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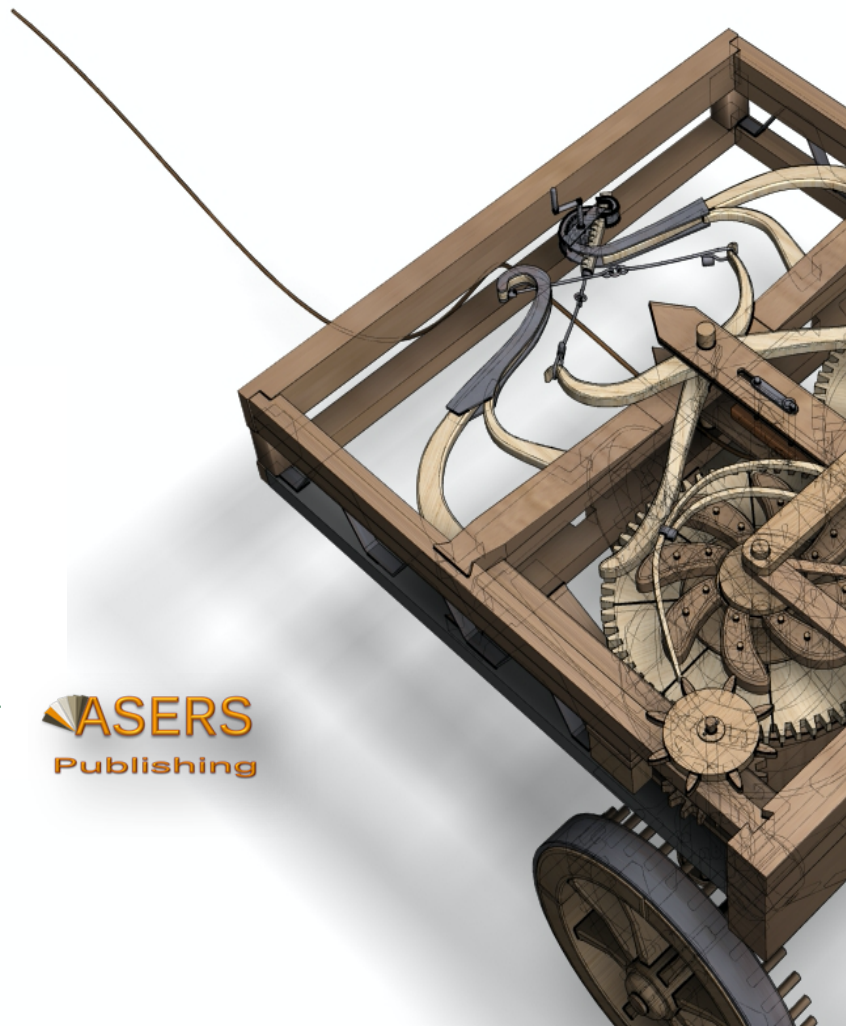
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Penal Liability for the Oil Leak Incident "Heavy Fuel" in the Jordanian Port of Aqaba and Its Impact on the Environment

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Abstract:

Pollution by oil "heavy fuel" poses an environmental problem. Therefore, there must be legal protection through civil and penal liability to combat this. Still, in this research, we will address the penal protection relating to preserving the marine environment in the Aqaba Special Economic Zone, Jordan's only water crossing and a source of economic and tourism income for Jordan.

The study reached several conclusions and recommendations, the most important of which was: The Jordanian legislator provides in article 54/b of the Aqaba Special Economic Zone Act and article 54 ter for penalties applicable to those responsible for pollution of the marine environment, in particular concerning the issue of the oil leak, such responsible must have criminal intent according to the general rules of the Criminal Code. Regarding the recommendations, articles 54/b and 54 make it clear that a penalty must be imposed whether or not there is criminal intent. Also, there must be a gradation of penalty; therefore, I wish the Jordanian legislator to amend article 54/b of the Aqaba Special Economic Zone Act and the proposed provision as follows: "If there is pollution in the seawater or the marine environment, whether the criminal intent is available or not, the penalty must be imprisonment for a period of not less than one year and not more than three years or a fine from (2000) JD to (20,000) JD or both penalties if they are for the first time. If they are for the second time or have devastating and persistent effects on the environment, article 54 ter of the same code must be applied and determined by a specialized committee to be determined by the competent court".

