period of months or approximately a season; and "severe" means involving serious or significant disruption or harm to human life, natural or

economic resources or other assets."<sup>v</sup>

This article has three principal components: "(1) the actus reus which consists of launching an attack which causes "widespread, long-term and severe damage" to the natural environment; (2) the damage must be clearly excessive to the concrete and direct overall military advantage anticipated; and (3) the mens rea which must be demonstrated, thereby entailing proof that the attack was launched intentionally and in the knowledge it will cause "widespread, long-term, and severe damage" to the natural environment."<sup>v1</sup>

The inclusion of Article 8 in the Rome Statute represents an important advance for international environmental law. For the first time, "international community has recognized both that environmental damage caused by unnecessary military attacks should be prohibited, even when that damage does not directly harm human interests, and that the only effective sanction for such attacks is individual criminal responsibility."<sup>v2</sup>

In fact, the article prohibits any bad act against the neutral environment by individuals, which assert that individuals must be criminally responsible under international environmental law.

## **Conclusion**

After analyzing some international conventions related to international environment law, it appears that individual should be criminally responsible under international environmental law as in international humanitarian law, and international criminal law in general.

The development of individual rights under international law occurred at the same time that international law began to enforce duties on individuals in their private capacity. The most famous example of this phenomenon was the imposition of criminal responsibility on individuals by Nuremberg tribunals formed by the victorious Allied Powers in World War II.<sup>v3</sup>

International environmental law, like any other system of international law, ultimately regulates human conduct which brings rights and imposes responsibilities. Many international conventions emphasize that individual should be responsible for any environmental crimes.

Several international human rights organizations achieve great attainments such as contribution to enact many humanitarian

conventions which protect human rights. According to modern international environmental doctrines, international organizations have responsibility to ensure that natural resources are protected and those how commit these crimes are responsible.

In fact, individuals must be criminally responsible for their environmental crimes, and the international community should find great instrument to prosecute individuals internationally for any damage against the environment. "The international community should focus on prosecuting environmental destruction when conducted to achieve another atrocity, such as genocide or crimes against humanity."<sup>١٤</sup>

### **Recommendations**

- Individual responsibility under international law is important in the ٢١ century, particularly, under international environmental law. Nevertheless, there are not enough studies that deal with this subject. Therefore, I encourage scholars and students to focus on this area.
- United Nations and international environmental organizations must reinforce the international society to enact environmental convention to protect the environment against individuals' crimes.
- International community must find legal solution to protect the environment from Individuals crimes.
- United Nations must have coherent institutional mechanism for dealing successfully with environmental crimes.
- International organizations such as the The United Nations Organization for Education, Science and Culture (UNESCO) must encourage states to raise awareness to their nations about protection of the environment.
- Governments must support environmental rights through international instruments to protect the environment against individual damage.
- International environmental organizations must deal with this issue as in international humanitarian law.

### **Footnotes:**

<sup>١</sup> Rome Statute is dealing with international crimes against humanity. It has been used in this paper to show that the statute recognize an attack to the natural environment as an international crime. See: Rome Statute, supra note ١٤, art ٨ (٢)(b)(iv).

<sup>٢</sup> Private individuals mean any one act only for himself, and is not representing any state.

