

The role of governments' practice in the possibility of applying global jurisdiction in dealing with pollution and international environmental crimes

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Abstract

The procedure of governments in the formation of environmental laws has the most effective role in the international community. One of the necessities of the current situation governing international environmental issues is the issue of dealing with environmental destruction and crimes in a serious manner. by examining international documents such as multilateral treaties, international environmental principles and rules regarding the international responsibility of governments in protecting the environment, it seems that the international rules and regulations regarding the prevention of international environmental crimes and destructions exist, as they should; but what seems necessary is the formation of the procedure of the governments in taking practical measures to deal with international environmental destruction and pollution. In this article, the practice of some governments in dealing with environmental crimes at the domestic level and its impact on preventing international environmental crimes have been examined. It has been concluded that in countries where the procedures for dealing with environmental crimes have been established and consolidated, there are better conditions for the possibility of applying global jurisdiction in dealing with international environmental crimes.

Keywords: Government Procedural, Confrontation, Environmental Crimes, International

Introduction

INTRODUCTION

The procedure is the performance of governments, if it is indifferent and the same, there will be a unity in the behavior of governments that can be cited in international law. Government procedures are divided into two categories: legislative procedures and procedures that express the will of the government to implement treaties. International custom, which is one of the most important sources of international law, is the result of the procedure of governments. Governments make legal rules with their own procedure and in case of collective acceptance, they are bound to implement those rules. In international law, the deferred procedure of governments is

considered as a means of official interpretation of the treaty. Article 31 of the Vienna Treaty in the Law of Treaties of 1969, in addition to the procedure of late agreement of the parties to the treaty, also recognizes it for interpretation. The approach and procedure of the governments in facing the situations that have happened to the international community so far has been very determinative. In most cases, it is observed that the rules resulting from international custom have created procedures that have been accepted as *jus Cogens* rules by the international community as a whole. the issue of environmental pollution and destruction, as well as the issue of human rights violations, is one of the issues that directly affects the fundamental rights of human beings, and this

is the reason why it is now observed that the human society feels threatened by the prevailing state of environmental health. governments and organizations, as well as individuals, groups and people's organizations, show harsh reactions to the behavior and performance of violators of the rules of international environmental law. (the action of the Canadian government in seizing a Spanish fishing vessel in the high seas in 1995, the action of the Australian government in filing a lawsuit against Japan and the entry of New Zealand as a third party in the matter of violations of the Convention on the Regulation of Ocean Whaling in 2010, the set of lawsuits by the Marshall Islands against the governments nuclear in 2014 in the International Court of Justice, Australia and New Zealand filed a lawsuit against France in 1974 regarding France's nuclear tests in the International Court of Justice, including the actions of governments in dealing with pollution and environmental damage in the protection of the external sphere it is from its own sovereignty. this actions and reactions on the part of governments indicate the existence of significant capacities of international law in dealing with environmental threats, which can be an efficient and effective procedure in dealing with environmental crimes. for this reason, examining the procedure of governments in applying effective policies to deal with environmental crimes is directly and indirectly effective in the final conclusion. in international environmental law, the share of each state in causing pollution and environmental damage depends on the economic status of that state. therefore, developed, developing and less developed governments each have a special position in this regard. for this reason, in this research, the situation of a number of governments is taken into consideration.

1-The role of internal factors in the formation of governments' procedure

while most countries support the program of cooperation in combating environmental crimes, but the actors who have a specific role, as well as the financial resources and cooperation with these actors are controversial, and this is because cooperation on an

international scale has never been impartial and is influenced by domestic political events. for example, regardless of the declared "good intentions", many countries are wary of US aid and intervention (as well as other donor countries for that matter); Because the interests of the United States often prevail over other interests in international cooperation operations and programs. governments do not trust each other due to the change in their internal policy in terms of participation in financing the fight against environmental crimes, so in order to effectively respond to environmental crimes, participation and cooperation must be established first at the local, regional and then international levels. Who takes the leadership role in a partnership or collaboration and what type of leadership model is adopted (For example, hierarchical or based on shared responsibilities) should be determined. the main role, in turn, is determined by the structures, processes and goals of the collaboration. given that environmental crimes are international in scope and nature, the complexity of environmental crimes means that greater investment in enforcement policies, capacity and performance management is required in most jurisdictions. dealing with environmental crimes requires a strong legal framework as well as investigative, prosecutorial, and judicial capacity to arrest and prosecute traffickers, confiscate the proceeds of crimes, and impose penalties that will deter others from committing environmental and wildlife crimes. however, all these requirements simultaneously demand that the authorities and powerful global agents carefully pay attention to the participation of regional governments in formulating a strategy to achieve this goal and learn from them. For example, some governments have funded projects that provide basic equipment and training for rangers' anti-poaching patrols, as well as training for community members to participate in conservation activities.

2-The procedure of governments, environmental crimes and criminalization

Environmental crimes is a complex and somewhat ambiguous term. Often this term is used to introduce crimes related to biodiversity, wildlife, natural resources, dangerous waste, prohibited substances, and ozone depleting substances; but there is a difference of opinion regarding the types of environmental crimes. the

variety of criminals in this field also complicates the concept of environmental crimes. On the other hand, the amount of damage caused by each actor may not be compatible with the definitions. Therefore, in defining this term, it is necessary to consider a wide range of crimes along with the researchers' point of view; but the crimes related to the spread of pollution caused by dangerous substances, water pollution, wildlife, air pollution, deforestation, are almost compatible with most definitions. In general, it can be claimed that all illegal activities that harm the human environment can be considered examples of international environmental crimes. Because each of the governments have criminalized things according to their definition in their domestic laws for punishing environmental crimes, and in most cases, these definitions have similarities, and these similarities create the capacity to create an international coordinated procedure. With an overview of the regions divided by the United Nations Environment Program in 1972, the countries are considered in 6 sections, which include: Asian countries, African countries, Eastern European countries, Latin American countries, and Western European countries. And therefore the situation of dealing with environmental crimes in these countries has been evaluated in a general view and the results obtained are cited in the present topic.