Keywords: environment; oil; "heavy fuel"; penal liability; penalty.

JEL Classification: Q53; K32; R11.

Introduction

The fight against pollution from "heavy fuel" oil is one of the most important topics that the countries of the world are trying to combat because of its devastating effects on the environment at the State level (Regional Seawater) or the level of the countries of the world (International Seawater) because there must be a balance between man and the environment in which he lives, the environment and man are affected negatively or positively by each other.

The oil leak (heavy fuel) from the FLOWER OF SEA ship took place in the territorial sea waters in Aqaba, Jordan, in August 2022 and damaged several container port docks, passenger ports and several southern Aqaba beaches located within the limits of the marine reserve. About 11 tons of heavy fuel used in the engines leaked. The substance was spread in large locations due to continuous wind and wave movement for three days, and a large proportion of the beaches arrived when some divers were exposed to oil spots during their entry and exit from the water.

This crime requires three elements. The first element is the legal one through legal provisions penalizing environmental pollution, which is available in the Aqaba Special Economic Zone Act. The second element is the physical element through the criminal behaviour conducted by the perpetrator and the criminal consequence of polluting the marine environment because, according to the legal provisions on marine pollution, it is one of the crimes that require an outcome rather than a formal crime and a guide to the word "pollution". "Damage", mentioned by the legislator, and the existence of the causal link between conduct and result. The third element is the mental one requiring general criminal intent with its two elements "awareness and willingness": an understanding that their action pollutes the environment and their desire to commit such an unlawful act. Therefore, polluting the marine environment is a deliberate crime requiring criminal intent. If the elements of the crime are fulfilled, the perpetrator is liable for an illegal offence; if one of the above elements is not available, then criminal liability does not arise, but civil liability does because its criterion is damage (Manasra, M.W., Mamari, S.A., Gharibeh, A. Younes, A.S., Alsharqawi, A.H. 2022).

1. Reasearch Problem

Penal protection of the marine environment in the Aqaba Special Economic Zone from pollution, particularly the oil leak incident "Heavy fuel" from the ship that occurred on August 14, 2022. The problem, therefore, lies in the adequacy of the penal protection provided by the Jordanian legislator in the Aqaba Special Economic Zone Act No. 32 of 2000 and its amendments and the Environmental Protection System in the Aqaba Special Economic Zone No. 21 of 2001 and its modifications.

2. Importance of Research

The impact of oil pollution, "heavy fuel", is not limited to environmental matters only but extends to health matters, represented by diseases that may affect people who practice swimming. For example, on my recent visit to the city of Aqaba, I was exposed to a personal situation when I visited the southern shore where my feet were filled with oil from that ship. Also, this pollution affects fish caught in the sea, which are eaten by the citizen and considered an important source of income for fishermen. Moreover, ship navigation may be affected by the closure of the port or tourist matters through the small number of tourists, especially diving and swimming lovers.

3. Research Methodology

The research will rely on the descriptive and analytical methodology of the Aqaba Special Economic Zone Act and the Aqaba Economic Zone Environmental Protection System with specific provisions on the penal protection of the environment in the Aqaba Special Economic Zone regional sea for only "heavy fuel" oil leak and several scientific references to the impact of pollution on the environment.

4. Literature Review

4.1 What Are the Marine Environment and the Impact of the Leak on the Environment

Water constitutes 70% of the Earth's surface and contains millions of living things. This environment is vulnerable to pollution from many things, and the most important is the oil "heavy fuel" oil produced by ships. The territorial sea is defined as the adjacent marine belt confined between inland waters and the adjoining area (United Nations Convention on the Law of the Sea under article 2, paragraph 1).

