

Comparative Study of Legislations on Major Domestic and Foreign Environmental Pollution Crimes

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Abstract

Surveying across Germany, Japan, The United Kingdom, and the United States' environmental pollution crime legislations, there are similarities and differences, and these similar or different models or regulations reflect their different environmental states, legal cultures, legal traditions, political systems, levels of economic development, etc., and have achieved positive results in their own countries. Having been inspired by these countries which are sophisticated in the trend of environmental protection and mature in environmental criminal legislation, our country should also discover a path that is suitable for us according to our own environmental pollution problems and practices. It is suggested that major environmental pollution crimes' relevant regulations are to be further modified from the perspective of how things ought to be. Possible flaws in the legislative techniques aside, fundamentally speaking, a lot of the other problems or deficiencies stem from just what kind of value system major environmental pollution crimes are systematically constructed and responsibilities allocated. Only by coming from a correct and sound value system can there be an effective guidance to the scientific design of the regulations of these types of crimes and to have it be effective in practice when preventing and remedying major environmental pollutions.

Key words: Environmental pollutions; Crimes; Legislations; Comparative

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1. STATUS QUO OF THE DOMESTIC LEGISLATION OF MAJOR ENVIRONMENTAL POLLUTION CRIMES

Our country's current environmental criminal law mostly includes 1997's *Criminal Law* chapter six "Crime of Undermining Administration of Social Order"'s "Crime of Undermining Environmental Resources Protection" unit's stipulated fourteen types of crimes and subsidiary criminal law that are spread out in other chapters related to undermining environmental resources (referring to the penal clauses in all kinds of environmental resources protection laws and regulations because there is almost no component which the specific provisions for convictions and sentencing and cases where in practice are not regarded as environmental crimes according to subsidiary criminal laws), and includes the nine provisions and fifteen charges that came about after modification to the criminal law amendment and relevant charges that are spread out in other chapters in the *Criminal Law*. Respectively, they are crime of major environmental pollution incidents, crime of negligence in environmental supervision, crime of the illegal disposal of imported solid waste, crime of the unauthorized importation of solid waste, crime of smuggling waste, crime of the illegal catching of aquatic products, crime of the illegal poaching and killing of precious and endangered wildlife, crime of the illegal purchase, transport, and sale of precious and endangered wildlife and wildlife products, crime of illegal hunting, crime of smuggling precious animals and animal products, crime of the illegal logging and the destruction of national priority protected plants, crime of the illegal purchase, transport, processing, and sale of national priority protected plants and plant products, crime of the smuggling of precious plants and plant products, crime of logging, crime of excessive logging, crime of the illegal purchase and transport of illegally logged and excessively logged timber, crime of the illegal distribution of cutting

licenses, crime of the evasion of animals and plants quarantine, crime of corruption in animals and plants quarantine, crime of negligence in animals and plants quarantine, crime of illegal occupation of agricultural land, crime of illegal transference and resale of land tenure rights, crime of illegal authorization of requisition and occupation of land, crime of the illegal sale of the use of state-owned land cheap, crime of illegal mining, crime of destructive mining, etc., totalling twenty-six charges.

It can be seen that these charges are bifurcated into crimes of damaging resources and crimes of environmental pollution. The majority of the charges are related to crimes of damaging resources, but crimes of environmental pollution only include the three charges, namely, major environmental pollution incidents, crime of illegal disposition of imported solid waste, and crime of importing solid waste without authorization, and the two charges which can possibly result in severe environmental pollution, namely, crime of smuggling waste and crime of negligence in environmental supervision. From a quantitative comparison, we can tell that legislations of environmental pollution are quite few. However, as a matter of fact, in the practices of our country's production life, environmental pollution incidents are multifaceted and perpetual, major environmental pollution incidents happen frequently, and three or five charges are not nearly enough to effectively regulate the quantitative and qualitative endless crimes of environmental pollution. Moreover, not including the crime of major environmental pollution incident, these charges are extremely limited in its flexibility and only aimed at the behaviors of illegal disposition, importing of solid waste without authorization or smuggling waste, negligence of environmental supervisors, and do not quite relate to the plentiful behaviors of major environmental pollution incidents caused by all kinds of discharged toxic substances that are existent in real life. Thus, the heavy burden of legislatively adjusting crimes of major environmental pollution falls on the crime of major environmental pollution incidents; it is our country's environmental criminal law's very important charge. The charge is set in 97 *Criminal Law* clause #338: violating national regulations, discharging radioactive, pathogenic, toxic, or other dangerous waste to land, water, and air, causing major environmental pollution incidents, resulting in grave consequences such as a major loss in public or private properties and assets or human injury or death, is subjected to a sentence of less than three years or imprisonment, with or without fine; for the gravest cases, a sentence between three and seven years with the addition of a fine. Yet, on August 23rd in 2010 in the sixteenth conference of the eleventh session of the Standing Committee of the National People's Congress, the *Amendment to the Criminal Law of the People's Republic of China (Eight)* submitted for deliberation proposed to revise *Criminal Law* clause #338 "Crimes of Major Environmental Pollution Incidents" to "Crimes of

Major Environmental Pollution," specifically: "violating national regulations, discharging, dumping, or disposal of radioactive, pathogenic, toxic, or waste containing other dangerous substances that severely pollute the environment, will be subjected to a sentence of less than three years or imprisonment, with or without fine; for the gravest cases, a sentence between three to seven years with the addition of a fine." The amendment came into effect on May 1st, 2011.

