

Further Discussion On International Treaties And Basis Of Provision Of Environmental Crimes In Criminal Law

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ABSTRACT

Our paper aims to present **DISCUSSION ON International treaties and BASIS OF PROVISION OF ENVIRONMENTAL CRIMINES IN Criminal Law** By using qualitative and analytical methods, descriptive method for primary model, synthesis and discussion methods, This **study find out that:** In the process of developing international cooperation, the trend of globalization in the field of environmental protection, the number of regulations regulating environmental products is increasing. Therefore, the principled development embodied in the drafting and application of regional and international conventions and codes becomes the model for the application of criminal liability measures to the behavior that is dangerous to society and infringes on the environment.

Keywords: Problems, Environmental Law, Regulations, International Treaties, Revisions, Environmental Crimes

1. Introduction

Currently, Vietnam has included the concept of environmental security in the Law on Environmental Protection in 2020, according to which, environmental security is the assurance that there is no major impact of the environment on the political, social stability and economic development of the country.

Research questions:

Question 1: What are **DISCUSSION ON International treaties and BASIS OF PROVISION OF ENVIRONMENTAL CRIMINES IN Criminal Law**

Then, THE LAW on ENVIRONMENTAL PROTECTION

Law No: 72/2020/QH14

Hanoi, November 17, 2020

Pointed:

In this Law, the following terms are construed as follows:

1. The environment includes natural and man-made material factors that are closely related to each other, surround people, and affect people's life, economy, society, existence and development. , biology and nature.
2. Environmental protection activities mean activities to prevent and limit adverse impacts on the environment; responding to environmental incidents; overcome pollution, environmental degradation, improve environmental quality; rational use of natural resources, biodiversity and response to climate change.
3. Environmental composition is the material element forming the environment, including soil, water, air, organisms, sound, light and other physical forms.
4. National environmental protection planning is the arrangement, orientation, spatial distribution of zoning, management of environmental quality, conservation of nature and biodiversity, waste management, monitoring and warning. environment in a defined territory to protect the environment, to serve the goal of sustainable development of the country for a defined period.

Article 5. State policies on environmental protection

1. Create favorable conditions for agencies, organizations, residential communities, households and individuals to participate in the implementation, inspection and supervision of environmental protection activities.
2. Propaganda and education in combination with administrative, economic and other measures to strengthen the observance of the law on environmental protection, building a culture of environmental protection.
3. Pay attention to biodiversity conservation, environmental protection of natural heritage; exploit, rationally and economically use natural resources; develop clean energy and renewable energy; develop technical infrastructure for environmental protection.
4. Prioritize treatment of environmental pollution, restore degraded natural ecosystems, and focus on environmental protection of residential areas.
5. Diversify investment capital sources for environmental protection; arrange separate expenditures for environmental protection in the state budget with an increasing rate according to

the state budget's ability and requirements and tasks of environmental protection; prioritizing funding sources for key environmental protection tasks.

6. Ensuring the interests of organizations, residential communities, households and individuals that contribute to environmental protection activities; incentives and support for environmental protection activities; promote environmentally friendly products and services.

7. Strengthening scientific research, developing technology for pollution treatment, recycling and waste treatment; to prioritize the transfer and application of advanced, high-tech, environmentally-friendly technologies and best existing techniques; strengthen training of human resources on environmental protection.

8. Honor and commend agencies, organizations, residential communities, households and individuals that have made positive contributions to environmental protection activities in accordance with law.

9. Expand and strengthen international integration and cooperation and fulfill international commitments on environmental protection.

10. Screening investment projects according to environmental criteria; apply appropriate environmental management tools for each stage of investment strategies, planning, programs and projects.

11. Integrating and promoting the circular economy and green economic models in the formulation and implementation of socio-economic development strategies, master plans, plans, programs, schemes and projects.

2. Methodology

Authors have used qualitative and analytical methods, descriptive method for primary model, synthesis and discussion methods in this paper.

We also used historical materialism method.

3. Main findings

BASIS OF PROVISION OF ENVIRONMENTAL CRIMINES IN Criminal Law and Issues of International treaties

International treaties are obligatory (opinion juris) which means that when participating in these conventions, countries are obliged to comply with the commitments agreed in the international treaties. The International Court of Justice has determined: States must not only perform acts repeatedly, but must also act in a manner that shows they are aware of their statutory obligations. This perception is implied that the state considers the conduct a mandatory legal norm (opinio juris sive necessitatis). As such, states must be aware that they are performing a legal obligation. Regular application, or even habitual behavior, is not a sufficient condition.

In fact, environmental issues are dominated by socio-economic interests, leading to conflicts of interests between countries. However, in order to achieve common interests, such as preventing the extinction of species, or limiting the causes of acid rain, the reasonable solution is to ensure harmony in the behavior of nations through the conclusion of international treaties, thereby recognizing and applying mandatory legal norms, in order to determine the legal consequences of state behavior. When participating in international conventions, Vietnam has identified an increasing scope, scale and extent, and increasing obligations and levels of legal binding. This is a trend of globalization and is considered popular in recent times and will continue in the future. For international frameworks to which Vietnam has joined as an official member, newly added obligations or deeper commitments, proposals are made for obligations in the form of decisions, resolutions, and resolutions. to decide on amendments and supplements at annual conventions and conferences. Provisions on amendments and supplements towards a deeper level of commitment and legal binding take place in most international conventions, focusing more on chemicals, waste, and biodiversity conservation. biodiversity, ... requires Vietnam to internalize and criminalize acts of harm to the environment within the framework of those commitments.