The environment has been known: it is the place in which man lives and consists of several elements, including water, soil and air, in which man lives and gets the ingredients of his life (Issa, 2002).

As for the marine environment, it was defined as: it is a part of the expanses of the globe that are submerged in salt water among themselves without obstacles (Al-Humaidi, 2008).

It also the salty water bodies related to each other, including their bottom and subsoil, or their animal and plant organisms and natural wealth, which as a whole constitute elements of marine life as an integrated ecosystem (Abdel Jalil 2006).

The Jordan legislator has defined the environment as follows: It is the surrounding that includes living and non-living organisms, the substances it contains, the air, water, and soil that surrounds it, the interactions of any of them, and the facilities that man establishes in it. We find that this definition is sententious of all elements of the environment and its natural and industrial wealth (Aqaba Special Economic Zone Environmental Protection Regulation No. 21 of 2001).

And those who protect the environment are the Board of Commissioners of Aqaba and Ensure Sustainable Development (Aqaba Special Economic Zone Act No. 32 of 2000, as amended by article 52). As for the impact of a heavy fuel leak on the environment in the Gulf of the Aqaba: the heavy fuel, when spilt into the sea, causes devastating effects that may last for years in the marine environment, which exposes the marine organisms to developmental problems and its reproductive cycle and often floats on the surface of the water, which reduces the entry of sunlight penetrating water, reducing the photosynthesis of marine plants and phytoplankton, and this leads to a decrease in biological density which negatively reflects on the food chain in the ecosystem (The Effects of Maritime Oil Spills on Wildlife including Non-Avian Marine Life 2010).

Similarly, in the Aqaba region, fishing is frequent because marine fish constitute a source of income for many of the region's inhabitants and a major source of food for them. However, oil spills prevent fishermen from fishing because of pollution and unsuitable fishing, negatively affecting other marine animals such as crustaceans, algae, shells, corals and plants.

4.2 Penal Protection of the Environment in the Aqaba Special Economic Zone

Initially, jurisdiction over environmental crimes is within the jurisdiction of the first instance court in the Aqaba area (Aqaba Special Economic Zone Act No. 32 of 2000, as amended by article 52 bis) and giving the Special Economic Aqaba Zone Authority's personnel the authority of the judicial police officers is conciliatory and consistent with the impact of the crime on the environment through their inspection of the means of oil transport and materials polluting the marine environment through their boarding the ship (Article 64 of the Aqaba Special Economic Zone Environmental Protection Regulation No. 21 of 2001).

All ships are prohibited from discharging or dumping oil or oil mixture, but the Jordanian legislator mentions a serious exception that this prohibition does not include foreign warships, aid ships and government vessels not used for commercial purposes (The Environmental Protection Regulation in Aqaba Special Economic Zone No. 21 of 2001 under the provision of Article 56/a). Therefore, the oil spill from these ships does not entail any civil or criminal liability, and this runs counter to the lowest principles of justice and law enforcement because the law should be applied to everyone without discrimination, as well as the marine environment is not the property of any government entity or the authority of the Aqaba Special Economic Zone. However, it is an outlet for every Jordanian citizen, and therefore they do not have to waive the rights of Jordanians; that is why this exception will be cancelled because the public interest requires it.

Moreover, the responsibility for marine pollution is the personal responsibility of the master of the ship or the user of the ship. According to the Environmental Protection System in the Aqaba area, a penalty of imprisonment or a fine is imposed on him, as well as a responsibility on the moral personality who owns that ship, but by imposing financial penalties only on this personality. As for the penalties, the discharging or dumping of oil or oil mixture or any harmful or dangerous substance or any waste resulting in damage to the aquatic environment, public health or coral reefs is considered serious damage and constitutes a penalty (Environmental Protection Regulation in Aqaba Special Economic Zone No. 21 of 2001, according to the provision of Article 67), and the penalty is imprisonment for not less than three months and not more than two years, or a fine of not less than (300) JD and not more than (10000) JD or both penalties (Aqaba Special Economic Zone Act No. 32 of 2000 and its amendments according to the provision of Article 54 / B).