2-1-Asian countries

In the study of Asian countries, the status of a number of these governments whose actions are effective in the regional situation is studied. As one of the Asian countries, Iran is located in the sensitive region of the Middle East and as a communication route between the West and the East is among the most effective governments in the field of dealing with environmental crimes. In Iranian law, the issue of environmental protection and prevention of crimes related to it has been of interest for many years, and the legislative centers have tried to solve the problems related to this field by passing

numerous laws. The issue of environmental protection is emphasized both in the constitution and in ordinary laws. Article 50 of the Constitution, Article 68 of the Islamic Penal Code and Note 2 of this article and Article 66 of the Criminal Procedure Law deal with the protection of the environment and the criminalization of environmental crimes. In Iran, environmental rights can be divided into two categories: natural environment and human environment. The natural environment law examines ways to preserve the ecosystem and protect natural environments such as forests, pastures, national parks and protected areas, as well as wildlife, animals and aquatic life, and prevent their destruction. Human environmental rights include those laws that protect human life in these environments, and because the issues that may arise in this environment for the survival of a person are related to various types of pollution, human environmental rights include laws necessary to fight it is polluted¹. According to the legal approach, environmental crime refers to the commission or omission of an action for which the law has determined a punishment. Criminalizing the destruction and pollution of the environment, as well as the use of criminal penalties, in addition to compensating for the resulting damages, also results in effective reactions from the human society. In Iran, the highest amount of pollution is related to air pollution, water pollution and then pollution caused by waste. In the classifications of criminal crimes, environmental crimes are classified as intentional crimes: Criminal intent, which is required to commit a deliberate crime, can be recognized in different ways. On the other hand, environmental crimes are divided into two major groups based on their nature: crimes committed against the living environment minus humans, which includes all plant and animal organisms, and crimes committed against¹ inanimate elements such as water and soil, noise and chemical pollution. According to the environmental protection and improvement Law, one of the duties of the environmental protection organization is to prevent any kind of pollution and destructive actions that disturb the balance of

¹. Protocol of 1978 relating to the International Convention for the prevention of pollution from ships, 22484/1973/v1340.pdf

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the environment also, this organization covers all issues related to wildlife and aquatic life. According to clause 2, Article 6 of Iran's Environmental protection law, the destruction of forests is also one of the things that disrupts the balance in the environment and is therefore considered a criminal act (Typology of Environmental Crimes in Iran, 2020)². In general, no provisions have been approved in Iran's laws that have the capacity to grant global jurisdiction to governments in dealing with environmental crimes. In the procedure of the Iranian government, no unilateral action has been observed so far in order to deal with environmental crimes outside of the government's jurisdiction, although environmental crimes have been criminalized to a considerable extent in domestic law, and from a cultural and social point of view, the necessary preparation for Applying new rules is more efficient. Iran joined the Basel³ Convention in 1993, ratified the MARPOL Convention in 2009, the SITES⁴ Convention in 1976, and approved the amendment of the Montreal Protocol⁴ regarding substances that deplete the ozone layer in 1994. In the aforementioned conventions, environmental crimes are subject to criminal penalties. Article 5, paragraph 4 of the MARPOL Convention states that ships of non-Member Parties shall apply the requirements of this Convention as necessary to ensure that such ships are not treated more favorably. In this article, the need to comply with the provisions of the convention for non-member parties is emphasized, and this indicates the multilateral nature of the provisions of the convention and the obligation of governments to comply with its provisions. In paragraph 3 of Article 4 of the Basel Convention, regarding the criminalization of violation of the provisions of the treaty, it has reminded the member parties and in paragraph

4 of this article, it has emphasized the punishment of criminals and violators. In Clause 11, Article 4 of the Basel Convention, the governments have also emphasized the establishment of regulations and laws regarding the implementation of the provisions of the convention and better protection of human health and the environment. In Clause 11, Article 4 of the Basel Convention, governments have been urged to establish regulations and laws regarding the implementation of the provisions of the Convention and better protection of human health and the environment. certainly, the establishment of laws and regulations to deal seriously with crimes caused by destruction and pollution, even in areas that are not under the rule of any government, but are considered to be the area of the environment, can be justified under paragraph 11 of article 4 of this convention. The Climate Change Convention and the Biological Diversity Convention have required the members to protect the human environment, while in the current situation, the best way to protect the environment and human health is to deal seriously with environmental crimes caused by destruction and pollution. 196 countries have signed the Convention on Biological Diversity and the Montreal Protocol on Climate Change and are considered parties to these conventions. 153 countries have signed the Basel Convention and 158 countries have signed the MARPOL Convention and are considered contracting parties to these conventions. According to Article 18 of the Vienna Convention on the Law of Treaties of 1969, the contracting party shall not take any action that harms the subject and purpose of the treaty before the treaty enters into force⁵ [1]. Therefore, it seems that all or the majority of governments are contracting parties to such treaties and are responsible for dealing with environmental crimes. Environmental crimes in Asia and the Pacific have different dimensions

². <https://rc.majlis.ir/en>

³. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal/1989/03/22/28911-v1673.pdf

⁴. Convention on international trade in endangered species of wild fauna and flora//14537 v993.pdf

⁵. Vienna Convention on the Law of Treaties/1969/05/23/18232/v1155.pdf/p.331

and transnational nature. In these regions, like many other regions of the world, environmental crimes are diverse. crimes such as wildlife trafficking, illegal cutting of trees, excessive use of marine aquatic resources and fishing, illegal transfer and disposal of dangerous waste, and in addition to these cases, damage caused by land degradation and carbon dioxide emission are among the major crimes in the areas Asia and the Pacific. Crimes such as illegal cutting of trees occur with the involvement of corrupt government officials, including law enforcement officers, financial institutions and patrons and businessmen. The amount of illegal wildlife trade in East Asia and the Pacific (China, Vietnam, Cambodia, Myanmar, Laos, Thailand, Malaysia, Solomon Islands, Papua New Guinea, Indonesia, Philippines) is estimated at 2.5 billion dollars. On the other hand, the illegal trade of wood products from the region to the world (excluding illegal timber trade and offshore fishing), amounts to 17 billion dollars. At the same time, e-waste is sent from Europe to Asian destinations such as China, Japan and India. Also, unused ships and planes are also sent to India and Bangladesh is active in dismantling them⁶.

