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OIL AND WATER DON'T MIX:

LEGAL REMEDIES FOR ENVIRONMENTAL WARTIME DESTRUCTION ON LEBANON'S MEDITERRANEAN COAST

by Abigail Okrent*

INTRODUCTION

In July 2006, an oil spill approaching the size of the Exxon Valdez disaster of 1989 began making its way along the Mediterranean Sea.¹ Unlike the infamous Exxon Valdez incident, this was no accident but the result of a military action by Israel on the Jiyeh power utility in Lebanon. While environmental destruction as a war tactic is an ancient practice, legal scholars, environmentalists, and military tacticians are increasingly focusing their attention on this phenomenon. International laws contain provisions for such destruction and tribunals such as the International Criminal Court ("ICC") are empowered to hear these types of claims, though almost none of these laws or venues have been tested.

EFFECTS ON THE HEALTH OF OCEANS AND SEAS

The oil spill from the Jiyeh plant spread along 150 kilometers of Lebanon's coastline and up to Syria.² Early estimates put the volume of oil spilled at between 10,000 and 15,000 tons,³ though the eventual count could reach 35,000 tons.⁴ The shores of a nature reserve off the coast of Tripoli were covered in oil, threatening numerous species of birds as well as loggerhead turtles and rare monk seals.⁵ The spill contains carcinogenic substances of the kind which caused the fish population to collapse years following the Exxon Valdez accident in Alaska.⁶

The social and economic impact of the spill on the region is equally alarming. Lebanese families living along the coast depend on fish as a major food and income source and much of that fish will become toxic as a result of the spill.⁷ The effects on the Lebanese economy will be severe, since tourism is sixteen percent of the economy and many tourist destinations are along the coastline.⁸

More disturbing is that the total tonnage of oil spilled into seas and oceans in the 1990s is estimated at 1,140,000 tons and this figure does not even include wartime spills.⁹ While more oil releases into the ocean through routine dumping than through spills, the concentrated nature of oil spills makes the effects on the environment more visible and immediate. Oil is extremely harmful to the marine environment, coating birds and marine

mammals, poisoning fish, killing reefs, and creating long-lived toxic effects.¹⁰

INTERNATIONAL LAW AND WARTIME ENVIRONMENTAL DESTRUCTION

Lebanon announced in September 2006 that it intends to seek damages from Israel for the oil spill through the ICC.¹¹ The enabling statute of the ICC, the Rome Statute, contains environmental crimes within the list of triable war crimes.¹² War crimes include "intentionally launching an attack in the knowledge that such attack will cause . . . 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."¹³ Problems with the use of ICC as a means to seek remedies include the fact that the ICC was designed to deal with individuals, not states. Thus Lebanon cannot seek relief from Israel, but only from individuals involved in the bombing.

The International Court of Justice ("ICJ") is another venue through which states could address wartime environmental destruction. The ICJ has not decided an environmental crime claim yet; however in a 1996 advisory opinion it repeatedly mentioned destruction of the natural environment as a concern.¹⁴ Unfortunately, the power of the ICJ is limited, and it can only hear cases if all state parties involved consent.

Several international environmental laws address wartime environmental damage. The Convention on the Prohibition of Military or Other Hostile Use of Environmental Modification Techniques ("ENMOD")¹⁵ was created on the heels of environmental destruction in Vietnam. ENMOD has been interpreted to mean large-scale manipulation of natural forces and not oil spills.¹⁶ In addition, the World Charter for Nature prohibits damaging military activities¹⁷, and the Stockholm Declaration of 1972¹⁸ and Rio Declaration of 1992¹⁹ both address the need to protect the environment during armed conflict.

Moreover, maritime laws are at odds with each other regarding liability for war damage to waterways.²⁰ The United Nations

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Convention on the Law of the Sea (“UNCLOS”) contains a chapter devoted to the protection of the marine environment, yet it explicitly exempts warships and crafts (including airplanes) from compliance.²¹ UNCLOS does however make the flag state of warships responsible for loss or damage to another state through non-compliance with the laws and regulations of that state.²² In addition, the UN Convention on the Non-Navigational Uses of International Watercourses, adopted in 1997 but not yet in force by 2005, provides that these areas shall enjoy the protections of international law for international and non-international armed conflict.²³

CONCLUSION

The very nature of wartime environmental damage makes it difficult to address through existing international law. The destruction on Lebanon’s Mediterranean coastline occurred amidst continuing hostilities, and cleanup was delayed several weeks until Israel gave permission for a crew to begin and conditions became safe enough for work.²⁴ Given the nature of warfare, it is not unusual that environmental destruction should occur long before the end of the military actions. Unfortunately, given the nature of oil spills, any delay in clean up can cause

irremediable damage. The wait before surveys for cleanup could begin in Lebanon was “pretty unprecedented” for a spill of its size, according to a UN Environmental Programme spokesperson.²⁵

Environmental wartime destruction in seas poses an additional problem due to the nature of tides, currents, and ownership of those bodies of water. As evidenced in the Lebanese oil spill, the slick can spread rapidly to protected areas, other countries’ coastlines, and international waters. To effectively remedy environmental destruction, any damages must include clean up costs in coastal waters and international waters.

