International Responsibility for Environmental Pollution Crimes Resulting from Armed Conflicts in the Light of the Provisions of the Statute of the International Criminal Court

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Abstract

Protection of environment during armed conflicts is one of the important issues in the International Law, particularly due to the exposure of environment to destruction in many occasions because of wars and armed conflicts, as a result of all kinds of traditional weapons and other nuclear, chemical or biological weapons of limited and mass destruction which were or are used in such conflicts. The reality shows us that the wars to which the international arena was and is exposed led to a violation of a basic human right; i.e. the right to live in a safe and clean environment.

All the foregoing led countries to move and awaken to prevent the reoccurrence of these crimes, and therefore they resorted to entering into treaties and conventions which contained a kind of penalties against anyone who commits an international crime, including the crimes relating to contamination of environment during armed conflicts. Those treaties, however, were in need for a judicial institution to actually apply the provisions thereof. Thus, the Statute of the International Criminal Court was adopted in 1998 and entered into force in 2002. Although it does not contain provisions directly incriminating the attacking the environment, yet it considered all actions that cause widespread, long-term and severe damage to the natural environment and violate the principle of proportionality as a war crime, and further considered certain environmental crimes under the crimes against humanity and genocides.

Keywords: International Responsibility, Environmental Pollution Crimes, Armed Conflicts, International Criminal Court (ICC).

Introduction

In the last decades, many armed conflicts were associated with a various set of environment-threatening risks, which do not have their effect on the countries involved in the conflict, but also on the civilians and neutral countries, which effects often long survive the end of the armed conflict. The reality demonstrates that the wars that took place and are taking place in the international arena led and are leading to violating one the basic human rights, i.e. the right to live in a safe and clean environment, the matter that forced the world legal systems to include the issues of environment and its protection in their interest priorities, including the International Humanitarian Law. These treaties
however need a judicial institution to apply the provisions thereof on the ground, which actually happened upon the adoption of the Statute of the International Criminal Court, which entered into force in 2002, from which point this papers examines the articles of the Statute of the International Criminal Court relating to the issue of protection of environment in international armed conflicts, the matter that leads us to pose the following problem:

Do the provisions of the Statute of the International Criminal Court guarantee due protection of natural environment during armed conflicts? Or is there still shortcoming or omission in these provisions, the matter that requires working on redressing the legal loopholes, and what is the international responsibility for damages to the environment in an armed conflict? And how to establish such a responsibility? Based on the foregoing, this research is divided into two topics, in addition to the introduction, conclusion and list of sources and references as follows:

**Topic One:** International responsibility for the crimes of environmental pollution resulting from armed conflicts.

**Topic Two:** Scope of jurisdiction of the International Criminal Court over the crimes of environmental pollution resulting from armed conflict.

**Topic One**

**International Responsibility for the Crimes of Environmental Pollution Resulting from Armed Conflicts**

The principle of legal responsibility is one of the principles of the public international law which means the international law person assumes legal responsibility upon satisfying two conditions; the objective element (represented in committing an internationally unlawful act by the state, i.e. violating an international legal obligations), and the subjective element (represented in attributing such an act to that state or to any of the official organs thereof). If both conditions are available, the state shall be held responsible, and can be claimed in case of occurrence of environmental damage in the aftermath of committing the internationally unlawful act. Accordingly, we will divide this topic into the following:

**Theme One**

**Concept of International Responsibility for the Crimes of Environment Pollution and the Legal Basis Thereof**

The international responsibility is a legal connection arising in case of violation of an international commitment between the international legal person who has violated the commitment thereof and the international legal person against which the violation of commitment has taken place.

Thus, some defined it as: a legal system arising in case of an action or inaction by a state or an international law person in violation of the established obligations in accordance with the provision of the international law in which case the state or the other legal person shall be liable for the consequence of the behavior thereof in violation of the international obligations thereof to be observed.

International responsibility is an accepted principle in the public international law, regulated by a set of customary rules derived from the international practice. This principle is also a key component

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of the international legal system serving as a guarantee for implementing the rules thereof and for actual setting up of the mandatory effect of the provisions thereof.  