In general, Southeast Asia is one of the main causes of marine plastic pollution in the world. In 2010, 6, ASEAN member countries were responsible for creating the most plastic pollution. These governments did not manage their waste properly, and as a result, plastic flowed into the ocean. Specifically, the governments of China, Indonesia, the Philippines, Thailand, Vietnam and Malaysia were responsible for creating these pollutions. These governments were responsible for the pollution of almost half of the plastics entering the ocean. In the 34th ASEAN Summit. In June 2019 in Thailand, these countries decided to reduce marine plastic waste and in this regard, two documents were signed. The first document was the Bangkok Declaration regarding the protection of the marine environment and the next document was the Action Framework on Marine Garbage, and the costs and expenses of implementing these decisions were also

determined. In this meeting, six governments were responsible for developing national regulations for the implementation of this decision. It should be noted that the financial source for the implementation of this decision is paid from the national and regional budgets and with the support of another program called "the polluter pays principle"⁷. In Australia and Indonesia, most environmental crimes include illegal cutting of trees. The illegal Indonesian-Australian timber trade and the sale of the proceeds of this crime are criminalized in the framework of transnational environmental crimes in the jurisdictions of both countries. The laws of these two countries regarding the punishment of this crime and its proceeds are implemented with the cooperation of both countries; So that proceeds from illegal logging of Indonesian timber in Australia and Australian timber in Indonesia can be prosecuted. In other words, this cooperation is an international agreement. Many transboundary environmental crimes are different in nature. For example, illegal hunting and smuggling of endangered species and their transfer from their habitat can be mentioned. In Australia, there is a federation in which the main responsibility for forest management and law enforcement rests with government agencies, and the states have signed agreements with the federal government. Cutting of any type of wood as well as native plants protected from forests in the states is an offense punishable by fine or six months imprisonment. Importing or processing timber or wood products illegally, knowingly or due to carelessness is an indictable crime and is punishable by up to five years in prison. The protection of Indonesian forests is also under the management of forest resources and is supplemented by external supervision Australia, the European Union and the United States employ the necessary mechanisms to identify importers. Coordination of national laws and international cooperation, such as the cooperation between Indonesia and Australia, can be extended to a wider range of environmental crimes⁸. Bangladesh is an environmentally vulnerable country where environmental crimes are widespread and common. But the mechanism to

⁶. White, Rob, 2016:95

⁷. Hermawan, Sapto, and Wida Astuti, 2021:15

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⁸. Rose, Gregory, 2017:132

prevent environmental crimes in this country is very weak and traditional police are used to prevent these crimes. Therefore, the green criminology approach to environmental crime prevention in Bangladesh is underdeveloped in many ways. This issue has been aggravated due to the weakness of the crime prevention mechanism⁹. In India, the major environmental crimes include the most common crimes against the environment, which are related to the illegal exploitation of wild animals and plants, water and air pollution, waste disposal and trade. Upstream judicial bodies in India have set certain norms in dealing with environmental crimes. The graph of environmental crimes is increasing with the development and jeopardizing of entire ecosystems including plants, animals, wildlife, human health, sustainable livelihoods and even income streams for governments. In India, the concept of environmental protection is as old as the country itself. Environmental crimes in Indian law include such things as forest damage, illegal mining, illegal fishing, hazardous waste smuggling, and unnatural exploitation of natural resources. Such crimes are among the major crimes in this country. In general, environmental crime in India can be summed up precisely in the way that any illegal activity that endangers the environment or ecosystem can be included in the scope of "environmental crimes." The Constitution of India has special provisions related to the environment in Articles 21, 48 and 51 to ensure environmental justice for people and to punish environmental criminals. The gas leak tragedy in Bhopal, India in 1985 caused a disaster in which about 500,000 people were affected. After this disaster, the Indian court determined the necessary punishment for those responsible for that disaster¹⁰.

Bangladesh is currently one of the most ecologically fragile places in the world. a densely populated country surrounded by river systems and low-lying wetlands leading to the Bay of Bengal. Even as pollution threatens agriculture and public health, Bangladesh is

highly vulnerable to climate change; because the rise in sea level and changing weather patterns can displace millions of people and severely reduce the quality of products. In the judicial system of Bangladesh, environmental crimes are categorized; crimes that include acts or omissions against the law and are subject to criminal punishment. Some protected areas in this country have international world heritage, which are currently threatened in various ways. The country also faces many direct threats to its biodiversity. The continuation of economic growth and development and population increase means that many of these threats will intensify. In 2018, the World Health organization ranked Bangladesh fourth among 91 countries with the worst urban air quality. Therefore, in summary, a wide range of crimes and environmental damages can be identified in Bangladesh. To combat these damages, the police laws have given the police permission and authority to arrest criminals related to environmental protection. in Article 18 A of the 1972 Constitution of the People's Republic of Bangladesh, the responsibility of the government is defined as follows: "Efforts to protect and improve the environment and preserve and protect natural resources, biodiversity, wetlands, forests and wildlife for the citizens of the present and the future." In this regard, a wide range of other laws and regulations exist for use in cases of environmental crimes and crimes against animals. For example, the Constitution of Bangladesh (Articles 31 and 32) recognizes the "right to life and personal liberty" as a fundamental right, and the Supreme Court has decided to recognize the "right to life" as including the "right to a healthy environment"¹¹. "as the largest developing and transitioning country, China has produced a lot of pollutants while experiencing rapid economic growth. From 1998 to 2017 China's industrial SO₂ emissions and industrial wastewater emissions have increased dramatically. Diversity in environmental pollution and the amount of environmental crime is evident in this country. Since China is a large country with 34 provinces, there is cross-sectional variation in

⁹. Sharif, Sherajul Mustajib, and Md Kamal Uddin, 2021

¹⁰Rub, Arbab Mohammed Abdul, and Mohith Agadii, 2021.