Though the forums and laws are somewhat deficient, an increased focus by scholars on prosecution of environmental war crimes may make this a ripe

time to move forward with such a claim. If Lebanon does bring this case, it will be a canary for this emerging jurisprudence, and the results will forecast how well the international community is prepared to deal with the widening problem of wartime environmental destruction.

Maritime laws are at odds with each other regarding liability for war damage to waterways.



Endnotes:

¹ BBC News, Richard Black, *Environmental ‘Crisis’ in Lebanon* (July 31, 2006), available at <http://news.bbc.co.uk/2/hi/science/nature/5233358.stm> (last visited Sept. 22, 2006).

² United Nations Environment Programme, *The Crisis in Lebanon: Environmental Impact*, <http://www.unep.org/lebanon/> (last visited Sept. 23, 2006).

³ Experts Working Group for Lebanon, *Lebanon Marine and Coastal Oil Pollution International Assistance Action Plan* (Aug. 25, 2006), available at http://www.unep.org/PDF/lebanon/LebanonOilSpill_ActionPlan20060825.pdf (last visited Sept. 23, 2006).

⁴ Black, *supra* note 1 (noting that the amount of oil spilled by the Exxon Valdez was 37,000 tons).

⁵ World Conservation Union (IUCN), *Lebanon Oil Spill Threatens Migrant Birds and Marine Life* (Aug. 27, 2006), <http://www.iucn.org/places/wescana/news/lebanonoilslick.html> (last visited Sept. 23, 2006).

⁶ World Conservation Union, *id.*

⁷ Christopher Allbritton, *An environmental disaster emerges on Lebanon coast*, *SAN FRANCISCO CHRON.*, Aug. 28, 2006, at A1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=c/a/2006/08/28/MNGHDKQHK31.DTL> (last visited Sept. 23, 2006).

⁸ Allbritton, *id.*

⁹ The International Tanker Owners Pollution Federation Limited, *Oil Tanker Spill Statistics: 2005*, available at www.moe.gov.lb (follow “Some Oil Tanker Spill Statistics” hyperlink) (last visited Sept. 25, 2006).

¹⁰ Australian Maritime Safety Authority, *The Effects of Oil on Wildlife*, http://www.amsa.gov.au/Marine_Environment_Protection/Educational_resource_s_and_information/Teachers/The_Effects_of_Oil_on_Wildlife.asp (last visited Sept. 25, 2006).

¹¹ *Lebanon to Sue Israel for Ecological Damage*, *MOROCCO TIMES*, Sept. 11, 2006, available at <http://www.moroccotimes.com/news/article.asp?id=16986> (last visited Sept. 24, 2006).

¹² Rome Statute of the International Criminal Court, Art. 8(2)(b)(iv), entered into force July 1, 2002 [hereinafter Rome Statute].

¹³ Rome Statute, *id.*

¹⁴ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (July 8), available at <http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm> (last visited Sept. 24, 2006).

¹⁵ *Convention on the Prohibition of Military or Other Hostile Use of Environmental Modification Techniques*, Dec. 10, 1976, 31 U.S.T.S. 333.

¹⁶ Meredith Dubarry Huston, *Wartime Environmental Damages: Financing the Cleanup*, 23 U. PA. J. INT’L ECON. L. 899, 907 (2002).

¹⁷ World Charter for Nature, G.A. Res. 37/7, Art. XX, U.N. Doc. A/Res/ 37/51 (Oct. 28, 1982).

¹⁸ Stockholm Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14, Principles 21 and 26 (June 16, 1972).

¹⁹ Rio Declaration on Environment and Development, Principle 24, U.N. Doc. A/Conf. 151/5/Rev. 1 (June 14, 1992).

²⁰ See Andy Rich, *The Environment: Adequacy of Protection in Times of War*, 12 PENN. ST. ENVTL. L. REV. 445 (2004).

²¹ UN Convention on the Law of the Sea, Part XII, Art. 236, Dec. 10, 1982, 1833 U.N.T.S. 3.

²² UN Convention on the Law of the Sea, *id.* at Part II, Art. 31.

²³ G.A. Res. 51/229, *Convention on the Law of the Non-navigational Uses of International Waterways*, Art. 29, adopted by the G.A. on May 21, 1997.

²⁴ Allbritton, *supra* note 7.

²⁵ Allbritton, *supra* note 7.