It is noteworthy to indicate that although the matter of responsibility is taking its place in the international legal system as an accepted principle, it still however an ambiguous uncertain and theoretically controversial matter, and even poses one of the broader and most difficult issue facing the international law in general, and the field of environment protection in armed conflicts in particular.

Based on the definition of the international responsibility, some may understand it as limited to the civil responsibility and excluding the criminal responsibility, yet there is a difference when the parties to a conflict are subject to the international humanitarian law, where the state shall be then responsible, both civilly and criminally, for the acts committed by persons forming part of its armed forces as emphasized by Article ( 3 ) of The Hague Convention IV of 1907, which provides for that "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." Furthermore, Article 91 of the Protocol I of 1977 Additional to the Geneva Conventions provides for that "A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."

It is evident that these articles, imposed a criminal responsibility upon the belligerents in an armed conflict, in addition to the traditional responsibility represented in civil liability such as compensation for damages, as they determined ( a belligerent party shall be responsible for all acts committed by persons forming part of its armed forces. ) Accordingly, the state itself, as a legal person- assumes responsibility towards the affected party for all acts committed by members of the armed forces, whether constituting war crimes or ordinary violations of the international humanitarian law.

The Statute of the International Criminal Court, which incriminated all gross violations of the rules of the international humanitarian law, supports this trend, as it is clarified in the criminal penalties imposed by Article 77/Paragraph 2/ a and b of the Statute, adequate to the nature of states as legal persons, such as the penalties of fine and forfeiture.

To establish the international responsibility against a public international law person, it is necessary to have the same grounded on a theory governing such a responsibility. Although there are several theories that addressed the grounds for international responsibility, the international jurisprudence and action are not settled yet for a uniform basis.

The fact is that the requirements and nature of the legal relationship and the type of activity causing the damage impose themselves on the international jurisprudence to select the basis governing the legal relationship. There is almost an agreement within international jurisprudence one that the responsibility is governed by three main theories:

1. **Theory of Error**
   This theory is based on that states cannot be held responsible unless they have committed an error, since the state that intends to prove its claim must establish the error of the state responsible for the damage. Thus, the international responsibility cannot rise unless the state has committed a wrongful act causing damages to other states, which wrongful act can be either intentional or unintentional, where establishing the international responsibility would result in an obligation to redress the damage or pay sufficient compensation for the same.

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2. Theory of Wrongful Act
In the early twentieth century, the Italian jurist (Dionisio Anzilotti) developed his new theory regarding the international responsibility in which he avoided the subjective character grounded on error and adopted an abstract objective trend represented in violation of the provisions of the international law, since such a violation is an internationally unlawful act. The international jurisprudence is settled for considering the unlawful act as an act involving a violation of the consensual or customary rules of the public international law or the general principles of the law.

As a result of the scientific and technological progress, the lawful activities per se cause gross damages, the gravity of which led to looking for a new basis to cover the cases of international responsibility for cross-border damages which are not included by the concept of error nor fall within the internationally unlawful acts.

3. Theory of Risk
The massive scientific progress in the world plays a role in revealing the inability of the traditional elements of international responsibility to find solutions to matters of law in the contemporary international relations. Therefore, it was necessary to look for a new basis for the international responsibility to keep up with the newly emerging situations, leading the jurisprudence to recognize the absolute responsibility for damages resulting from the use of hazardous lawful activities.

The theory of risk means holding the person in charge for a hazardous activity responsible for the damages caused to others, and the role thereof to establish the error. This theory is deemed as an objective responsibility pattern which are not based on a subjective criterion to establish the international responsibility.

Theme Two
Elements of International Responsibility for the Crimes of Environmental Pollution
The contemporary international jurisprudence is settled for adopting three elements for establishing international responsibility: attribution of the act to the state, the act is internationally unlawful, and the damage.

1. Attribution of the Act to the State
For responsibility to exist, it is not sufficient to claim that the act is hazardous, i.e. unlawful, but rather the act must be ascribed or attributed to a state, which state has to be fully sovereign and competent.

