

ENVIRONMENTAL PROTECTION IN CASE OF AN ARMED CONFLICT

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Abstract

Nowadays, when the Earth's ecosystems are rapidly degraded because of human actions or natural disasters, a new type of weapon appeared the geophysical weapon. It also appeared a new type of war, the geophysical war, with actions that modify the environment in military purposes. Many of the principles are rendered in the international juridical texts in the expressis verbis way, while others are rendered implicitly, so that the legal maxim has the role to determine and systemize the new principles of international environmental law.

Key words: the technique used for change the environment, geophysical war, international legal responsibility

INTRODUCTION

Over the years there were concerns about the counteraction of the disasters produced by the world wars upon the environment, by this means, the international cooperation had a great development in the field of forests too. Thus, in the period after the Second World War, some steps were made to build up the forests of Europe (in Germany, Russia, etc.)

In this actual period is created an even clearer outline of the importance and influences of governments, of academical institutions and of the industrial sector in the accelerate revolution of science and technology. This phenomenon creates possibilities, but at the same time major challenges for the research in the domain of the international humanitarian law, but also in the domain of environmental law.

The modern battlefield is a background of an enormous complexity for the actual armed conflicts – so that it assesses challenges for the military leaders, but for the specialists from the domain of international humanitarian law and environmental law too; different kind of challenges, beginning with the implications of the use of auto-controlled weapons, of the cruise rockets, of the global positioning system, of the operating systems, of the communication systems, computers and informational systems and of the other means and modern technologies.

The immediate results of these conflicts are reflected upon the population – in large sense (combatants, war prisoners, women and children, etc.) and in a grate range upon the *environment*, upon the nature.

MATERIAL AND METHODS

In the subject of the international law, the classification criteria of the wars can be considered the followings:

- the cause of the conflict
- the way of “behavior” of that certain war

In the past it was used the idiom “jus ad bellum”, law that clearly established the legitimate causes, in presence of which a state is allowed to participate in a war – it was about the “ancestral right of the states to take part in a war”. Through the new judicial frame instituted by the U.N. Bill of Rights this right was disestablished, giving birth to the “jus contra bellum”, the right of peace.

We can sadly state with certitude that even the following century can't offer for humanity the desired “eternal peace”, however the armed fight will register a continuous evolution, generated by the whole development of the society, especially by the following factors:

- the accelerate development/ even the revolution of the economical background of the society
- the assimilation of the results of the technical-scientific revolution in the domain of armed fight
- the growth of the importance of information and of the speed of transformation of the processes and phenomena specific to the military medium.

We can easily observe that an armed conflict has a series of negative influences upon the environment – pollution of waters, contamination of soils of air, so that the solution of these problems represents a priority for the decisional factors of the political-military structures. These serious effects endanger for a long time the “integrity” of the environment.

Different substances with high grade of toxicity, toxic dust, flammable materials, explosives, toxic gases, and the use of depleted uranium – these all cause some disastrous effects upon the human health and upon the environment (M. Duțu, 2004, International Environmental Law, Editura Economică, București, p. 452).

A kind of manifestation of the future war can be surely the geophysical war (it appeared and it was researched in the period of the Cold War. In the literature of specialty it was treated in different ways: as the concept of the meteorological war or the ecological war (in the U.S.A.) or under the term of geophysical or geoclimatical war (in the USSR, China and in the states of the Treaty of Warsaw).

According to the opinion of some specialists from the soviet army “ the notion of geophysical war contains a complexity of measures with the aim of disturbance of the natural conditions on the military battle-grounds

and with the aim to create some new conditions, which exclude or essentially disturb the fighting actions of the units and the life of the peaceful inhabitants”.

According to the Military Lexicon “through geophysical (ecological) war one can understand a form of behavior of the total war, in which case there are used changing measures and methods upon the natural environment, being considered that these can cause so great destruction, that it can force the adversary to give up it’s fighting actions”.

In our literature of speciality, general Dumitru I. defined the geophysical war as a war which would consist in the modification, with destructive aims, of the environment, followed by the break of the existing balance in nature and in the release, through technical steps of some phenomena and processes with damaging effects upon the population and upon the terrestrial, aerial and maritime environment) which could imply an ensemble of operations and actions that can provoke some natural phenomena, disasters, catastrophes with great influence upon the environment, upon the human inhabitants and the lands, with the aim to create a military desideratum like the destruction of the potentials and resources of the adversary.

