

---

# The Basis of Crimes That Arise From Handling Hazardous Waste and Its Legal Description

<sup>1</sup>Dr. Ammar Turki Attia, <sup>2</sup>Nagham Karim Fadhel

<sup>1,2</sup>University of Thi-Qar, college of law, Iraq. university.of.thiqar@utq.edu.iq

<sup>1</sup>lawp1e213@utq.edu.iq

<sup>2</sup>Law5mas@utq.edu.iq

---

## Abstract

Many international and regional agreements have been concluded to control the transport of hazardous waste and reduce its harmful effects, which is one of the most important environmental problems facing countries in the world, especially developing countries, because it directly contributes to environmental pollution, including its impact on the human element and all natural components, and internal legislation has been incorporated Rules and obligations related to hazardous waste. The Iraqi legislature and comparative legislation regulate the management of hazardous waste and how to dispose of it, and criminalize illegal dealing with it. Since hazardous wastes are characterized by the extension of their harmful effects to neighboring countries, and the achievement of the damage resulting from them is slow for a period of time that may be long or short, and the breadth of their scope and the difficulty of controlling them and identifying those affected by them. In terms of the material pillar and the moral pillar, and in terms of the right of the victim in these crimes.

## Introduction

### First / research topic

The issue of pollution in hazardous waste has received great attention at the international and domestic levels, as hazardous waste is constantly increasing as a result of industrial progress, which poses a threat to human health and other elements of the environment with its direct toxic effects represented in the elimination of humans and other organisms or indirect results that take some Time to appear as cases of disability, poisoning and other diseases.

The impact of hazardous waste was not limited to the borders of one country, but extended to other countries, as developed countries resorted to exporting their waste outside their territories to settle in one of the developing countries despite their lack of technology for safe disposal of them, which called for a legal protection from the effects of hazardous waste. By concluding international and regional agreements and enacting internal legislation regulating dealing with these wastes and limiting their harmful effects.

### Second / the Importance of Research

The importance of research lies in the international and internal attention to the problem of hazardous waste and the provision of legal protection from its harmful effects on humans and the environment, which requires a statement of the legal basis for it at the level of international conventions and at the level of the constitution and ordinary laws, as well as shedding light on the legal description of the crimes arising from illegal dealing with these wastes.

### Third / the Problem of Research:

The subject of the basis of crimes arising from handling hazardous waste and its legal description raises several questions, including:

1. Is there a legal basis for hazardous waste at the international and domestic levels?
2. Did the Iraqi legislator stipulate the illegal handling of hazardous waste?
3. What is the legal description of the crimes arising from the handling of hazardous waste, are they dangerous crimes or harm? Intentional or unintentional?

The answer to these questions will be the focus of the research

### Fourth / Research Methodology

The research will adopt the analytical approach and the comparative approach, by analyzing the legal texts related to providing protection from illegal dealing with hazardous waste, and then comparing them with other legislation to find out the similarities and differences to reach the appropriate legislative solutions.

## **Fifth / Research Plan**

For the purpose of studying the topic (the basis of crimes arising from the illegal handling of hazardous waste and its legal description), it is necessary for us to divide the research plan into two sections.

### **The first topic**

#### **Legal basis for dealing with hazardous waste**

The problem of hazardous waste has aroused great interest at the international and internal levels, which resulted in the conclusion of many international and regional agreements and the enactment of internal laws intended to get rid of these wastes and reduce their direct or indirect effects that they cause to humans or the environment, and accordingly we will discuss the first requirement of this topic The legal basis for hazardous waste at the international level. In the second requirement, we discuss the legal basis at the constitutional level. In the third requirement, we discuss the legal basis at the level of ordinary laws.

The first requirement

#### **The Legal Basis for Hazardous Waste at the International Level**

Many international and regional agreements have been concluded to protect the environment from pollution by hazardous waste, as certain procedures have been established and several obligations have been imposed to solve the problem of such waste by transporting or disposing of it. Among those agreements are:

##### **First: The London Convention of 1972 to Prevent Marine Pollution Resulting From Dumping Hazardous Wastes.**

The main objective of the agreement is to prevent the disposal of wastes that can cause harm to humans and the marine environment as a whole.

This agreement was signed in 1972 and entered into force in 1975.

The agreement includes 22 articles and 3 annexes (Qari, 2020, pg. 28.)

The London Convention approved the inclusion of several lists containing the categories of hazardous substances and waste included in the annexes attached to the Convention, which are prohibited from being disposed of in the marine environment. .

Examples of these wastes include cadmium and its compounds, mercury and its compounds, and high-level radioactive waste, and prohibiting the disposal of wastes contained in Annex II without a prior special permission from the competent authority, and not allowing the disposal of wastes contained in Annex III without a prior general permit from the competent authority (Abdul Mohsen, 2018 , p. 19)

It is noted from the foregoing that the London Convention has expanded its inclusion of the categories of hazardous waste, as radioactive waste is considered as one of these categories. It should be noted that Iraq is not among the member states of this agreement.