Thus, a country affiliated to a federal state shall not be held accountable for its actions, since it is not considered as a public international law personality, but rather the federal state shall be subject to accountability. Moreover, the state with incomplete sovereignty shall not be held accountable for the action thereof, because it does not exercise the rights of a fully competent state, but rather the state in charge of protectorate, mandate or trust.

In other words, the state shall be held accountable for the actions of its three branches (the legislative, executive and judicial), and shall be held accountable in certain occasion for the actions regular individuals or public servants.

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11 Abed Al-Hudaithi, Salah Abdul Rahman, ibid, p. 98.
12 Al-Sayyed, Rashad Aref, ibid, p. 201.
14 Al-Fiqqi, Mohammed Abdul Qader, ibid, p. 52.
15 Shamsuddin, Ashraf, ibid, 1988, p. 165.
2. The Act is Internationally Unlawful

The international jurisprudence is unanimously settled for defining the unlawful act as an act in violation of the provisions of the international law, i.e. the act that involves a violation of the consensual or customary rules of the public international law or the general principles of the law.  

It is, as defined by some: the conduct attributed to the state in accordance with the law, which is represented in an action or inaction, constituting a violation of one of its international obligations. The criterion of unlawfulness is thus an objective international criterion, which does not take the origin of the obligation into consideration, since the violation of any international obligation, of whatever source, creates the international responsibility, irrespective of the description of the act in the domestic law. The means used for committing the violation of the international law, whether by an action, inaction or negligence, is not taken into consideration as well.

3. Damage

It is considered as one of the most important elements and most significant condition of the international responsibility. Damage in the public international law means "violating the right or lawful interest of a public international law person," especially when failing to observe the principle of precaution with which states are bound to comply as set out in more than an international declaration, in addition to the International Law Commission and the draft laws on protection from cross-border damages. This principle was excluded from the Marrakech Agreement of 1994.

The damage here means the damage that may affect the state, the international organization or individuals whose states interfere to protect them through what is known as the diplomatic protection. The damage may be material (such as an assault), or moral (such as in insulting the representatives of the state abroad).

As for compensation, only the direct damage can be compensated while the indirect damage is not subject to compensation. Finally, to initiate an action on international responsibility against an international law person, the internationally unlawful act must be attributed to the person who has committed such an act.

This attribution is a legal mental process related to substantiation, where the plaintiff or compensation claimant must establish that the unlawful act has actually caused damages by the defendant. Without having this condition available, in addition to the condition of direct causality between the act and damage, the international responsibility cannot be substantiated (no judgment on compensation or ruling on any legal effect of responsibility can be rendered.)

As for the international responsibility for environmental damages, the features thereof have not been finally established yet, because of the nature of environmental damages and the difficulty of defining the elements of responsibility for the same for the following reason:

1. Environmental damages, whether inflicted to the environment in times of peace or during armed conflicts, do not occur all of a sudden, but require a period of time, which may take years or decades, such as the environmental damages resulting from the use of chemical, biological and nuclear weapons, whose adverse effects on the components of living environment do not appear all at once immediately upon occurrence of the aggression, but rather such effects expand for several successive generations.

2. Environmental damages often result from indirect damages, where it is difficult to determine the legal responsibility for them, such as in the radioactive pollution resulting

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17 Besher, Nabil, ibid., p. 175.
19 Amer, Salahuddin, ibid., p. 198.
21 Mahmoud, Amer, ibid., p. 52.
from nuclear weapons, for instance, may not directly affect humans or animals, but may result from consuming river water contaminated with radiation by such a living being.\textsuperscript{22}

In the midst of international concern with environment, conclusion of several agreements and issuing many announcements concerning the protection of environment, we can say that the international humanitarian law has not expressly addressed this subject but in the Protocol I of 1977 Additional to the Geneva Conventions, namely in Articles 35-3 and 55 thereof. In spite of the adoption of the rule of protection of environment by this Protocol, yet it did not expressly refer to the legal responsibility for the damages to the environment during armed conflicts resulting from violating this rule.\textsuperscript{23}