However, if the pollution of the sea is serious or seriously damaging to the environment that cannot be removed or that affects the normal course of the environment, The offender is obliged to compensate and remove the damage caused by the offence. The offender must be punished by a term of imprisonment of not less than one year and not more than three years and a fine of not less than 5,000 JD and not more than 10 million JD or both penalties (Aqaba Special Economic Zone Act No. 32 of 2000 and its amendments according to the provision of Article 54 ter a/2). The Court requires him/her to remove the damage within a specified period, and if he/her

fails to remove it after the prescribed period, he/she must incur a fine for each day from one hundred dinars to five hundred dinars. The Aqaba District Authority will remove it at his/her expense and add 15% of its value to it as an administrative allowance and seize the source of the offence pending payment of the official's expenses (Aqaba Special Economic Zone Act No. 32 of 2000 and its amendments according to the provision of Article 54 ter B).

It is clear from the preceding article that the penalty must be whether the criminal intent is available or not, as well as the gradation of the penalty. The proposed provision reads as follows: "If there is seawater or marine environment pollution whether the criminal intent is available or not, the penalty must be a term of imprisonment of not less than one year and not more than three years or a fine from (2000) JD to (20,000) JD or both penalties if they are for the first time. Suppose it is for the second time or has devastating and persistent environmental effects. In that case, article 54 ter of the same Act must be applied and determined by a specialized committee to be determined by the competent Court (5-Al-Dlabeeh, A., Alsharqawi, A.H., Al Kloub, R., Karabsheh, A.-K.O. 2022).

However, in the Court's application of articles 54/b or 54 ter, following the general rules of the Penal Code, this requires the existence of the preceding elements. One of the most important is the mental element represented in the general criminal intent until the penalties prescribed in the preceding provisions are applied. However, on the contrary, if the lack of criminal intent is established, the crime will collapse, and consequently, the perpetrator will not be punished.

This is a legal gap to be covered by the Jordanian legislator in the Aqaba Special Economic Zone Act, whereby previous provisions must be amended to apply whether or not there is a criminal intent because the special provisions come to face a special situation requiring greater aggravation of penalty. After all, protecting the marine environment is a strategic matter for the Aqaba Special Economic Zone's authority.

Conclusion

Jordan is a State that attaches importance to the marine environment, particularly because of the presence of a single waterway in the Aqaba Special Economic Zone. However, environmental regulations are inadequate and need deterrent sanctions because they are the effective legal means of environmental protection.

Conclusions

1. Pollution of the environment is a continuing crime because its impact on the marine environment may extend for years.

2. giving the Special Economic Aqaba Zone Authority's personnel the authority of the judicial police officers and among their functions, the inspection of the means of oil transport and materials polluting the marine environment through their boarding the ship

3. All ships are prohibited from discharging or dumping oil or oil mixture. However, there is a serious exception mentioned by the Jordanian legislator that this prohibition does not include foreign warships, aid ships, and government vessels not used for commercial purposes.

4. The Jordanian legislator provided in the law of the Aqaba Special Economic Zone Act in Article 54/b and Article 54 ter the penalties applied to the person responsible for the pollution of the marine environment, especially about the issue of an oil leak, and this office must have criminal intent according to the general rules in the criminal law.

Recommendations

1. We wish the Jordanian legislature to amend article 56/a of the Aqaba Special Economic Zone of Environmental Protection System by deleting the exception provided for and that there is a civil and penal liability on all ships because the existence of this exception runs counter to the lowest principles of justice and the application of the law. The law must be applied to all without discrimination. Furthermore, the marine environment is not the property of any State entity or the Aqaba Special Economic Zone Authority but is the outlet for every Jordanian citizen. Therefore, they do not have to waive the rights of Jordanians, and the public interest requires it.

