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THE PROTECTION OF THE ENVIRONMENT IN ARMED CONFLICTS

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ABSTRACT

This research aims to analyze the normative regulations of International Humanitarian Law, focusing on examining norms aimed at protecting the environment to highlight the interdisciplinarity between the aspects of International Human Rights Law, International Environmental Law, and International Humanitarian Law and to demonstrate the effectiveness of applying the referred protection norms to the environment during armed conflicts. As a result, the armed conflict gains profound relevance, as it fits the classification of anthropic intervention since they are acts of hostility caused by human activities that result in a degradation of environmental quality, causing various ecological consequences and, thus, can give rise to accountability for non-compliance with the humanitarian regulation. Within this perspective, this research will use the scientific deductive method, with a rationalist perspective as the only way to reach knowledge, resorting to the descending chain of reasoning, from general to detailed analysis, by using syllogism.

Keywords: International Humanitarian Law; Effectiveness of standards; Environment.

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A PROTEÇÃO DO MEIO AMBIENTE NOS CONFLITOS ARMADOS

RESUMO

A pesquisa tem por objetivo analisar o conjunto normativo do Direito Internacional Humanitário, tendo como enfoque o exame de normas voltadas à proteção do meio ambiente, de modo a evidenciar a interdisciplinaridade entre as vertentes do Direito Internacional dos Direitos Humanos, Direito Internacional Ambiental e Direito Internacional Humanitário, bem como demonstrar a efetividade da aplicação das referidas normas de proteção ao meio ambiente em cenário de conflitos armados. Em razão disso, o conflito armado ganha grande relevância, posto que se adequa à classificação de intervenção antrópica, uma vez que são atos de beligerância provocados pela ação humana que importam em uma degradação da qualidade ambiental, ocasionando diversas consequências ao meio ambiente e, por isso, podem ensejar a responsabilização pela inobservância ao regramento humanitário. Nessa perspectiva, a pesquisa utilizará o método científico dedutivo, com perspectiva racionalista como única maneira de chegar ao conhecimento, ao recorrer à cadeia de raciocínio descendente, da análise geral para a particular, por meio do emprego de silogismo.

Palavras-chave: *Direito Internacional Humanitário; Efetividade das normas; Meio ambiente.*

INTRODUCTION

study aims to analyze the applicability of international law standards on the protection of the environment in the context of armed conflicts. In the desired perspective, this work presents a research methodology based on books, articles, and journals to collect information related to the theme addressed, and uses the database of the International Committee of the Red Cross as a normative source of International Humanitarian Law (IHL).

The methodological examination will be carried out in three phases and will be based on a theoretical, exploratory, and semantic investigation, and will be based on example cases, to construct a systematized study.

Therefore, firstly developing a detailed study about the foundations by which the various fields of Law associated with the proposed theme are structured is indispensable, since it is linked to International Environmental Law and IHL, and may also touch International Human Rights Law, and thus, show that the object of study is related to various fields of Law.

After understanding the reason why the object of the research is associated with these legal fields, analyzing the international normative framework applicable to this theme becomes substantial, in a second moment. Indeed, since in Law, in theory, legal standards are aimed at the protection of a certain legal good, whenever legal precepts are violated, the possibility of liability arises, which is why, in a third moment, criminal liability for environmental crimes will be inquired.

Before reaching the heart of the issue, an aspect that needs to be clarified for a better understanding of the problem corresponds to the meaning of the word "environment" and its concept, which presents itself as a term of great significant basis. In this sense, we must clarify that, based on an essentially semantic analysis, words sometimes have convergent meanings, and at other times have diametrically opposed connotations.

Despite the discussions about the word and considering the objective of the theme proposed here, environment can be defined as a set of physical, biological, and chemical factors that surround living beings, influencing them and being influenced by them.

Given the objectives of the research, the legal meaning of the word environment gains relevance, to the extent that its conceptual scope depends on the theoretical line used. If the restrict theory is used, the conceptualization is restricted to natural elements such as air, fauna, soil, etc., whereas the broader theoretical line, in addition to considering the natural elements,

contemplates human elements to conceptualize the term, such as artificial, cultural, and social elements.

Despite the dichotomous division of word, note that the environment is considered one and indivisible, therefore, discussing this division is not needed.