We can however stress on the principle of responsibility of the parties to an armed conflict for the damages to the surrounding environment due to hostile operations, which principle became acceptable and settle in the international humanitarian law although not expressly provided for in Protocol I, yet it contained express provisions entailing the protection of environment during armed conflicts, a matter that can, even without an express provision, lead to holding states responsible for environmental damages even before issuing the Protocol I of 1977\textsuperscript{24}, as states, since The Hague 1899, 1907 Conventions are considered bound to protect the environment and are subsequently responsible for the damages thereto because the rules of responsibility are correlated to the rules of protection.

The Guidelines on the Protection of the Environment during Armed Conflict, drawn up by the International Red Cross Committee based on the UN General Assembly Resolution No. 50/49 of 1994 referred to the principle of responsibility for the environmental damages during armed conflicts in Article (20) by stating (In the event of breaches of rules of international humanitarian law protecting the environment, measures shall be taken to stop any such violation and to prevent further breaches. Military commanders are required to prevent and, where necessary, to suppress and to report to competent authorities breaches of these rules. In serious cases, offenders shall be brought to justice.)\textsuperscript{25}

To this end we can say that the Statute of the International Criminal Court, considering that it has incriminated the violations of the international humanitarian law, and deemed the same as war crimes, represents the top development in determining the responsibility of the belligerent states for environmental damages, as Article Eight of the ICC Statute relating to war crimes provided in Paragraph 2/b/iv states that the following constitutes the crime of war\textsuperscript{26} “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.”

\textbf{Topic Two}
\textbf{Scope of Jurisdiction of the International Criminal Court over the Crimes of Environmental Pollution Resulting from Armed Conflict}

The humanity ascertained that there is no way to suppress the violations of the international humanitarian law, whose pace has recently increased, due to the increased destructive power of the modern weapons which no longer distinguish between military targets and civilian targets, but by establishing a permanent international criminal court competent in holding trials for the violations of the international humanitarian law and penalizing the commission of international punishable crimes.

\textsuperscript{22} Al-Thaher, Khaled, ibid, p. 29.
\textsuperscript{23} Mahmoud, Abdul Ghani, International Humanitarian Law, 1991, p. 72.
\textsuperscript{24} Younes, Mohammed Mustafa, Features of Development of the International Humanitarian Law, 1996, p. 37.
\textsuperscript{25} Mahmoud, Abdul Ghani, ibid, p. 97.
\textsuperscript{26} Al-Masdi, Adel Abdullah, International Criminal Court; Jurisdiction and Rules of Referral, 2002, p. 54.
The dream that the jurists of the international law had for decades became true by establishing the International Criminal Court to become an international judicial authority with the competence of trying persons who have committed international crimes, where the international criminal responsibility can be realized, along with the international civil responsibility, with the existence of a criminal penalty along with compensation in case of grave violations of the international obligations, particularly when they reach the extent of committing international crimes in violation of the international law, and against the human and environmental existence.

In this topic, we will focus on the scope of jurisdiction of the International Criminal Court over the crimes of environment pollution by dividing this topic as follows:

**Theme One**

**Scope of Personal Jurisdiction of the International Criminal Court over the Crimes of Environmental Pollution**

Article (25) of the Statute of the International Criminal Court provides for criminal responsibility and that "a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute: a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, provided that such a contribution shall be intentional."

Article (26) provided for that: "The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime."

Furthermore, Article (27) provided for that the official capacity "shall in no case exempt a person from criminal responsibility, nor shall it constitute a ground for reduction of sentence." and "Immunities or special procedural rules which may attach to the official capacity of a person shall not bar the Court from exercising its jurisdiction over such a person."

Criminal responsibility shall be excluded if the perpetrator was "suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness of his or her conduct." Other grounds includes the state of involuntary intoxication to commit the crime, the case of self-defense, and duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person.