¹¹. Faroque, Sarker, and Nigel South, 2022:392

environmental pollution in the provinces of this country¹². Air pollution in China is a very big threat to the people of this country and other governments. The illegal transportation of electrical waste from the European Union to China is an example of a complex and serious environmental crime. China is the largest downstream destination for e-waste exported from Europe. Despite the ban on the export of waste to China since 2000, large amounts of this waste are still illegally imported to China every year and most of it is recycled. In the meantime, the techniques of doing this process do not comply with the standards of safety and health and environment. In order to deal with this environmental violation, the European Union and China have drawn up sets of political recommendations¹³. China's rapid development in the post-reform era led to the deterioration of the country's environment. The indiscriminate development of factories by producing unfiltered waste polluted and poisoned the rivers. China, unable to ignore the consequences of environmental pollution and international reactions in this regard, in 2007 tried to strengthen and amend its criminal laws on environmental protection. This country tried to encourage companies to protect the environment from pollution by considering two methods of cooperation and punishment; but after this date, no practical action was taken as needed. In 2009, the residents of the city of Yancheng spent three days without clean drinking water; because a chemical factory had polluted all water sources near this city. Most environmental pollution, especially the pollution of water sources, has been criminalized in China. Water pollution is punishable by death, and for other crimes such as dumping or transporting toxic waste, deforestation, smuggling of endangered species, and destruction of ancient monuments, the punishment is up to ten years in prison. However, the level of environmental pollutants is increasing to such an extent that sometimes the people of some provinces have to use special masks to breathe in the dark brown air, and this

has even affected marine life. In such a way that sometimes the fish float dead on the surface of the water. In 2008, when China hosted the Olympic Games, many concerns about the ability of athletes to breathe were raised in international forums. Some countries settled their athletes in Japan and South Korea. These measures cast doubt on China's legitimacy to host the tournament. The public dissatisfaction of Chinese citizens has also helped intensify the world community's vigilant look at China's environmental issues¹⁴. Among Asian countries, China is a leading and influential economy for all types of business. However, China is also known as the largest market for trafficked wildlife products in the world. International wildlife trafficking is a low-risk, high-return business that is estimated to generate between \$7billion and \$29billion annually. For example, ancient traditional Chinese medicines have considerable value, and these medicines also include wildlife products. China is a member of the CITES Convention, which has a framework for action to combat species trafficking. By examining the names of drugs used in traditional medicine, it has been proven that there are better scientific alternatives for these drugs.

Also, illegal wildlife trade has many risks where contact between wildlife and humans increases the risk of transmission of common diseases between humans and animals. Another environmental crime in China is the illegal cutting of trees. it is worth mentioning that this act is not subject to any international convention for any punitive action, and despite having serious environmental effects and concerns, it is not considered a crime in international environmental crimes; but as a result of studies, it has been found that the increase in wood demand has led to the destruction of forests in this region¹⁵. In Central Asia and the Caucasus, the main problem regarding environmental protection is the protection of water resources. the high rate of population growth, low per capita income, increasing water deficit due to growing needs and poor demand management have caused significant environmental damage to the ecosystems,

¹² . Wu, Haitao, et al, 2021:301

¹³ . Illés, Andrea, and Kristof Geeraerts, 2016:137

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¹⁴ . Pushkarna, Natasha, 2015

¹⁵ . Joglekar, Yashprada, 2021

including the upper watershed, deltas, Aral Sea, Swan Lake, etc. management and financing, maintenance, planning and development, public awareness and openness and transparency of the water resources system, the priority of nature's requirements in the activity of water institutions, incentives for saving water consumption and controlling non-productive water losses are among the most important issues effective in solving problems. It is related to the water field. Regarding the problems of water resources in the stage of public education, appropriate actions have been taken; however, regarding crimes and criminal punishments in the field of water, it has not been addressed as needed¹⁶. Japan, India, Bangladesh, Indonesia, Malaysia and even smaller countries such as Nepal are also members of the Basel, MARPOL, CITES and Montreal Protocol conventions. Therefore, all these governments are required to criminalize environmental crimes and deal with such crimes.

2-2-The Eastern European

The Eastern European region is different from other regions in terms of diversity of environmental crimes. Some of the countries in this region are located in the Balkan countries and have their own biodiversity and climate, and the culture of ethnic and religious groups has also influenced their behavior in environmental protection to some extent. Most environmental protection regulations in these areas do not have a criminal aspect. In general, in these areas, environmental crimes are influenced by social and economic factors. In some places where the environment is used for survival, it is misused as a resource for profit. People in these places use legal loopholes to commit environmental crimes. Since 2009, organized crimes have been noticed in Slovenia and the government and society are trying to provide solutions to reduce environmental threats to maintain personal, national and international security. In Bosnia and Herzegovina, the rapid development of technologies has had a negative impact on the environment. In Croatia, inefficient waste

management has caused climate pollution. In addition to climate pollution, forest destruction, illegal hunting of species and overfishing are among the major crimes of Eastern European governments in the Balkans, which are proportionate punishments to deal with them in Croatia. Not considered. Unfortunately, in most Eastern European countries, environmental crimes are not considered as a serious threat to the environment and society, and this view causes the increasing destruction of the environment in these countries. as a new country, Kosovo has many challenges for environmental protection. this land was in the past without effective environmental protection and now, this is important, among its main international obligations. now this country implements the legal system, which has its origin in the laws approved by the United Nations delegation under the mandate of the Security Council Resolution 99/1244(UNMIK) and it must implement the environmental laws of the European Union to strengthen the said legal system. Kosovo has some of the most polluted areas in Europe, affecting human health and the environment. In this scenario, whether the European Union can export its legal model of environmental protection to Kosovo through the development of criminal laws is an issue that can be explored. as one of Europe's neighbors, Armenia has close political and economic ties with the European Union. Armenia, like most former Soviet republics, inherits many environmental problems. Since independence, despite the country's desire to sign and ratify international environmental treaties and conventions, Armenia has not taken any practical action to address these problems. for example, environmental degradation is particularly evident in the mining sector, one of the few booming economic sectors in Armenia. domestic laws and their implementation are completely inadequate to regulate the country's mining industry, which pollutes the land, water resources and air and destroys Armenia's pristine nature. Although some of these practices are illegal under Armenian law, insufficient law enforcement and widespread corruption create an atmosphere of impunity¹⁷. a small number of Eastern European

¹⁶ . Sokolov, Vadim, 2006:63

¹⁷ . Eman, K., Meško, G., Dobovšek, B., & Sotlar, A. 2013

countries are members of the MARPOL Convention, but more of these states are members of the Cites and Basel Conventions, including the countries of Lithuania, Estonia, Bosnia and Herzegovina, Croatia and Belarus. Membership in these conventions obliges governments to criminalize related environmental crimes and therefore can have a significant impact on creating an approach to deal with environmental crimes.