It can be seen that whether it's the pre- or post-revised clause #338, crimes of major environmental pollution incidents or crimes of major environmental pollution are not like the other charges of the environmental criminal law which only specify one crime in one aspect, but rather include all charges of the existing environmental pollution regulations, being a general provision containing mixed stipulations.

According to the statements made to the academia, the criteria of the crimes of the revised clause #338 are: (1) Object: the majority of our country's legal textbooks believe that the object of this crime is the administration system of the prevention and control of environmental pollution. However, there has been scholarly opinion that the crime's object is the environmental legal interests, or a dual object that combines the two (Wu, 2010). (2) Subject: before 97 *Criminal Law*, aside from individual legally allowed (*Prevention and Control Law of Solid Waste Environmental Pollution*) institutions which can be the subject of environmental crimes, other laws all stipulate that the subject of environmental crimes can only be natural person, but the revised criminal law after 1997 clearly stipulates that institutions can be the subjects of environmental crimes. Hence, according to relevant regulations of the criminal law, subjects of major environmental pollution incidents include both natural persons and institutions, and most criminal subjects are enterprises and institutions, especially industrial and mining, that engage in production and operation, and in the processes of these create pollution waste and cause severe major environmental pollution incidents. Natural persons that are charged of this crime are mostly those who are related to the disposals and usages of pollution waste in the enterprises and institutions. (3) Objective aspect: the objective aspect of this crime is the discharging, dumping, or disposal of radioactive, containing contagion pathogens, toxic or other dangerous substances that severely pollute the environment while violating the national regulations. The violations of national regulations mean the violations of the provisions of laws and regulations related to the national prevention and control of environmental pollution. For example, violation of the regulations of prevention and control of pollution in *Environmental Protection Law*, *Air Pollution Prevention and Control Law*, and *Ocean Environmental Protection Law*. Furthermore, the crime must cause severe pollution to the environment, and that a mere dangerous

state does not constitute the crime, nor does the causing of normal levels of environmental pollution incidents, which only requires administrative penalty. (4) Subjective: generally speaking, the subjective aspect of this crime is negligence, meaning environmental pollution activities like the discharging, dumping, and disposal of pollutants are intentional, but the results of these activities which cause major environmental pollution incidents are negligence.

2. STATUS QUO OF THE LEGISLATION OF MAJOR ENVIRONMENTAL POLLUTION CRIMES ABROAD

2.1 Status Quo of the German Legislation of Major Environmental Pollution Crimes

Germany has always been known for the advanced states of its environmental protection ideology, technology, and legal system; their environmental pollution criminal legislation began early and has matured. This part of legal provisions mainly includes: *German Penal Code's* clause #324's crimes of water pollution, crimes of land pollution, clause #325's crimes of air pollution, crimes of noise pollution, clause #326's crimes of illegal waste disposal, clause #329's crimes of violating specially protected area and regulations related to crimes of major environmental pollution of laws and regulations (like *Federal Pollution Control Law, Waste Disposal Laws*, etc.) of other environmentally protected institutions.

Compared to our country, Germany's main characteristics of the environmental pollution criminal legislation are: (1) in Germany, the model that is used for environmental criminal law is the penal code with the addition of the subsidiary criminal code (*German Criminal Code, 2005*). Their legislative ability is impressive, and the whole legal regulation is rigorous, detailed, clear, and easy to handle. (2) Because Germany has excellent legal tradition, perfected legal system, booming economics, and advanced environmental protection technological facilities, they emphasize more on protecting the legal benefits of the ecological environment and established stringent environmental criminal laws where many crimes of environmental pollution reflect the protection of the legal benefits of the ecological environment. For instance, the *German Penal Code's* clause #329 stipulates: "violating the regulations based on the *Federal Environmental Protection Law*, in areas that especially need to be protected from air and noise pollution, or sharply increasing the harmful effects to the environment because of air pollution when climate changes very minimally, operating machinery in protected areas, are subjected to less than three years of noise crime or fine." It can be seen that this regulation does not consider human lives, health, or wealth as the subject of protection, but rather the environment itself, and that

if "harmful effects" are caused to specific environment, then one can be sentenced and fined. (3) The constitution of the crime does not require a harmful outcome, rather, just the action or the causation of danger is enough. This means that crimes of German environmental pollution are categorized as offense of act or danger. Those that result in dangerous consequences are to be punished according to regulations relevant to aggregated consequential offense.

2.2 Status Quo of the Japanese Legislation of Major Environmental Pollution Crimes

Everyone knows that Japan used to be one of the most environmentally polluted countries in the world. The Japanese environment protection philosophy was lacking and laws about environmental pollution were lacking, yet in just a few years Japan became one of the most advanced in environment protection. Aside from the Japanese seriously learning from their mistakes and improved the environment protection awareness and technology, a lot of it had to do with Japan having established scientific and perfected environment pollution criminal laws.