In this perspective, for strictly didactic purposes, the classification proposed by Silva (2005) gains relevance by contributing to a comprehensive conceptual understanding of the environment, since in addition to including the natural elements, it supports, in this understanding, the cultural, artificial, and work elements.

Although the environment is understood as the meeting of natural, social, cultural, and work elements, in a broad legal conception, note that it should be assimilated as a system of integral elements among themselves, conceived as a true symbiosis, and not as the mere sum of its integral factors. Thus, the environment must be assimilated in its fullness, as a complex system (CASTRO, 1973). Likewise, focusing on the theories known as anthropocentrism and biocentrism, conceptions resulting from the way man interacts and perceives the environment (ROSSETTO; ZARDIN, 2019), is vital, as well as using history as a tool for producing a relevant study.

Renaissance emerged in Europe between the 14th and 16th centuries, and is considered an important cultural, artistic, and scientific movement, by which rationalist thought was valued, which placed man at the center of the universe, by advocating the use of critical thought as a way of producing knowledge. This movement rescued the artistic and philosophical conceptions that date back to Classical Antiquity, contributing, later, to the rupture of the predominant paradigm in scientific production until then.

As a sequel to the prominence of this mode of thought, the anthropocentric conception influences, at first, the way man perceives the environment. In fact, the environment will be understood as a mere economic product, with the human person assuming the role of superiority in relation to other living beings, to perform an action on the environment based exclusively on his own interest, thus appropriating the environment.

In counterpoint to this theory, the biocentric conception gains relevance, which proposes the lack of superiority of the human being in relation to the environment, both having equal relevance and their relationship being marked by interdependence. Thus, all beings are appreciated, regardless of their usefulness or interest to the human being.

Note that the conceptions were not exhaustively worked. For example, we can mention the ecocentric conception, which defends an intrinsic value of nature, according to which it would be understood as an end in itself, seeking to overcome the anthropocentric view.

Nevertheless, the ecocentric conception surpassed the Kantian-anthropocentric matrix and, consequently, expanded the conceptual and normative limits beyond the human being, embodying the cultural and ethical values that sustain international relations in a risk society. Recognizing an end in itself inherent to other forms of life is possible, attributing to them a dignity (SARLET; FENSTERSEIFER, 2008).

Far from exhausting the matter, bringing up the discussion about which of the conceptions would be adopted from the perspective of International Environmental Law is appropriate. Some authors advocate for overcoming the adoption of the anthropocentric conception at the international level, recognizing the need to conjugate the anthropocentric and ecocentric conception, to achieve a harmonic relationship between man and the environment (ARANTES, 2011).

In this logic, the study of conceptions is of paramount importance for the development of the theme, as will be demonstrated, since the way the human person perceives the environment will influence the way its legal protection will be guaranteed during the course of belligerence acts.

1 FUNDAMENTALS OF IHL AND OF INTERNATIONAL ENVIRONMENTAL LAW

War, being presented as a social phenomenon, presents itself as a reality, and we can identify that the "centuries of war far surpass the centuries of peace" (PALMA, 2009, p. 10).

Wars, for being the social phenomena of greater impact, are subject to regulation (REALE, 2000, p. 28-37). In this sense, Guerra (2021, p. 215) explains:

> Conventional International Humanitarian Law applies only in the event of armed conflict. It does not concern situations of internal tensions or internal disturbances, such as certain isolated acts of violence that can take place in the territory of a State without constituting an armed conflict without an international character. It only applies when an armed conflict has been triggered and applies equally to all parties involved without considering who initiated hostilities. Some fundamental standards of this legal system have acquired the mandatory character (*jus cogens*) due to their

> acceptance and recognition by the States, since they are essential for the survival of the international community.

War conflicts of interest between States are presented as a latent reality in international society and distinguish between the legal concepts of war and armed conflict regarding their objectivity, subjectivity, materiality, and formality (GUERRA, 2021).

For an act to be considered war, it must necessarily obey the material and formal prisms. The first consists of the use of the armed forces, whereas the second causes a change in legal status between countries involved in the declaration of war, causing the disruption of diplomatic relations between the warring States (GUERRA, 2021).

Regarding the classification aspects, note, from the objective point of view, that this occurs with the use of armed struggle, that is, the effectuation of hostilities. In the subjective perspective, this materializes in the desire to carry out the war, when the *animus belligerandi* is observed. Thus,the cumulative presence of the four requirements is necessary to consubstantiate the war. (GUERRA, 2021).