Part of Russia is located in Asia and part in Eastern Europe. The number of environmental crimes in Russia is very high. The domestic laws of Russia lack specific mechanisms to impose environmental liability for small environmental crimes. Legal responsibility includes things such as education, protection, criminalization and punishment, which includes both natural persons and legal persons, and includes illegal acts such as damage, destruction and unreasonable use of natural resources, destruction of ecosystems and natural landscapes. And finally, the compensation is complete and perfect. There is a legal vacuum in Russia that means there is no responsibility. Responsibility for environmental crimes is foreseen by laws and its implementation is carried out by the government. Meanwhile, in Russia, most of the crimes known as environmental crimes have not been criminalized. The criminal law of the Russian Federation has generally prohibited activities that disturb the balance of nature and have destructive effects on the environment, health, and people's lives, and has not addressed the examples of these activities as necessary. This has caused the legal liability of environmental crimes in other countries to be harder than in Russia¹⁸. According to chapter 26 of the Criminal Code of the Russian Federation, the victim of environmental crimes must be a natural person whose criminal act has caused material, physical or spiritual damage to him, or a legal person whose criminal act has caused

damage to his property and reputation. In Russian and European laws, there is a difference between environmental damage and ecosystem damage. In Russia, in economic development programs and in business and management research, the concepts of environmental damage and ecosystem damage are used synonymously. Russian environmental laws pay much attention to the development of the local legal system, which does not provide the effect of environmental protection. This issue, which causes the failure of the category of the official need for legislation, does not occupy a proper place in the course of public awareness and education in society, especially in the business environment, environmental and legal problems, and the issue of environmental protection. It does not find a place in profit-seeking situations; therefore, environmental damage is mostly denied or faced with differences in examples¹⁹. One of the reasons for the high number of environmental crimes in Russia is the difficulty of identifying and proving environmental crimes and creating a causal relationship between crimes and criminals. failure to determine the form of the crime, the content of the criminal act and its commission, as well as the failure to determine specific rates for calculating the amount of damage, the methods of calculating damages and compensating actions caused by environmental violations, the conflict between the definition of natural resources and environmental protection standards in the law Russian Federation, the necessity of harmonizing domestic laws on environmental protection and international laws within the framework of obligations of the Russian Federation under international treaties are among the things that should be considered as weaknesses in the laws of the Russian Federation²⁰. Russia is a member of Basel Conventions 1989, MARPOL ,1987SITES 1973, Montreal²¹Protocol 1987on Substances that Deplete the Ozone Layer and Climate Change²² Convention 1992. Membership in these conventions requires governments to create

¹⁸ . Aleksey, Fatyanov, et al, 2018

¹⁹ . Gerasimenko, Alexey, 2020

²⁰ . Igorevich Golubev, Stanislav, et al, 2020:535

²¹ . Montreal Protocol on Substances that Deplete the Ozone Layer/ /1987/09/16 /26369

v1522.pdf

²² . United Nations Framework Convention on Climate Change/ /1992/05/09 /30822v1771.pdf

internal regulations and laws to deal with environmental destruction and pollution.

2-3- African countries

One of the dangerous environmental crimes in Africa is the illegal disposal of transnational hazardous waste. Electronic waste is illegally imported from North Africa to the west and south of this continent. Also, a large amount of this waste is produced in South Africa. It is estimated that this problem in Africa is a multi-billion dollar industry. During 1980s, approximately 15 African countries) including Ghana, Somalia, Cote d'Ivoire, Kenya, Guinea, Guinea-Bissau, Zimbabwe, and South Africa) participated in the establishment of hazardous waste disposal sites outside their borders. In the meantime, government officials have also played a role in this matter. Organized crime groups were also involved in the global chain of illegal transportation of about 11 tons of hazardous waste during the 1990s. According to the reports, these groups were affiliated with the mafia groups of the waste industry in Italy, which have the monopoly of this industry in Italy. It is estimated that in 2008, the illegal waste disposal industry in Italy generated around 20.8 billion euros. In 2006, it was discovered that nearly 500 tons of chemical waste had been dumped near Abidjan, on the Ivory Coast. This is a serious threat to the security of human life, not only in a country, but in the entire region. Thousands of people needed treatment for various diseases caused by these substances and pollution. The victims usually had symptoms such as severe headaches, vomiting, skin rashes and some even had breathing problems. African developing countries, which are weak in terms of governmental capacity and power, are the main losers in the development of pollution and environmental crimes²³. Another significant problem on the continent is wildlife trafficking, and South Africa and the Southern African

Development Community (SADC)²⁴ have declared this crime a priority crime. In the meantime, especially, the illegal hunting of rhinoceros has attracted the attention of the public, the international community, and local governments. Other plant and animal species with less fans are also separated from their habitats and smuggled around the world. A rare species of penguin is also considered as one of the most trafficked and cycads are the most threatened plant species on this planet. Generally, in this continent, illegal extraction of natural resources, logging, mining, overfishing, smuggling of toxic, nuclear or electronic waste, and industrial dumping are all worrying issues. So far, a series of national and international protective and regulatory measures have not been able to disrupt the consumer markets and criminal networks that allow these businesses to flourish. While environmental protection is often considered a pastime of economic elites of various nationalities, the impact of environmental degradation is disproportionately greater on the poor people. This is while the role of transnational reactions in dealing with environmental crimes is as effective and important as the role of protection and monitoring measures at the national level. At the same time, the trade of endangered species in Africa, originating in sub-Saharan Africa, is moving towards Asian markets, which needs to be controlled and countered, both at the national and international levels²⁵. Meanwhile, no country in sub-Saharan Africa has specific laws to control electronic waste. Most of the recycling is done informally and without considering the huge damage to the environment and human health, using primitive methods to recover precious metals²⁶. by the mid-2000s, acid mine drainage in South Africa's Gauteng province, the center of that country's gold mining industry, had reached a critical point. The extraction of metals such as gold, silver and copper leads to the exposure of the region to the weather contaminated with ore containing Sulphide. This leads to the formation of several harmful substances, such as sulfuric

²³ . Lambrechts, Derica, and Michael Hector, 2016:260

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²⁴ . South African Development

²⁵ . Hübschle, Annette, and Andrew Faull, 2017:56

²⁶ . Maphosa, Vusumuzi, and Mfowabo Maphosa, 2020

acid. If not controlled, water drainage from these mines may flow into streams or rivers or infiltrate into groundwater and, as a result, eventually enter groundwater systems that are interconnected in large areas. As a result, in general, such water that comes out of mines is very dangerous for the health of living organisms. For example, the water pollution crisis in one of the provinces of South Africa was simply because some mining companies had left the mines without neutralizing the silt dams, and this crime led to the flow of acid-containing water into streams, dams. And underground water sources throughout the province²⁷.