However, the perpetrator shall not be relieved from criminal responsibility for compliance with orders of the government or a superior, unless the perpetrator falls within any of the following cases:

1) The person was under a legal obligation to obey orders;
2) The person did not know that the order was unlawful; and
3) The order was not manifestly unlawful.

Based on the foregoing, we find that the Statute of the International Criminal Court has accepted the principle of individual criminal responsibility, yet the individual jurisdiction of the court raises several problems including those relating to the juristic person, and whether it is capable of

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29 Al-Bakhit, Abdul Aziz Abkal, Permanent International Court; Comparison with the Temporary International Criminal Courts, 2004, p. 197.
30 For more, See Article 31 of the Statute of the International Criminal Court (Rome Statute).
31 For more, See Article 33 of the Statute of the International Criminal Court (Rome Statute).
being criminally responsible, especially that many environmental crimes were committed by juristic persons, or the same is only limited to the natural persons?

We, however, see that the Statute of the international Criminal Court has recognized the responsibility of natural person yet has not recognized the responsibility of juristic persons. Although this trend was criticized by some who found it preferred if the provisions of the Statute included juristic persons, since this responsibility is established in many national criminal legislations, where it is possible to impose types of deterring and suitable penalties against them, namely states. 32

One of the problems relating to the personal jurisdiction of the Court is that related to the responsibility of juveniles, since, as we have already seen, the Court has jurisdiction over adult suspects only, where it did not include the juveniles under the age of 18, as consideration is given to the determining the age of the suspect at the time of commission of the crime rather than the time of hearing the case.

Some has criticized the Statute for the same, as they see it possible to create a circuit to be added to the court specializing in juvenile justice 33, but we support the trend adopted by the Statute of the Court, which is consistent with the prevailing trend in most national legislations and in harmony with the United Nation's Standard Minimum Rules for the Administration of Juvenile Justice of 1985, as limiting the Court's jurisdiction to adults is appropriate, since the juvenile suspect has no full capacity to be tried before an international criminal court, since the procedures of the court and the penalties it imposes are harsh and inappropriate to the juvenility.

Moreover, there should be no confusion between the lack of jurisdiction to prosecute perpetrators under the age of eighteen and their non-responsibility or relief from punishment. Lack of jurisdiction does not mean permitting the acts they have committed if they were completing international crimes, yet such acts retain their criminal character, and a lawsuit for the same may be initiated before any other court having competent jurisdiction over the same. 34

It is noteworthy to indicate that the jurisdiction of the court is not limited to the subjects of states parties to the Statute, but rather extends to include the subjects of states not parties thereto if a crime was committed in the territory of a state party, or in a state that accepted to have the court exercise its jurisdiction over such a crime. 35

Based on the foregoing, the development of the international criminal law, which led to admissibility of the individual criminal responsibility, has also led to creating a permanent criminal justice, i.e. the International Criminal Court, whose Statute excluded the immunities prescribed in the national legislations, and as a result the perpetrators of the limited to the most serious crimes of concern to the international community as a whole, can be subjected to the jurisdiction of the International Criminal Court. Since the crimes that fall within the jurisdiction of the Criminal Court are (war crimes, crimes against humanity and genocide ), as we will see hereunder, and since the environmental crimes may fall within the scope of these crimes, the jurisdiction of the International Criminal Court may extend to prosecute the perpetrators of crimes affecting the environment, the matter that provides an international criminal protection to the environment.

34 Article 22/3 of the Statute provides for (This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.)
35 For more, See Article 13 of the Statute of the International Criminal Court (Rome Statute).
Theme Two
Objective Jurisdiction of the International Criminal Court over the Crimes of Environment

Pollution

With respect to the objective jurisdiction of the court and the possibility of trying this who commits an international environmental crime before the International Criminal Court, this requires examining Articles ( 5-8 ) of the Statute of the Court which provide for the crimes within the jurisdiction of the International Criminal Court and the possibility of considering the environmental crimes as falling within them.