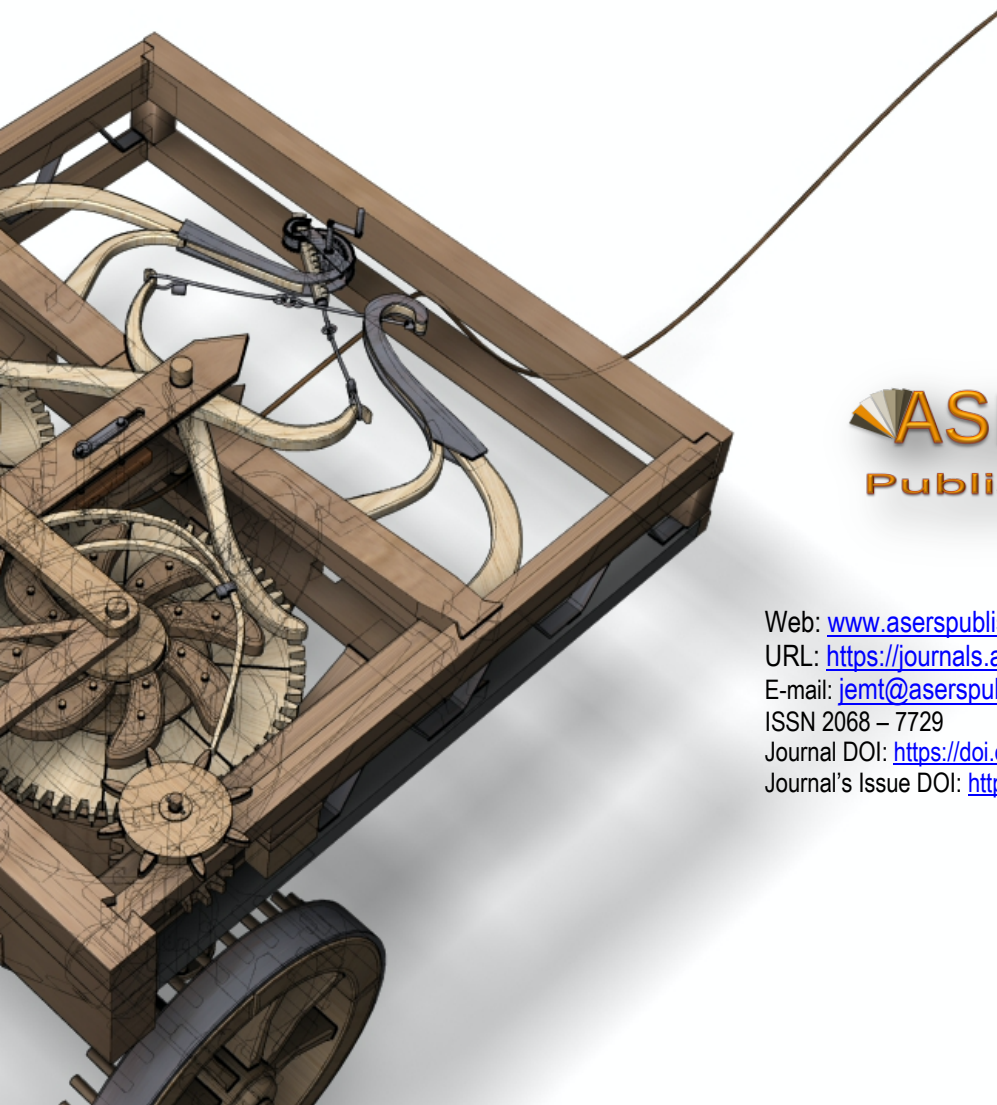
2. It is clear from articles 54/b and 54 ter that the penalty must be whether the criminal intent is available or not, as well as the gradation of the penalty. Therefore I wish the Jordanian legislator to amend article 54/b of the Aqaba Special Economic Zone Act and the proposed provision as follows: "If there is pollution in the seawater or the marine environment, whether the criminal intent is available or not, the penalty must be imprisonment for a period of not less than one year and not more than three years or a fine from (2000) JD to (20,000) JD or both penalties if they are for the first time. If they are for the second time or have devastating and persistent effects on

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