In Nigeria, the widespread pollution of oil spills during its discovery, since 1956, brought severe environmental challenges. the United Nations Development Program (UNDP) estimated that between 1976 and 2001 alone, there were approximately 6,800 oil spills totaling 3,000,000 barrels of oil. Similarly, reports show that there were 253 oil spills in 2006, 588 oil spills in 2007, and 419 oil spills in the first six months of 2008. In the report presented by amnesty international, the water system of the Niger Delta (rivers, streams, ponds) has been polluted due to oil spills and the discharge of waste from oil companies. Water pollution caused by oil spills causes the death of fish and damage to the reproductive process of aquatic animals. According to this report, the species of shellfish in this area has become completely extinct, which has seriously affected the livelihood activities of the native people of those areas. in the report of some other researchers, it is stated that the emissions resulting from the burning of gases containing toxins such as benzene, nitrogen oxides, dioxin, etc., increase the risk of diseases. in addition, the number of 123 burning areas in Nigeria discharges an estimated 45.8 billion kilowatts of heat into the atmosphere. According to this report, Nigeria accounts for more than 25% of the global gas burner share. this source of strong pollution in the Nigerian Delta has cause serious health risks such as asthma, bronchitis, skin problems and respiratory problems. the

Nigerian government has been required to protect the environment and pay attention to public safety in this regard in section 20 of its constitution, with the amendment of 1999. In Section 2 of the constitution of this country, provisions for economic activities and compliance with the environmental effects of these activities for the public sector and the private sector have been considered²⁸. most African countries are members of the CITES, MARPOL, Basel, Vienna Convention and the Montreal Protocol related to this convention in 1987, and therefore, from an international point of view, they are responsible for protecting the environment and dealing with crimes caused by destruction and pollution. Therefore, they are obliged to criminalize environmental crimes in their domestic laws.

2-4-Latin American governments

In Latin America, deforestation, mining and road construction are among the major crimes. latin America has adopted strong environmental laws. However, deforestation, illegal mining, encroachment on protected areas, illegal road construction, land allocation for illegal exploitation and other similar practices all show how weak and unsustainable environmental protection is. the region's two main tropical regions, Central America and the Amazon basin, together contain half of the planet's remaining rainforests. the actions of the government are contradictory and different from the public interest due to the inconsistency of different organs. therefore, often, non-governmental actors form relationships and even judges have differences of opinion in the procedure of dealing with environmental cases. a set of semi-autonomous factors with their freedom of action create unexpected methods and certain systematic patterns²⁹. mining activities, such as gold mining, have created significant negative social and environmental effects and have weakened the effectiveness of enforcement mechanisms to prevent environmental crimes related to gold mining activities. there are environmental laws to prevent environmental crimes in gold mining; but only the rules in the writings are not enough to

²⁷ . Minnaar, Anthony, 2020:230

²⁸ . Chuks-Ezike, Chukwuemeka, 2018

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²⁹ . Ungar, Mark, 2017:68

ensure that all social actors follow them³⁰. in other words, although several studies show that it is possible to see a reduction in environmental crimes following the application of punishment, other studies show that there is limited criminal prosecution against environmental crimes; but it is not enough to create deterrence³¹. it seems that, while the distinction between sanctions and deterrence approaches is useful for theoretical purposes, in practice, most environmental regulatory systems employ a combination of both³². therefore, these considerations raise issues about the factors that hinder the effective implementation of environmental rules and thus weaken deterrence and compliance. thus, in summary, deterrence and compliance perspectives highlight different explanations for ineffective enforcement against illegal activities.

Among Latin American countries, Peru is the largest producer of gold and the fifth largest producer worldwide³³. therefore, the gold mining sector is important for the national development of this country and is considered as one of the government's priorities. in recent years, one of the sub-sectors that has become very important in the national sector of gold mining is gold mining in the traditional way and on a small scale. Such activities have created significant threats to the existing biodiversity in the region. In particular, some of the major environmental damages produced include water and air pollution using toxic entities such as mercury, and deforestation by removing trees to search for gold in alluvial subsoils³⁴. as a result of these activities, wildlife habitats have been destroyed, biodiversity has decreased, soil has been degraded, and water resources have been polluted that are used by rural communities and animals alike also, the increasing level of deforestation even in prohibited areas is one of the evidences that show that illegal mining in Peru is a big problem. The term environmental crime in Peru may be used to describe a wide range of" behaviors that range from individual acts such as littering to large-scale releases of

toxic substances by multinational corporations "³⁵. on the other hand, in this country, national government institutions set budgets for local and regional governments. therefore, overall, the budget for government agencies that work to participate in the enforcement of the law against illegal mining has always been insufficient.

Crimes against the environment in Brazil also occur at an unacceptable rate. this is related to the developing situation of this country. serious crimes in Brazil include deforestation, selling species and moving them from their habitats, and pollution by industrial waste. although the federal government tries to formulate laws with the aim of minimizing the destruction of natural resources and protecting the environment; but these laws have not produced effective results. statistical data shows the fact that more than 12,000 violations were committed in a 60-month period in 2011, which reaches a monthly figure of 200 violations per month. deforestation is the first and biggest environmental crime in this country³⁶. in general, Latin American efforts to prosecute environmental crimes focus on the three-part structure of the police, the prosecutor, and the court. For a long time, the police has the authority to enforce environmental laws; however, the weak record of this institution and the distinct nature of this duty have led to the formation of special environmental units in the police security structure. Latin America has been a pioneer with environmental police units in half of its countries. Since 2015, six Latin American countries, Chile, Costa Rica, Brazil, Mexico, Peru, and Bolivia, have established separate court branches for environmental cases; But the issue of prosecuting such crimes is facing many obstacles, which further reveals the weakness of the existing laws. the need for evidence that only the police can obtain through field investigations, the inability of judges to try criminals due to the lack of transparency in crimes and the definition of crime boundaries, as well as the lack of police equipment to pursue criminals are among the basic problems in dealing with environmental crimes in America. it is Latin. in some countries