- <sup>3</sup> See Alexander Orakhelashvili, *The Position Of The Individual In International Law*, 31 Cal. W. Int'l L.J. 241, 269, 2001.
- <sup>4</sup> See Marcos A. Orellana, *Criminal Punishment For Environmental Damage: Individual And State Responsibility At A Crossroad*, 17 Geo. Int'l Envtl. L. Rev. 773, 774, 2000. And Tara Weinstein, *Prosecuting Attacks That Destroy The Environment: Environmental Crimes Or Humanitarian*, 17 Geo. Int'l Envtl. L. Rev. 797, 798, 2000.
- <sup>5</sup> See Anthony Leibler, *Deliberate Wartime Environmental Damage: New Challenges For International Law*, 23 Cal. W. Int'l L.J. 77, 84, 1992.
- <sup>6</sup> See *Beanal v. Freeport McMoRan, Inc.*, 969 F.Supp. 372, 372 (E.D. La. 1997)
- <sup>7</sup> Saman Zia-Zarifi, *Suing Multinational Corporations In The U.S. For Violating International Law*, 4 Ucla J. Int'l L. & Foreign Aff. 81, 98, 1999.
- <sup>8</sup> Cyril Kormos, *U.S. Participation In International Environmental Law And Policy*, 13 Geo. Int'l Envtl. L. Rev. 771, 776, 2001.
- <sup>9</sup> Randi Alarcon, *Beanal v. Freeport McMoran Inc*, 13 N.Y. Int'l L. Rev. 141, 140, 2000.
- <sup>10</sup> It is important to note that if the environmental crime is committed in the peace time, it may be under certain conditions a crime against humanity or genocide.
- <sup>11</sup> United Nations Convention on the Law of the Sea, art 211..
- <sup>12</sup> *Id.* art. 100.
- <sup>13</sup> Piracy under International Law, Prepared by the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations.
- <sup>14</sup> Gary D. Meyers, *Answering "The Call Of The Wild": An Examination Of U.S. Participation In International Wildlife Law*, 9 Pace Envtl. L. Rev. 70, 87, 1989.
- <sup>15</sup> The Antarctica Treaty, *supra* note 13, art IV.
- <sup>16</sup> The Antarctica Treaty, protocol on environment protection to the Antarctica treaty, Oct. 4, 1991, 30 I.L.M. 1400, 1461.
- <sup>17</sup> *Id.*, art 2.
- <sup>18</sup> *Id.*, art 7.
- <sup>19</sup> *Id.*, art 8.
- <sup>20</sup> *Id.*, art 3, (2), (b), (i).
- <sup>21</sup> *Id.*, art 3, (2), (b), (ii).
- <sup>22</sup> *Id.*, art 3, (2), (b), (iii).
- <sup>23</sup> See The Antarctica Treaty, protocol on environment protection to the Antarctica treaty, *supra* note 16, annex IV. And Jennifer Angelini, *A Call For U.S. Ratification Of The Protocol On Antarctic Environmental Protection*, 21 Ecology L.Q. 163, 193, 1994.
- <sup>24</sup> See Michael J. Matheson, *The Environmental Effects Of Nuclear Weapons And The 1996 World Court Opinion*, 20 Vt. L. Rev. 773, 773, 2001, at 773.

- <sup>٢٥</sup> See Peter Bekker, Judith Bello, Legality of Threat or Use Of Nuclear Weapons Advisory Opinion, ٩١ Am. J. Int'l L. ١٢٦, ١٢٦, ١٩٩٧., at ١٢٦.
- <sup>٢٦</sup> See convention on civil liability for damage resulting from activities dangerous to the environment, supra note ١٠, art ٢,(٥).
- <sup>٢٧</sup> Id, art ٢, (١), (a).
- <sup>٢٨</sup> Id, art ٢, (١), (b).
- <sup>٢٩</sup> Id, art ٢, (١), (c).
- <sup>٣٠</sup> Id, art ٢, (١), (d).
- <sup>٣١</sup> Id, art ٢, (٧), (c).
- <sup>٣٢</sup> Id, art ٢, (١٠).
- <sup>٣٣</sup> Id, art ٦, (١).
- <sup>٣٤</sup> Id, art ٦, (٢).
- <sup>٣٥</sup> Id, art ٦, (٣).
- <sup>٣٦</sup> Id, art ٦, (٤).
- <sup>٣٧</sup> Id, art ٧, (١).
- <sup>٣٨</sup> See Philippe Sands, Principles of International Environmental Law, Frameworks, Standards and Implementation, ch. ٦ at ٦٥٢, ١٩٩٥.
- <sup>٣٩</sup> See Margaret Rosso Grossman, Agriculture And The Polluter Pays Principle: An Introduction, ٥٩ Okla. L. Rev. ١,٢٨, ٢٠٠٦.
- <sup>٤٠</sup> See:  
[Http://Www.Cambridge.Org/Uk/Catalogue/Catalogue.asp?isbn=٩٧٨٠٥٢١٨٨٩٩٧١&ss=exc](http://Www.Cambridge.Org/Uk/Catalogue/Catalogue.asp?isbn=٩٧٨٠٥٢١٨٨٩٩٧١&ss=exc).
- <sup>٤١</sup> See Chao Wu, Liability and Compensation for Bunker Pollution, ٣٣ J. Mar. L. & Com. ٥٥٣, ٥٥٣, ٢٠٠٢.
- <sup>٤٢</sup> See Ling Zhu, Can The Bunker Convention Ensure Adequate Compensation For Pollution Victims?, ٤٠ J. Mar. L. & Com. ٢٠٣, ٢٠٣, ٢٠٠٩.
- <sup>٤٣</sup> See Michael A. De Gennaro, Oil Pollution Liability And Control Under International Maritime Law: Market Incentives As An Alternative To Government Regulation, ٣٧ Vand. J. Transnat'l L. ٢٦٥, ٢٧١, ٢٠٠٤.
- <sup>٤٤</sup> International Convention on Civil Liability for Bunker Oil Pollution Damage, Mar ٣, ٢٠٠١, art ١ (٢&٣).
- <sup>٤٥</sup> Id, art ٣ (١).
- <sup>٤٦</sup> Chao Wu, Liability and Compensation for Bunker Pollution, P ٥٥٧.
- <sup>٤٧</sup> International Convention on Civil Liability for Bunker Oil Pollution Damage, art ٣ (٢).
- <sup>٤٨</sup> See Charter of the International Military Tribunal, *in* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, done Aug. ٨, ١٩٤٥, ٥٨ Stat. ١٥٤٤, ٨٢ U.N.T.S. ٢٧٩.
- <sup>٤٩</sup> See Christopher C. Joyner, Accountability for International Crime and Serious Violation of Fundamental Human Right, ٥٩-AUT Law & Contemp. Probs. ١٥٣, ١٦١, ١٩٩٦., at ١٦١.