The relevant Japanese criminal regulations include *The Japanese Criminal Code's* clause #203's crimes of drinking water pollution, clause #204's crimes of waterway pollution, clause #206's crimes of toxic substances being mixed into waterway, clause #272's crimes of air leakage, *Offense of Public Hazard Law Concerning Punishment of Endangering Human Health's* second and third regulations (in which the second regulation: (intentional offense) discharging substances that harm human health (including substances that harm human health after accumulation) during productions of factories or corporations, causing danger to public life or health, is subjected to either a sentence of less than three years or three million Yen fine. The third regulation: Any failure of fulfilling the necessary duty of operational care, discharging substances that harm human health with factory production activities or corporation activities, causing danger to public life or body, is subjected to a sentence of less than two years or imprisonment, or a fine of two million Yen.), regulations etc., about crimes of major environment pollution from separate criminal regulations of environmentally protected (for example, *Japanese Prevention and Control Law of Ocean Pollution, Prevention and Control Law of Air Pollution, Prevention and Control Law of Agricultural Land Pollution*, etc.)

The main characteristics of Japanese environment pollution criminal legislation are: (1) Performing specialized punishment to crimes of environmental pollution using separate environment criminal laws -- *Offense of Public Hazard Law Concerning Punishment of Endangering Human Health*. (2) Because of Japan's lack of natural resources and the post-war economic depression, economic development, increase of the quality of life of the citizens result in Japan's inability to establish environment legislations that are stringent

like those of Germany, and so only considers human health and administrative legal interests as the subjects of protection (Luo & Du, 2004). For example the first clause of the *Offense of Public Hazard Law Concerning Punishment of Endangering Human Health* stipulates: this law is combined with other regulations concerning public hazard laws to prevent and control public hazards that endanger human health through the method of punishing acts of public endangerment from corporate activities. (3) The constitution of Japanese environmental pollution crimes, whether it's intentional or accidental, does not require the manifestation of dangerous outcomes, but just the dangerous possibilities, then the crime would be considered offense of danger. And for those that result in dangerous outcomes they can be tried according to the relevant regulations of aggregated consequential offense.

2.3 Status Quo of the British and American Legislation of Major Environmental Pollution Crimes

The United Kingdom and the United States are different from Germany and Japan in that both of the former use the common law legal system which lacks the tradition of statute law (Gan & He, 1984) and relies on mostly case law. The British and American environmental pollution criminal legislation rely on subsidiary legislations, that is, regulations about environmental pollution crimes of the laws and regulations of all kinds of separate environmental protection. Even though there are no unified criminal code or specialized separate environmental criminal law, we can tell from these subsidiary criminal laws that the British and American environmental criminal laws regard the protection of the environmental elements as the purpose. The constitution of a crime does not require the outcome of any loss of human life, health, or wealth. These subsidiary criminal laws almost radiate to all aspects of environmental pollution practices and are regulated meticulously. Complements are complete and easy to operate, punishments are stringent. Yet prior to the punishments a large amount of economic measures which manage the environment like the environmental tax system, emission trading system, etc. are set up such that effective outcomes are obtained.

CONCLUSION

A survey of German, Japanese, British, and American environmental pollution criminal legislations show that they have similarities and their own uniqueness. These similar or different models or regulations reflect their different environmental states, legal cultures, legal traditions, political systems, levels of economic development, etc., and result in positive outcomes in their own countries. Having been inspired by these countries which are developed in the trend of environmental

protection and mature in environmental criminal legislation, our country should also discover a path that is suitable for us according to our own environmental pollution problems and practices.

Because of the aforementioned reasons, disregard the revisions that are already made to the *Amendment to the Criminal Law of the People's Republic of China (Eight)*, from the perspective of how things ought to be, the relevant regulations of major environmental pollution crimes should be further revised. For example, the problem of the mildness of the punishment that are exposed by the relevant cases during practices has not been addressed and improved by *The Amendment to the Criminal Law of the People's Republic of China (Eight)*. For example, the problem of the parochialism of the subjective perspective on the crime before the amendment, and the paradox caused by the improvement from the subjective perspective of crimes of major environmental pollution incidents and the crime's charge, while *The Amendment to the Criminal Law of the People's Republic of China (Eight)* has made an effort, the author believes that there are better choices. Also, in relation to the objective perspective of crimes of major environmental pollution incidents, whether it should be stipulated as consequential offense, potential damage offense, or behavioral offense will directly influence the effect of prevention of major environmental pollution problems and the feasibility of implementation. There is also the limitedness of the range of protection of crimes of major environmental pollution incidents, etc. Yet among all these shortcomings, the value standpoint of this type of law should be the first to be explored and clarified, because aside from the possible flaws in legislative techniques, fundamentally speaking, a lot of the other problems or deficiency stem from the kind of value system major environmental pollution crimes are systematically constructed and responsibilities allocated. Only by coming from a correct and sound value system can there be an effective guidance to the scientific design of the regulations of these types of crimes and to have it being effective in practices when preventing and remedying major environmental pollutions.

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