³⁰ . Robinson, Elizabeth JZ, Ajay M. Kumar, and Heidi J. Albers, 2010:27

³¹ . Lynch MJ, Stretesky PB, 2011

³² . Dasgupta, Nandini, 2000:950

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³³ . Kumah, Abraham, 2006:320

³⁴ . Childs, John, 2014:129

³⁵ . Finer, M., and S. Novoa, 2015

³⁶ . Roque, Patrícia Gonçalves, et al, 2018:52

such as Ecuador, the police need the necessary resources to pursue criminals who do not even have access to a suitable vehicle³⁷.

Latin American countries such as Peru, Brazil, Ecuador, Chile, and Bolivia are members of the Basel, Marpol, CITES and climate change conventions. in these conventions, the member states are obliged to criminalize environmental crimes. the member states of these conventions have duties and responsibilities for the systematic and planned protection of the environment. the environmental rights movement in the United States and the development of environmental laws can be traced back more than 100years. for example, the rivers and harbors Act of 1899is often considered the first environmental criminal law in the United States. this law includes regulations and strict liability that makes dumping waste in navigable waters of the United States a crime (ie punishable by a fine or less than one year in prison). for Congress,³⁸ however, interference in interstate commerce has been a higher priority than environmental protection. until the 1970s, US lawmakers failed to pass environmental laws that effectively criminalized some environmental crimes³⁹.the organization for setting regulations and the organization for the implementation of anti-environmental crime activities, which was established in 1970, represents a part of the continuous national effort to protect humans from environmental pollution. this organization is responsible for translating environmental laws into specific requirements, implementing those requirements, and sanctioning companies or individuals who fail to comply with them. the agency maintains civil and criminal programs to help enforce key requirements of federal environmental law. among the plans of this organization is the creation of 10regional offices to implement civil enforcement actions on a daily basis, and through its criminal affairs enforcement office, the environmental crimes

unit pursues criminal violations of environmental laws, which is exclusively focused on prosecuting environmental criminals. it is focused. environmental laws enacted by congress draw limited distinctions between actions that can result in criminal, civil, or administrative enforcement. in principle, there is no basis for determining what makes an environmental case criminal. Since environmental crimes include a multitude of violations, they are usually divided based on the type of environment affected, such as air, water, or soil. the clean air law and the clean water law deal with two ecological media (air and water). often, environmental crimes include several violations. for example, a single event may contaminate soil and water (e.g., toxic chemicals are buried underground and eventually leak into the nearest watershed). violations that cause water pollution occur as a result of the entry of dangerous chemicals into the watershed. most violations include industrial discharge (intentional or unintentional), agricultural runoff pollution, and water system and distribution pipe failures⁴⁰.about 63million people, roughly one-fifth of the US population, have been at risk of using potentially unsafe and contaminated water more than once in the past decade⁴¹. water pollution cases can sometimes have such a significant impact that contaminated areas become completely uninhabitable. in the United States, public opinion generally classifies environmental crimes on par with violent crimes involving physical acts, such as rape, robbery, and murder. however, despite the fact that environmental crimes cause significant costs, victims of environmental damage are not widely recognized as victims of "crime "and often cannot be pursued as victims of environmental crime in the investigation process. most discussions of environmental crimes refer to the destruction of the environment on a macro level, such as the pollution of rivers or oceans on a large scale. this means little effort to describe the spread and real consequences of environmental crimes⁴². often,

³⁷ . Ungar, Mark, 2017:70

³⁸ . Uhlmann, David M, 2009:1223

³⁹ . Lynch, Michael J., Paul B. Stretesky, and Ronald G. Burns, 2004:335

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⁴⁰ . Gibbs, Carole, and Rachel Boratto,2017

⁴¹ . PRR10BHOO, NPDES TRACKING NO, 2020

⁴² . Sazdovska, Marina Malis, and Aleksandar Ivanov, 2012:70

the status of victims of environmental crimes is not clear; because its side effects do not appear immediately. it may take years for the effects of the injury to become apparent. diagnosing and accepting damage is difficult and very technical and specialized for the jury and the court. for example, convincing a jury that an environmental criminal is as dangerous as a drug dealer or murderer is a serious challenge. the victims of environmental crimes challenge the traditional victimology approach; because they are often sacrificed collectively and can include unconventional cases⁴³. in the United States, the criminalization of environmental violations began in earnest in 1982. the federal government's department of Justice created an environmental crimes unit to prosecute criminals. in 1984, this law was revised and reforms were made regarding the handling of crimes related to water pollution. after that, every few years, these laws were modified many times as needed. a number of cases related to environmental crimes are referred to the Department of Justice by the United States Environmental Protection Agency (EPA). the punishment for environmental crimes in the United States includes imprisonment and payment of a fine, the length of imprisonment and the amount of the fine depends on the severity of the crime committed⁴⁴. the United States of America ratified the Basel Convention in 1990 and the Marpole convention in 1980. this country also ratified the CITES convention in 1974. although this country ratified the climate change convention in 1994, but during the presidency of this country, fluctuations in the behavior of the officials towards the Paris agreement of 2015, which was the continuation of the climate change convention and the 1997 Kyoto Protocol, can be seen. In 2017, the US government withdrew from the Paris agreement, which was implemented in 2016, and returned to this agreement in 2021 during the current presidency. meanwhile, the United States of America is considered the second largest producer of greenhouse gases in the world. The behavior of countries that have a

significant and effective contribution to environmental destruction and pollution is very effective in the fate of dealing with the resulting crimes⁴⁵.