- <sup>60</sup> See Aaron Schwabach, Environmental Damage Resulting From The Nato Military Action Against Yugoslavia, 20 Colum. J. Envtl. L. 117, 134, 2000.
- <sup>61</sup> A scorched earth policy is a military strategy which involves destroying the environment that might be useful to the enemy. See Lieutenant Commander Jonathan P. Edwards, the Iraqi Oil “Weapon” in The 1991 Gulf War: A Law of Armed Conflict Analysis, 40 Naval L.Rev. 100, 124, 1992.
- <sup>62</sup> See Charter of the International Military Tribunal, *in* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, art. 6(b).
- <sup>63</sup> Tara Weinstein, *supra* note 4, at 709.
- <sup>64</sup> International Convention on the Prevention and Punishment of the Crime of Genocide, (Dec. 9, 1948), art 1, 78 U.N.T.S. 277.
- <sup>65</sup> *Id* at art. 4
- <sup>66</sup> See Peter Sharp, Prospects for Environmental Liability in the International Criminal Court, 18 Va. Envtl. L.J. 217, 234, 1999.
- <sup>67</sup> Carl E. Bruch, Criminal Liability for Environmental Damage in Internal Armed Conflict, 20 Vt. L. Rev. 790, 727, 2001.
- <sup>68</sup> See [Http://www.kenanaonline.com/page/4300](http://www.kenanaonline.com/page/4300), And Pekka Haavisto, The International Responses To The Environmental Impacts Of War, 17 Geo. Int'l Envtl. L. Rev. 060, 083, 2000.
- <sup>69</sup> See Captain William A. Wilcox, Jr, Environmental Protection in Combat, 17 S. Ill. U. L.J. 299, 300, 1993.
- <sup>70</sup> Geneva Convention, 1949, 6 U.S.T. 3016., art. 03.
- <sup>71</sup> Bruch, *supra* nota 68, at 717.
- <sup>72</sup> Protocol I, Geneva Convention, art 30, (3).
- <sup>73</sup> *Id*, art 00.
- <sup>74</sup> Rome Statute, *supra* note 14, art 7 (1).
- <sup>75</sup> *Id*, art 8 (2)(a)(iv).
- <sup>76</sup> Rome Statute, *supra* note 14, art 8 (2)(b)(xvii).
- <sup>77</sup> *Id*, art 8 (2)(a)(xviii).
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- <sup>٧٣</sup> See: Julian G. Ku, The Curious Case of Corporate Liability Under the Alien Tort Statute: A Flawed System of Judicial Lawmaking, ٥١ Va. J. Int'l L. ٣٥٣, ٣٧٨ (٢٠١١)
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