In the process of developing international cooperation, the trend of globalization in the field of environmental protection, the number of regulations regulating environmental products is increasing. Therefore, the principled development embodied in the drafting and application of regional and international conventions and codes becomes the model for the application of criminal liability measures to the behavior that is dangerous to society and infringes on the environment. The codification of environmental crimes (TPMT) into domestic law as well as the obligation to comply with the provisions of the convention that our country is a signatory to is a mandatory international obligation.

On the other hand, the environmental crimes (TPMT) tend to be transnational, cross-border, Vietnam, whether like it or not, becomes a link in the chain of countries "victims" of this type of crime. Vietnam must come together to fight environmental crimes (TPMT). Therefore, the internalization into the Penal Code for such acts becomes inevitable.

Fourth, the regulation of TPMT comes from the new trend of determining non-traditional security (ANPTT).

National security, in the simplest sense, is the ability of a country to stay safe from threats both externally and internally. However, security is not a static concept but a dynamic concept and undergoes many changes in understanding and approach. The basic content of national security is to protect national interests and eliminate threats to those interests. National security includes traditional security and non-traditional security (ANPTT).. Depending on different contexts and times, traditional or ANPTT security challenges emerge that threaten national security. In the current context, due to the negative side of development along with the strong trend of globalization, the issue of national security is not only limited to preventing and responding to war risks but also includes many non-traditional security (ANPTT) issues such as climate change, pollution, environmental degradation, water depletion, use of ecological weapons, terrorism, epidemics, free migration, transnational organized crime, high-tech crime... ANPTT challenges can still cause a country, social institution to collapse without any military action. On the other hand, ANPTT challenges can also lead to traditional security problems. The issues of non-traditional security (ANPTT) related to environmental protection that we have to face can be

mentioned as follows: Economic activities with bold use of natural resources and available minerals of the country such as over-exploitation of warning levels. destructive of underground minerals, causing depletion of natural mineral resources; endangered species of precious and rare organisms; underdeveloped and developing countries become the world's technology dumping ground....

The birth of non-traditional security reflects the change in people's perception of security and the expansion of the connotation of the concept of national security. Therefore, security threats are increasingly diverse and complex, not only limited to one country but also transnational, requiring the joint efforts of many countries. to respond to ANPTT challenges. Therefore, in the current context, non-traditional security (ANPTT) has become an important topic and a great concern mentioned in the defense and security strategies of many countries around the world. It can be seen that environmental security is one of the ANPTT threats that challenge the survival and prosperity of countries.

Vietnam has included the concept of environmental security in the Law on Environmental Protection in 2020, according to which, environmental security is the assurance that there is no major impact of the environment on the political, social stability and economic development of the country. This is the first time that the concept of environmental security has been officially included in a legal document in Vietnam, which shows the importance and changes in the perception of the Party and State on the issue of environmental security. Environmental security in Vietnam today, considering environmental challenges as a threat to national security, it is necessary to be warned and have a reasonable response plan. Environmental security is an element of non-traditional security (ANPTT). Environmental security issues have an intertwined relationship between the environment, society, economy and politics, which are very complicated, unpredictable, spread quickly in a wide range and leave long-term consequences. However, not all environmental problems lead to security problems, and most security problems are created from complex situations involving environmental, political, and social issues. society and economy.

The above issues pose great challenges, if not promptly adjusted legal policies, including the environmental policy, environmental security in particular and socio-economic security in our country in the coming time will be difficult to guarantee.

Fifth, the regulation of environmental protection products comes from the requirement to protect human rights to live in a healthy environment

The human right to live in a healthy environment is a pillar principle, a natural human right, recognized by the international community, directly related to the quality of life. The 1972 Stockholm Declaration states: "Man has the fundamental right to live in a quality environment that allows a life of dignity and well-being, which man has a solemn responsibility to protect and improve for the next generation. now and in the future". Similarly, in the 1992 Rio de Janeiro declaration, it was also affirmed: "People are at the center of concerns about long-term development. Humans have the right to enjoy a useful, healthy and harmonious life with nature" and the 2013 Constitution added many new contents on environmental protection, showing a strong transformation and concern for the environment. when there are 10 mentions of the environment. Although there is no specific definition, the Law on Environmental Protection 2020 mentioned this right from the perspective of the objective of "environmental protection activities"

and is one of the principles of environmental protection. Specifically, Clause 3, Article 3 on the interpretation of terms stipulates:

Environmental protection activities are activities to preserve, prevent and limit adverse impacts on the environment; responding to environmental incidents; overcome pollution, degradation, improve and restore the environment; rational exploitation and use of natural resources in order to keep the environment clean.

Clause 2, Article 4 of the Law on Environmental Protection in 2014 is amended and supplemented with Clause 3, Article 4 of the Law on Environmental Protection in 2020, the principles of environmental protection are stipulated: "Environmental protection is in harmony with social security, children's rights, gender equality, ensuring everyone's right to live in a healthy environment".

For that reason, to concretize the human right to live in a healthy environment is by the fact that the Penal Code has recognized and approved the times of codification of the Penal Code. As a developing country, Vietnam is also facing the problem of how to exploit natural resources, to ensure the factors of economic development, industrialization and modernization, and to protect the environment. living environment now as well as for future generations. The environmental crisis that our country as well as many countries in the world has to face needs to be resolved satisfactorily and rationally by various tools including LHS. Environmental protection by criminal law is not only a means to implement national environmental protection strategies, programs and policies, but also one of the factors to ensure the realization of citizens' right to live in a healthy environment.

4. Discussion and conclusion

In principle, all entities have an obligation to protect the environment. However, it is necessary to clearly define the responsibilities of the actors in this process. Responsibility for environmental protection belongs to the State, waste source owners, organizations, individuals and communities. Accordingly, the State must have the leading responsibility in environmental protection, because the State on behalf of the people to manage society, including state management of the environment...

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Conflicts of interest

There is no conflict of interest

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