2-5-Western European states

In Europe, the 1990 European Convention on Environmental Protection developed criminal laws; but these laws were never enforced. in the European Convention, a serious violation of environmental protection regulations is directly considered a crime. the European Union forces its member states to criminalize environmental crimes in their national laws. in Italy, since the late 1980s, toxic waste has been systematically burned and buried illegally. organized mafia crimes play an important role in illegal waste management in this area. however, organized crime mafias are not the only actors. although in public opinion, mafia clans are the most important subjects involved in the illegal trade of waste; but in this field, many businessmen and companies play a significant role. corruption is a vital element that connects all the actors in the waste sector, and is characterized by the granting of licenses and public permits; where the mafia's power of intimidation is particularly effective. weak executive power at both the national and regional levels has been used to explain this widespread illegality; but the responsibilities are actually at different levels of the government, ranging from inefficient bureaucracy to political support and criminal violations⁴⁶.

The London Illegal Wildlife Trade (IWT) 2018 conference was the fourth and largest meeting of the IWT, initiated by the UK government. In this conference, illegal wildlife trade was defined as one of the serious crimes that must be dealt with. the convergence of protection and crime, showcased at the 2018 London IWT conference, is characteristic of a protection policy landscape that increasingly calls for responses to IWT based on legal and judicial reform, criminal investigations, intelligence gathering and enforcement. are the law, takes into account. the opening paragraph of the declaration, which came

⁴³ . Shaw, Callie, 2021:599

⁴⁴ . Johnson, Erik W., Jennifer Schwartz, and Alana R. Inlow, 2020:311

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⁴⁵ . Shakibai et al., 211:1400

⁴⁶ . Illés, Andrea, and Kristof Geeraerts, (2016:141

out of the IWT conference in 2018, was signed by more than 60 countries. This paragraph was an agenda to address the illegal wildlife trade as a serious organized crime, which carries a wide range of consequences. In general, the message of this paragraph is that: "we, the representatives of the governments, gathered in London on October 11 and 12, 2018 and recognized the significant economic, environmental and security harms and call on the international community to, together, act to support and create urgent collective action to tackle the illegal wildlife trade as a serious crime, committed by organized criminals, and close illegal markets. "the UK government encouraged conference-goers to follow the hashtag #End_WildlifeCrime "on social media for the latest news and information. the 2018 IWT London conference adopted a broad definition of serious crimes and the slogan "End Wildlife Crime "in ways that reduce the complexity of identifying the many different forms of illegal extraction, harvesting and trade in biodiversity. this was the 4th World Conference on IWT organized at the initiative of the British Government. as a meeting at the level of heads of state, it brought together representatives of the government, the army, non-governmental organizations, the private sector, academics and community representatives. another issue discussed at the conference was the increase in poaching of elephants in East Africa and rhinos in South Africa. however, since 2008, international calls for urgent action to prevent the extinction of these species as a result of illegal wildlife trade have been raised. In addition to rhinoceroses and elephants, the concern of illegal extraction and trade of various types of penguins, eels, abalone, timber and other types of plant and animal species was also among the concerns raised)⁴⁷. In general, at the European level and beyond, the efforts to deal with environmental crimes have often been thwarted by an unsystematic and heterogeneous enforcement approach, in which the organizations related to environmental crimes behave without actually

reducing the dimensions and scope of the phenomenon in question⁴⁸. In the UK, Holland, Germany and Belgium until mid-2009, criminal penalties were used to deal with environmental crimes, but since 2009, the penalties are mostly civil and administrative. In England and Wales, the environmental organization can assume the role of prosecutor and determine punishment for criminals. In the Netherlands, the punishments include a combination of criminal, administrative and civil punishments, such as imposing fines or imposing some sanctions on criminals. In Germany, a combination of criminal punishments such as imprisonment and civil punishments such as fines and other less severe punishments are also applicable in dealing with environmental criminals⁴⁹. Western European countries are also members of conventions that punish environmental crimes.

Conclusion

While many governments have put the policy of dealing with crimes and environmental pollution among their priorities in their macro plans; but a number of governments are also known as the main accused in providing a suitable platform for the occurrence of crimes and the severity of pollution and environmental destruction. Due to the transnational nature of environmental crimes, governments that have taken strict positions in dealing with environmental crimes are more prepared to exercise global jurisdiction in dealing with the perpetrators of these crimes. In practice, such governments do not ignore the role of other governments based on the real factors formed in their policies and practical plans to deal with environmental crimes, and even in setting their own laws, they try to attract cooperation and conclude a memorandum of understanding. and the contract to advance their environmental goals. for example, the issue of confrontation between the governments of Australia and Indonesia in preventing timber smuggling can be considered. In the laws of these two countries, the import of Indonesian and Australian timber and the use of

⁴⁷. Nellemann, C., R. Henriksen, A. Kreilhuber, D. Stewart, M. Kotsovou, P. Raxter, E. Mrema and S. Barrat (eds). 2016

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⁴⁸. Illés, Andrea, and Kristof Geeraerts, 2016:142

⁴⁹. Faure, M. G., & Svatikova, K. 2012:259

its proceeds are criminalized in both countries and the commission of this crime can be prosecuted in both countries. the issue of criminalizing environmental crimes in the domestic laws of the governments is the basis for applying the global jurisdiction of the governments in dealing with these crimes at the international level. the results obtained in the examination of the titles of environmental crimes in the internal laws of the governments that have developed laws for criminalization indicate that the main crimes are: deforestation, wildlife trafficking, creating weather pollution. (including polluting river water, etc., emission of gases and harmful substances in the air, etc.), transportation and discharge of hazardous waste, excessive use of aquatic and water resources of open seas, marine pollution. in the internal laws of most states, these crimes have been criminalized. although the types of punishments are different; but what is important is the issue of criminalization in the internal laws of the states. the coordinated procedure of the governments in dealing with environmental crimes leads to the formation of an international

procedure in preventing environmental crimes and, as a result, the realization of their common goals. as mentioned in the text of this research, most of the governments in different regions of the world are considered contracting parties or treaty parties, and in any case, they are required to observe and implement the provisions of the treaties. on the other hand, the provisions of treaties such as Basel Convention, MARPOL Convention, CITES Convention, Paris Agreement and Montreal Protocol oblige governments to criminalize environmental crimes and establish regulations and laws to deal with crimes caused by destruction and pollution. Therefore, the formation of a coordinated procedure in dealing with environmental crimes on a large scale and applying the global jurisdiction of governments to deal with crimes committed in areas outside the jurisdiction of governments and areas that are not under the jurisdiction of any government is likely.

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