From this perspective, this classification proved insufficient to include new social facts that occurred after the First World War, due to the processes of decolonization, and that often did not manifest themselves on an international basis. Thus, the armed conflicts nomenclature gained preference within the scope of IHL, since the expression has a higher field of incidence and expands the objective limits of the legal conceptualization of war. Being appropriate, note the words of Guerra (2021, p. 215) regarding the distinctive aspects of the terms:

> Note that the expression “armed conflicts”, which is not the same as war, does not oblige third-States to neutrality, understanding this as a claim of a third-state of not committing itself to the act of belligerence that occurs between two nations in conflict.
>
> Moreover, treaties between the parties to the fight are not suspended or broken, nor is there need for diplomatic disruption. War is a legal status that has been defined with the evolution of humanity, unlike the armed conflict, which had notoriety in the twentieth century and has its strength in the humanitarian notion; armed conflict does not break the status of Peace.
>
> There is no talk of diplomatic relations in the state of war, considering the irreconcilability of these two concepts, but in an armed conflict diplomatic relations can normally exist.

The issue of armed conflict touches on IHL, since it consists of an international, conventional, and customary legal rule, specifically aimed

at protecting and reducing the suffering of persons and safeguarding the assets affected, and limits, for humanitarian reasons, the right of the parties to freely choose the methods and means used in the conflict (GUERRA, 2021).

Although armed conflicts are closely linked to IHL, this social phenomenon will involve an analysis in the light of International Environmental Law, since its harmful consequences produce relevant impacts on the environment. Therefore, "armed conflicts" fall under anthropic intervention in the environment and, as such, can cause environmental degradation, and their effects are perceived in the social, economic, and cultural field.

Corroborating this reasoning, the use of two toxic chemical compounds, known as orange agent, widely used by the United States of America, as a chemical weapon, in the Vietnam War (between November 1955 and April 30, 1975) is mentioned as a consequence of the armed conflict on the environment. Another example is the spill and burning of oil during the Gulf War, between 1990 and 1991, in Kuwait, by Iraqi fighters.

Bombings in the Japanese cities of Hiroshima and Nagasaki during the Second World War can also be pointed out as striking examples. In all these cases the consequences lasted until the present day, such as the destruction of the natural habitat of several species, as well as their extinction and even the infertility of the soil for planting.

Note that the examples exposed here were not exhaustive, and countless others demonstrate the effects caused by armed conflicts in the environment, such as the high pregnancy rate of children with some type of disability, such as cerebral palsy, extreme facial disfigurement, and cancer (ARAUJO, 2014, p. 14-15).

War is a subject that is related to the fields of IHL and International Environmental Law. However, by referring specifically to the study of the environment, it gains greater or lesser degree of relevance, to some extent, depending on the legal field used.

International Environmental Law ends up employing a closer look at the environment, with it as its main focus. The principles that govern it, such as the principle of ecologically balanced environment, sustainable development, cooperation, among others, place the environment in a prominent position.

However, despite doing that, the importance given to the environment by this field is under the anthropocentric conception, according to Fabiano Melo Gonçalves de Oliveira (2017, p. 10):

> According to international documents […] the protection is anthropocentric in nature. However, it is not the classical conception of anthropocentrism, but what the doctrine calls "extended anthropocentrism", which combines the interaction of the human species with other living beings as a guarantee of survival and dignity of the human being himself, as well as the recognition that the protection of fauna and flora is inevitable for intergenerational equity, for safeguarding future generations.

Undoubtedly, in view of the alarming rates of environmental degradation, the environment protection ends up being closely linked to the idea of the very preservation of the human species (GUERRA, 2021). In the context of IHL, despite the existence of a protection of the environment, its essence is closely linked to the protection of human dignity during hostilities, so that the safeguarding of the environment is a reflex, since the event of uncertainty between the protection of the environment or the intended military advantage has a certain subjectivity.

Since the field of incidence of this research is focused on the protection of the environment during armed conflicts, the normative set of International Environmental Law will not be used, since the protection of the environment takes place in times of peace and, as a logical consequence, the study will use the main legal framework regulating armed conflicts, thus why the IHL standards will be used.