Article ( 5 ) of the Statute of the Court provided for the jurisdiction, stating that the jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. These are

1. Genocide

Genocide is one of the most serious crimes that threaten the human kind since it is an aggression against the life, health and body integrity human for affiliation thereof to a certain group. The seriousness thereof lies in multiplied act aiming at exterminating certain national groups, whether ethnic or religious. Article ( 6 ) of the Statute of the Court defined the same as: any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; and Forcibly transferring children of the group to another group.

The reference in Article ( 6/c ) to deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part is considered as a genocide. Since the environment pollution mainly violates the provisions of Paragraph c of Article ( 6 ), the act is considered a genocide within the jurisdiction of the court if the purpose of such a pollution is the destruction in whole or in part of a national, ethnic or racial group by polluting the environments containing them, such as launching weapons with dangerous radiations leading to pollution of the environment and subsequently the destruction of the targeted group by the crime, in whole or in part.

2. Crimes Against Humanity

Crimes against humanity are the most prevailing type of international crimes in the present, since they are committed in both international and domestic armed conflicts, as well as in the times of peace. The Rome Statute did not provide for a clear definition of the crimes against humanity, but rather defined them by enumerating the acts constituting them, as it provided for the set of acts which any of them constitute the crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Such acts, according to the provisions of Article ( 7 ) of the Statute include: Murder; extermination; deportation or forcible transfer of population from the area in which they lawfully exist by exile or any other forcible act without justification permitted by the international law; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds; enforced disappearance of persons; the crime of apartheid; and other inhumane acts.

37 Abdul Latif, Baraa Munther Kamel, ibid, p. 103.
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Moreover, Paragraph (k) of Clause (1) of Article (7) also provided for considering as a crime against humanity other acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Causing severe damages to the environment may result in imposing living conditions leading to the destruction of part of the population, in addition to considering the same as inhumane act causing great suffering, or serious injury to body or to mental or physical health due to deprivation from the right to live in a clean environment. Therefore, destruction of the environment is considered as a crime against humanity.

3. War Crimes
According to Article (8) of the Statute of the Court, these acts are classified into four categories:

2. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.
3. Serious violations of article 3 common to the four Geneva Conventions.\(^{39}\)
4. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law.\(^{40}\)

As for the jurisdiction of the court over war crimes, the Statute of the court set out a long list to what can be considered as a war crime, in unprecedented way in other international documents, especially with respect to the sexual crimes which were superficially mentioned in previous international instruments\(^{41}\), which were listed within the crimes of rape or inhuman or humiliating treatment.

Article (8) of the Statute of the Court provided in Paragraph (2) thereof for three categories relating to the environment which constitute a war crime.

Category One: Grave breaches of the Geneva Conventions of 1949, which include a number of acts, that would be considered as war crimes in case of commission thereof against persons or properties protected by the Conventions, which may also be related to the destruction of the environments. These are the acts provided for in subparagraphs (3, 4) of Paragraph (2/a) of Article (8) by stating: willfully causing great suffering, or serious injury to body or health, which may result in environment pollution if committed at a large scale affecting the health.\(^{42}\)

Furthermore, the destruction of the environment falls within the scope of paragraph (2/a/d) of Article (8) of the Statute of the Court which provides for "Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly," which act is considered as a grave violation of the Geneva Conventions of 1949.

The other category provided for in Article (8) of the Statute of the court which is related to the contamination of the environment in armed forces is that relating to the grave breaches of the laws and customs of wars, where Paragraph (2/b-4) provides for: "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."

Thus, this article expressly provided for that the crimes relating to the environments may constitute a war crime and then fall within the jurisdiction of the International Criminal Court.