The concrete forms of the geophysical war can be:

- the instigation of some phenomena – downpours, hurricanes, hailstones, avalanches, tornados, which can strongly affect the territories of the enemy, particularly those territories who are stored elements of the military industry, weapon systems, mostly strategy points and stores of resources;
- the modification of the natural composition of air, of water or other elements on some large territories, which can cause great losses or can generate a sequence of destructive phenomena;
- modifications directed to the ozone strata or in the ionosphere that can strongly affect a certain territory;
- actions – thermo-nuclear explosions, the stimulation of the blow-out of some volcanoes – which can produce modifications of the environment; the catastrophic growth of the level of some waters, floods and even earthquakes
- strong modifications of the maritime environment;
- destructive climatic actions;
- actions upon some regions of the polar, equatorial zones or zones with hydrocarbons which can generate destructive phenomena – (G. Văduvă, 2004, Războiul continuu. Continuitatea războiului, Revista Observatorul militar, București, nr.8/2004, p.9).

This point of view about the techniques, methods of development of a war is totally opponent to the international legal foresights, these generating this way international catastrophes in the environment, which can question even the continuity of life on Earth.

To avoid destructive situations like these, a juridical frame was created through which the use of methods that maintain an armed conflict, which can cause the modification of the environment, are forbidden. This way the “Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (E.N.M.O.D)” was adopted by the General Meeting of the United Nations on 10 december 1976.

According to this Convention, every state which have signed it entered the obligation not to use in military aims or any other hostile case modification techniques upon the environment with large effects, of long term or great effects, like instruments which generate destruction, damage or prejudice for an other state. Even more, every participant state engaged itself not to offer assistance, not to sustain or not to incite another states, groups of states or international organizations in activities which are opposed to the foresights of this Convention. At the same time it was outlined the notion *environmental modification techniques*, considered that this refers to any technique which can change – through free manipulation of the natural processes – the dynamics or structure of Earth, implying the biosphere, lithosphere hydrosphere and atmosphere or the space of extra atmosphere. The Convention doesn’t restrain the use of environmental modification techniques which have a peaceful aim and which can’t cause prejudices to the general accepted foresights and to the rules applied of the international law according to this kind of use.

RESULTS AND DISCUSSIONS

With the occasion of different international conferences (Ministerial Conference for the protection of forests from Helsinki, 1993 and Lisbon, 1998) the problem of environmental protection in case of armed conflicts was once again discussed, even some documents appeared referring to environmental protection, implicit to the protection of the forests.

Near these foresights we can mention other components of the juridical frame regarding to the environmental protection in case of armed conflicts too:

- *Convention on Environmental Impact Assessment in a Transboundary Context* – Espoo, 1991;
- *Convention on Long-range Transboundary Air Pollution*- Geneva 1979, followed by nine additional protocols regarding to some categories of pollutants and the obligations of the states regarding to

the standards of the emission-control - Convention ratified in Romania through Law No. 8 from 25.01.1991 published in the Official Monitory of Romania No. 19 from 26.01.1991

The notion long-range transboundary air pollution designates that air pollution, that has a physical source totally or partially in a zone which is under the national jurisdiction of a state and which has damaging effects in a zone which is under the jurisdiction of an other state, so distant that generally it isn't possible to distinguish the contribution of individual sources or the group sources of emissions.

- *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* – Aarhus, 1998;
- *Convention on Climate Chang*, implying the Protocol of Kyoto, 1997;
- *The Vienna Convention for the Protection of the Ozone Layer* – 1985.

Even other documents mention the importance of the environmental protection in case of armed conflicts, précising that the war must be done with the protection of the natural environment from the large, long-lasting and important damages. This protection implies the interdiction of the use of fighting methods created to cause or which may cause some damages to the natural environment and which may compromise, as sequel, the health or survival of the population – this way, we can comprehend in this category weapons – chemical weapons, bacterial weapons, nuclear weapons, the ecological methods of war which can determine irremediable prejudices in the environment.

So, through legal documents, all the reprisal attacks towards the natural environment are forbidden.

CONCLUSIONS

The armed conflicts of our time confirmed the fact that the destruction of environment must be mentioned in the category of “war disasters”. Because of the importance of environmental protection, in generally, and especially in case of armed conflicts, there were some systems created to assure the reaching of this goal and among the instruments, which can be successfully used can be counted the juridical

liability for all the actions that break the rules which are established in this domain.

The general juridical system of the international liability for damages produced to the environment are established on the general base by means of which the violation of an international juridical rule causes the international liability of the subject which has committed this action.

REFERENCES

1. V., S. Bădescu, 2007, Umanizarea dreptului umanitar, Editura C.H. Beck, București, p.8
2. M.Duțu, 2004, Drept internațional al mediului, Editura Economică, București, p.452
3. G. Văduvă, 2004, Războiul continuu. Continuitatea războiului, Revista Observatorul militar, București, nr.8/2004, p.9
4. ***, Rezoluția Conferinței Ministeriale pentru Protecția Pădurilor de la Helsinki,1993
5. ***, Rezoluția Conferinței Ministeriale pentru Protecția Pădurilor de la Lisabona,1998