2 MAIN IHL POSTULATES AIMED AT ENVIRONMENT PROTECTION

After the initial considerations, we analyze the main IHL rules that are in line with the environment protection in times of armed conflict, whether or not they are included in the main normative scope of this legal field. As mentioned, the classifications of the environment in natural and artificial are of great relevance for the better understanding of the proposed theme. In this sense, when examining the specific IHL rules for environmental protection, this classification will be used for didactic purposes. The study will fall on the main postulates of protection of the natural environment, then, the protection of the artificial environment.

The main IHL legal rule for the protection of the natural environment is the Additional Protocol I to the Geneva Convention of 1949, drawn up in 1977 (Decree No. 849/1993). In this instrument, the Articles 35 and 55 gain relevance; the first establishes a prohibition on the use of any method or means of war whose purpose is to cause severe, long-term, and widespread

damage to the environment. The second, determines that care be taken to protect the natural environment from severe, long-term, and widespread damage, due to acts of belligerence, as well as asserting that attacks on the environment are prohibited as retaliations. It turns out that the widespread, severe, and long-term terms do not meet a legal definition and, for the alleged violation to be substantiated to the standard, the presence of those requirements is necessary simultaneously (ARAUJO, 2014).

Article 56 of Additional Protocol I provides for indirect protection of the environment by providing that constructions and installation of dangerous forces, such as the dams, nuclear power plants and dikes, cannot be attacked and, even when they constitute a military objective, attacks can only be carried out if all possible precautions are taken, to prevent the release of these forces.

Another relevant legal rule on the protection of the natural environment is the Convention on the Prohibition of the Military or Hostile Use of Environmental Modification Techniques, 1977, in which it was enshrined in the Article 1, Paragraph 1 that the effects of environmental modification must be long-term or severe. However, unlike Additional Protocol I to the 1949 Geneva Convention, there is no requirement for the concurrency of those effects. Paragraph 2 of the same article also requires that signatories undertake do not encourage or assist any State to undertake the contrary activities stipulated in the preceding paragraph.

Article 2 of the same convention is also worth mentioning, considering that it brings the definition of the term techniques of environmental modification, which defines that any technique whose purpose is to deliberately modify or manipulate the natural process, the dynamics, composition, or structure of the earth will be taken as a technique of environmental modification.

Finally, still in the perspective of protection of the natural environment,we must highlight that the crimes provided for in the Convention under study are typified only in the intentional modality. This means that it is not incorporated in the criminal typification of crimes committed in the unintentional modality (ARAUJO, 2014, p. 12).

Regarding the protection of the artificial environment, the Convention and Protocol for the Protection of Cultural Property in the event of armed conflict (UNESCO, 1954) stands out. The first article, which brings the general provisions on the protection of these assets, defines as cultural property both movable and immovable properties that have significant

importance for the cultural heritage of peoples, such as the monuments of architecture, art or history, religious or secular, places that offer archaeological interest, groups of buildings that, in view of their ensemble, present a high historical or artistic interest, works of art, manuscripts, books and other objects of historical, artistic or archaeological interest, scientific collections and important collections of books, archives, or reproductions, as well as museums and large libraries.

The Convention provides that the protection comprises both the safeguarding and respect of those properties and imposes the commitment of the signatory States, even in peacetime, to protect cultural goods located in their area of sovereignty against the possible consequences of an armed conflict, and who shall take the measures they deem necessary for the effectiveness of what has been established, in the form of what Articles 2 and 3, respectively, specify.

To make the desired protection effective, Article 6 established that cultural properties must be marked by a distinctive emblem that facilitates their identification. In addition, Article 8 provides that those properties may be granted special protection, containing a catalogue of registration of shelters reserved to safeguard movable and immovable cultural properties of great importance, provided that they are at an appropriate distance from a large industrial center or any important military object, considered to be a vulnerable point and not used for military purposes, such properties have immunity, that is, signatories must refrain from any act of hostilities against them. Article 16 of the Convention determines the use of the emblem so that cultural properties can be identified, consisting of a shield in tip down, per saltire blue and white (the shield contains a royal-blue square, one of the vertices that occupies the lower part of the shield and a triangle, also of royal-blue color at the top, both sides occupied by white triangles).