Clause (2/b- 17 and 18) of the same article provides for that (Employing poisons, and employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices) shall be considered as a war crime, where such gases and poisonous liquids would pollute the environment, where the article did not stipulate the occurrence of poisoning cases, where the mere

\(^{39}\) Al-Masdi, Adel Abdullah, ibid, p. 199.
\(^{40}\) For more details, see Article (8) of the Statute of the International Criminal Court (Rome Statute).
\(^{41}\) Nuremberg and Tokyo Charters, and Former Yugoslavia and Rwanda Statutes.
\(^{42}\) Shaaban Al-Hussein; International Criminal Court from Justice and Human Right Point of View, 2007, p. 203.
\(^{43}\) Hijazi, Abdul Fattah Bayyoumi, ibid, p. 154.
employment of such materials and the accompanying environmental pollution constitute a war crime and an international crimes falling within the jurisdiction of the International Criminal Court. 44

It is noteworthy to indicate the First Review Conference on the International Criminal Court held in the Ugandan Capital (Kampala) in 2010 discussed the amendments that can be made to the Statute, where one of the important matters in the field of international criminal protection of the environment was the adoption of the expansion of the scope of Article (7) of the Statute of the Court relating to the war crime to also include: Employing poisons or poisoned weapons, and employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices.

It is noted that these crimes which were included in the context of Article (8/2/5) require the perpetrator to use a material or weapon the use of which would launch such a material, which material has to be of the kind that causes death or inflict grave damage to health under normal circumstances due to the poisonous characters thereof, and also requires that the conduct is made in the context of an armed conflict and associated therewith, where the perpetrator is aware of the factual circumstances establishing the existence of undergoing conflict. 45

Whereas the use of such materials will be considered as a war crime falling within the jurisdiction of the court, regardless of causing human losses, the stipulation thereof certainly leads to a criminal protection of the environment due to the hazards of such weapons to the environment.

4. Crime of Aggression
The Statute of the International Criminal Courts provides for the jurisdiction thereof over the crime of aggression without defining the same nor determining the acts thereof as it did for other crimes. The Statute of the Court provided for in Article (5/2) "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations." 46

The Rome Statute binds the states supporting inclusion of the crime of aggression in the Statute of the court to wait for seven years as of the entry into force of the Statute of the court till the Secretary-General of the United Nations shall convened a Review Conference to consider amendments proposed to the Statute, where the subject of defining the crime of aggression was supposed to be among them. 47

Based on the foregoing, we note the Statute had formed the development to the environment as the setting in which the living being exist, and the necessity of preserving it in protecting the common human interests, since the effects of the crimes against the environment are not limited to the state in which they take place but extent to cover the international community as a whole 48, and they become today to represent an aggression against a human right, i.e. the right to a safe and clean environment.

Conclusion
There is a significant problem in the rules of protection dedicated to the environment in armed conflicts because the Statute of the International Criminal Court did not expressly include provisions incriminating the aggression to environment, in spite of considering as a war crime all acts that cause a wide scale long term severe damage to the natural environment and violate the principle of proportionality. It also considered certain environmental crimes as crimes against humanity and

44 Abul El-Kheir, Ahmad Attieh, The Permanent International Criminal Court ( Study on the Statute of the Court and the Crimes within the Jurisdiction of the Court ), 1999, p. 204.
45 See Resolution No. RC/RES 5 adopted by agreement at the 12th plenary session held on 10/June/2010 within the activities of the First Review Conference on the International Criminal Court held in Kampala/2010.
47 For more, see Articles 121, 123 of the Rome Statute of the International Criminal Court.
48 Abdul Hamid, Muhsen, the International Environmental Law, no publishing date, p. 45.
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genocides, in addition to the absence of devices and means to protect the environment in armed conflict that would aim at developing the international rules of environment protection.

Prosecuting a state and individuals for the violations of both the international humanitarian law, in the field of environment protection in times of armed conflict in particular, is rare.

Through this paper, we highlighted the difficulties facing the application of the traditional rules of international responsibility for hazardous activities damaging the environment, where search should be made for modern systems, policies and principles consistent with the issues of environment and method of protection thereof.

**Recommendations**

1. The necessity of enacting rules on the international responsibility for environmental damages and adopting proactive environmental policies aiming at preventing damages to the environment in armed conflicts.

2. The necessity of considering the attacks on the environments as a grave violation and a state crime, with the necessity of defining the concept of the international crime against the environment.

**List of Sources and References**

I: In Arabic

**a. Book**


b. Dissertations

c. Scientific Journals

d. Laws and Regulations

e. References in English

f. Electronic Sources