That emblem may only be used to identify immovable cultural properties that have special protection; transport operations of cultural properties under the conditions laid down in the Articles 12 and 13; and makeshift shelters under the conditions laid down in the Convention Regulation. Regarding Article 17, when used only once, it will identify cultural properties that do not enjoy special protection; persons entrusted with surveillance functions in accordance with the provisions of the Convention Regulation; the personnel belonging to the cultural property protection service and the identity cards provided for in its regulation.

Note that signatory States can use technical assistance from the United

Nations Educational, Scientific and Cultural Organization (UNESCO) to protect their cultural assets, as provided for on Article 23.

Finally, all Contracting Parties must take the necessary measures to impose criminal and disciplinary sanctions on persons who have committed violations of the provisions of the Convention, whatever their nationality.

In this sense, the Protocol to the Convention for the Protection of Cultural Propriety in the event of armed conflict (UNESCO, 1954) states that contractors must prevent the export of cultural properties, when they are in a territory occupied by it, during the armed conflict, as well as restore the properties that are in the occupied territory and those that have been improperly moved to another territory after the cessation of hostilities, as provided for in Article 28.

The Convention on Measures to be Adopted to Prohibit and Prevent the Import, Export, and Transport and Illicit Transfer of Ownership of Cultural Properties, 1970, promulgated in Brazil by Decree No. 72,312/1973 can also be mentioned. It lays down in its Article 1 the definition of cultural properties, such as collections and rare specimens of zoology, botany, mineralogy and anatomy, and object of paleontological interest; antiquities of more than 100 years, such as inscriptions, coins and engraved stamps; objects of ethnological interest, etc. From reading the device the conceptualization for legal purposes encompasses an extensive list of objects considered cultural properties.

In this sense, this legal rule, in its Article 3, considers the conduct of import, export, or transfer of ownership of cultural properties to be illicit and, to suppress such actions, States must ensure the protection of such goods and take certain measures in their territory to safeguard them, such as contributing to preparing bills and regulations aimed at ensuring the protection of cultural heritage and, in particular, the prevention of the illicit import, export, and transfer of ownership of important cultural properties; promote the development or creation of scientific and technical institutions (museums, libraries, archives, laboratories, workshops, etc.) necessary to ensure the preservation and good presentation of cultural properties and to take educational measures to stimulate and develop respect for the cultural heritage of all, knowledge of the provisions of this Convention, etc., as established in Article 5.

To make the provisions effective, Article 14 provides that States may set up national services with the allocation of protection of cultural heritage

and allocate a certain amount to create a fund, to ensure the objectives provided for in the Convention.

Finally, it is essential to bring to the fore the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW), in particular its Protocol II (UN, 1980b). Article 3 of the Protocol includes the prohibition of the indiscriminate use of mines, traps, and other artifacts aimed at attacking non-military targets, which may cause immeasurable damage to objects and loss of life of civilians, as well as the use of some means that cannot be directed against a specific military objective, that is, when the combination of such effects is excessive compared with the intended military advantage. The wording of the provision shows that the cultural environment is, indirectly, protected, regarding the safeguarding of cultural properties and the established protection is relative, since, if the cultural properties constitute military objectives, that protection will not remain.

Article 6 establishes that the use of certain traps to destroy historical monuments, works of art, and places of worship that constitute cultural or spiritual heritage of peoples is prohibited. This protects both mobile cultural properties and immobile. Note that CCW brings in its text, specifically in its Article 9, the possibility of denunciation by any signatory State, if it considers that the provisions set out in the agreement and its protocols were violated.

Note that several other IHL standards relate to the protection of the environment, such as the Roerich Pact (1935); the Treaty on the Non-Proliferation of Nuclear Weapons – 1968; the 1972 United Nations Convention on the Prohibition of Biological and Toxin Weapons (BTWC), and the 1993 Chemical Weapons Convention (CWC).

3 POSSIBILITY OF CRIMINAL LIABILITY FOR ENVIRONMENTAL CRIMES

A fundamental question that arises when it comes to the practice of illegal conduct that harms the environment in times of armed conflict, is the possibility of criminal liability of offenders at the international level.

The international forum competent to judge individuals is the International Criminal Court (ICC), although in a non-exclusive manner, and its jurisdiction is applied in the crimes provided for in Article 1 of the Rome

Statute, understood as crimes affecting the international community.

The Rome Statute makes no direct mention of environmental crimes, from which emerges the difficulty of framing conduct harmful to the environment as those described as international crimes. However, this typicality applies indirectly, so that conducts harmful to the environment fall under the crimes provided for in the Articles 6, 7, and 8 (genocide, against humanity and war) (FREELAND, 2005).

Article 6 of the Rome Statute defines the crime of genocide as any act committed with the intention of destroying a national, ethnic, racial, or religious group and establishes requirements for its configuration. There is no peaceful understanding whether the term "cultural genocide" integrates the conceptualization in the field of International Criminal Law. However, considering that this study adopted the broad concept of environment, including the cultural environment, the acts of environmental degradation in times of armed conflict, with the purpose of annihilating a group, considerably affecting the capacity to maintain its culture and life, can be considered a crime of genocide, provided that the conduct is intrinsic, in addition to physical annihilation, the intention to exterminate the cultural identity of that people (FREELAND, 2005).

Although the legal interpretation exposed may be feasible, real difficulties persist in framing the harmful conduct, when the act is directed solely to the degradation of the natural environment. Nevertheless, it is possible, provided the destruction of natural resources is associated with the desire for cultural destruction and physical extermination of the group, as seen in the words of Freeland (2005, p. 133):

> […] The drainage of the swamps of southern Iraq or the destruction of forests on which local indigenous groups depend for their livelihood may fall under this description […] If an extension of the groups referred to were to be accepted, it would be appropriate to apply the concept to the cultural genocide perpetrated through the destruction of the 'habitat' or the natural resources on which indigenous or minority populations depend […].

Another possibility of framing the conduct harmful to the environment corresponds to the adequacy to the crime provided for in Article 7 of the Rome Statute. The definition brought by the standard identifies as crime against humanity, acts of murder, extermination, torture, slavery, etc., when perpetrated in a generalized or systematic manner directed at the civilian population.

The crime typified in Article 7 brings in its text a more comprehensive

conceptualization, when compared with the previous article, to the extent that it lists several possibilities. It also presents subjective terms so that expanding its reach is possible. However, Paragraphs 2 and 3 restrict this interpretation, since they delimit these terms.

Here lies the same obstacle already presented, since the environment is not specifically mentioned in the definition of crime. However, certain acts may constitute environmental crimes, especially when observing points *h* and *k* of the Paragraph 1 of Article 7 (FREELAND, 2005, p. 135):

> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; […]
> k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

However, for a better understanding of the possibility of framing into those paragraphs, there must be a combination with Paragraph 2(*g*), which, defines persecution as "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity" (FREELAND, 2005, p. 135-136).

The typicality is evidenced when the human rights of individuals belonging to a given group are violated and, when contemplating the environment as a third dimension right, acts of environmental destruction would constitute a crime against humanity, revealing themselves as a viable tool for protecting the environment (FREELAND, 2005, p. 135-136).

Finally, the War crime is presented, provided for in Article 8 of the Rome Statute, which explicitly presents the protection of the environment, specifically, in Paragraph 2, *b*, IV:

> Article 8 – War Crimes
> 2. For the purposes of this Statutes, "war crimes" means:
> (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (iv) 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.

Note that, although this device contemplates the environment, the

scope ends up being limited, since the damage needs to be high for its framing. Therefore, if the harmful event is considered small, there is no need to be configured as a crime (FREELAND, 2005, p. 136-137). Added to this is the requirement of conjugating subjective evaluation with the analysis of the intended military advantage, so that, if the desired military advantage is very important and the damage to the environment caused by the action is excessive, it will not be configured as crime provided in Article 8, that is, there is a strong relativization, and meeting all criteria is extremely difficult.

Environmental crimes may also be settled, according to Article 8, Paragraph 2, *a*, IV:

> Article 8 – War Crimes
> 2. For the purposes of this Statutes, "war crimes" means:
> (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
> iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

Environment protection is perceived, provided that it is considered in its broad sense, thus reaching the protection of cultural goods. Moreover, envisioning the configuration of environmental crimes in times of armed conflict in other legal provisions of the same Statute is possible, as in Article 8, *b*, V, XVII, and XVIII, provided an extended interpretation is used so that environmental crimes can be typified in the context of armed conflicts (FREELAND, 2005, p. 136-137).

Regarding the possibility of criminal accountability of the State for environmental crimes in times of armed conflict, there is a strong divergence, given that once the situation is characterized, it would be equivalent to say that individuals belonging to a given State would be punished and, consequently, the institute of collective responsibility would be materialized (FREELAND, 2005, p. 136-137). The penalty applied to the State does not occur in the same proportion as that employed to the individual (FREELAND, 2005, p. 136-137). However, jurisdiction for the State's judgment will not be conferred on the ICC, since it has been granted jurisdiction over persons. In these circumstances, the jurisdiction will fall on the International Court of Justice, as determined by Article 34 of the Statute of the International Court of Justice of 1945, promulgated in Brazil by Decree No. 19,841/1945

Despite the existence of legal standards in times of armed conflict, situations may occur in which the applicability of those rules cannot be contemplated. It cannot be overlooked that for the incidence of the legal standard, the parties to the conflict must have adhered to the international agreements, and, in such cases, there are still hypotheses of normative absence. However, international legal rules applicable to the matter cannot be considered absent, to the extent that, even if International Agreements are not applied, other regulatory instruments contained in Article 38 of the ICJ may be used, despite the customs and general principles of International Law.

CONCLUSION

The protection of the environment is closely linked to the protection of the human person, since one cannot imagine the exercise of human rights without a healthy environment and that provides well-being for the full and dignified development of all.

This understanding flourished from 1972, on the occasion of the United Nations Conference on the Human Environment, in Stockholm, by consecrating, in the principle No. 1, that

> […] Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bear a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating *apartheid*, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated (UN, 1972).

In the year of the Rio Conference, in March, the Inter-American Seminar on Human Rights and the Environment took place in Brasilia, which had the participation of experts from different countries and institutions, with a long history, internationally recognized, in the field of international protection of human rights and the environment, reaching the following conclusion:

> There is an intimate relationship between development and environment, development and human rights, and environment and human rights. Possible links can be found, such as the right to life and health in its greatest dimension that require negative and positive actions on the part of the States. In reality, most economic, social, and cultural rights and the most basic civil and political rights demonstrate this intimate relationship. In the end, there is a parallel between the evolution of the protection of

> human rights and the protection of the environment, both of which have undergone a process of internationalization and globalization (TRINDADE, 1993, p. 35).

The matter was then resumed, at the time of the realization Rio-92, as the concern with the human person figured in the Declaration of Rio de Janeiro in the beginning, as we can see: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature" (UNITED NATIONS, 1992).

The link between the environment and human rights is demonstrated, and it is possible to affirm that, when environmental degradation occurs, violations of human rights are aggravated.

The year of 2007 was chosen as the International Year of Planet Earth, and the United Nations Security Council met for the first time in April to address environmental problems, since, in addition to being a sensitive issue, it can bring great imbalance in terms of planetary security.

Nevertheless, the rights of diffuse matrix arise as a response to cultural domination and as a reaction to the alarming degree of exploitation no longer of the working class of industrialized countries, but of developing nations and by those already developed, as well as by the frameworks of injustice and oppression in the internal environment of these and other nations revealed more acutely by the decolonization revolutions that occurred after the Second World War, in addition to the contemporary affirmation of interests that do not know limitations of borders, class, or social position and are defined as global rights or of all humanity. In this sense, the balanced environment is presented as a third dimension right (FAVOREU, 2007) and brings great concern and interest for the consolidation of the exercise of human rights, as in this passage from Trindade (1993, p. 24):

> No citizen can be oblivious to the theme of human rights and the environment, most notably with those living in countries, such as Brazil, that have the highest rates of social disparities in the world, which lead to the sad and undeniable coexistence, in its daily live, with the insensitivity and folly of the ruling classes, institutionalized and perpetuated injustice, and the continuing difficulty of the social environment in identifying with discernment and understanding the truly primordial themes that concern it, which require serious reflection and action. It is certain that today we witness a heartening worldwide awareness of the urgent need for protection of the human being and the environment.

Undoubtedly, the international protection of human rights and the environment is a major theme worldwide. In this wake, this matter advanced notably with the edition of Resolution No. 46/2014, of the United Nations

Human Rights Council, which recognizes the undeniable correlation between the environment and human rights. Adoption this resolution will provide greater protection to the environment, including in the scenarios of armed conflicts.

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