##### **Second: The Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and Their Disposal**

The Basel Convention is one of the most important international agreements that aim to protect humans and the environment from the effects of hazardous waste resulting from cross-border transportation or disposal.

It was concluded in 1989 and entered into force in 1992. The definition of the concept of hazardous waste came in Article 1 of the Convention, as it stipulates: "For the purposes of this Convention, the following wastes subject to transboundary movement are considered hazardous wastes: (a) Wastes belonging to any category contained in Annex I Unless it does not have any of the characteristics listed in Annex III:

and (b) wastes not covered by paragraph (a) but which are defined or regarded under the domestic legislation of a Party of export, import or transit as hazardous waste (2). Paragraph (3) of Article 1 of the Convention stipulates, "The wastes that are subject, as radioactive, to other international control systems, including international instruments specifically applicable to radioactive materials, are excluded from the scope of this Convention (Abdul Mohsen, 2018, pg. 19).

Paragraph (4) of the same article states, "Wastes resulting from the normal operations of ships and the disposal of which are covered by another international instrument are excluded from the scope of this Convention.

The agreement imposed on member states several obligations, the most important of which is to reduce the generation of hazardous waste to a minimum, to take the necessary steps in the management of hazardous waste to prevent pollution resulting from it, to reduce the movement of hazardous waste across borders to a minimum in accordance with environmentally sound management and not to allow the export of hazardous waste To a country or countries belonging to an economic or political integration organization, especially to developing countries whose legislation has prohibited all imports, not to allow the transboundary movement of hazardous

wastes unless the country of export does not have the technical capacity, the necessary means, or the appropriate sites to dispose of waste in an environmentally sound manner. Al-Shehhi, 2010, pg. 28) By reviewing the texts of the Basel Convention, it is noted that it was adopted in defining the concept of hazardous waste on the lists included in the annexes of the Convention, and also stipulated that the hazardous wastes contained in Annex I of the Convention should be characterized by the characteristics of the danger listed in Annex III, and radioactive waste and ordinary waste were excluded from the scope of the Convention For ships as they are subject to another international regulation, it is also noted that the agreement imposed several obligations on member states, the aim of which is to control and manage hazardous waste in environmentally sound ways.

It should be noted that Iraq has acceded to the Basel Convention under the law of the accession of the Republic of Iraq to the Basel Convention on the Control of Transboundary Transport and Disposal of Hazardous Waste No. (3) of 2011.

### **Third: Bamako Agreement of 1991**

The Bamako Convention is one of the regional agreements concluded in 1991 regarding banning the import of hazardous wastes to Africa and controlling their cross-border transportation. The concept of hazardous waste is defined in Article Two of the Convention, which stipulates that (1) For the purposes of this Convention, the following wastes are considered hazardous wastes: (A) Wastes belonging to any category contained in Annex I of this Convention. (b) Wastes not covered by paragraph (a) above but which are defined or considered by the domestic legislation of the State of export, import or transit as hazardous waste (c) Waste having the characteristics set forth in Annex II of this Convention (d) Hazardous substances that have been prohibited Or canceled or refused to be registered by a government regulatory action in the country of manufacture for the purpose of human health or environmental reasons, or it was voluntarily withdrawn or deleted from the government registration required for use in the country of manufacture (Abdul Mohsen. Previous source, p. 25). Note that Annex I of the Bamako Convention included all categories of waste listed in Annex I of the Basel Convention. The agreement also included: Waste that are subject to being radioactive for any international control systems, including international instruments specifically applied to radioactive materials within the scope of this Convention.

It is clear from the foregoing that the provisions of the Bamako Convention do not differ much from the provisions of the Basel Convention of 1989 in terms of their reliance on lists of categories of hazardous waste attached to the annexes of the Convention to define the concept of these wastes.

As the categories included in the Bamako Convention are the same as those included in the Basel Convention, but they differ from the Basel Convention because the categories of waste listed in Annex I are considered hazardous without requiring them to be characterized by the hazard characteristics contained in Annex II. Radioactive waste has also been included in its scope as one of the types of hazardous waste.

### **The second requirement**

#### **The Legal Basis for Hazardous Waste at the Constitutional Level**

Many countries have included the right to protect the environment from pollution in general in explicit constitutional texts, which makes this right binding on everyone because it was mentioned in the supreme law of the state. (Every person has the right to live in a healthy, balanced and dignified environment). It is clear from the text of the article that the legislator considered the human right to live in an appropriate healthy environment as one of the basic rights guaranteed by the French Constitution, and stated in other texts (Every person must according to the conditions it sets The law may prevent damage to the environment or limit its consequences if this is not possible. And (every person must contribute to redressing the damages that occur to the environment in accordance with the conditions specified by law).

It is noted from the texts contained that the French Constitution has obligated every person to prevent damage to the environment or limit its effects and contribute to redressing these damages in accordance with the law.

The same applies to the Egyptian Constitution of 2014, it contained explicit texts to protect the environment from pollution, the most important of which is what was stated in Article (46), which states: "Every person has the right to a healthy healthy environment, and protecting it is a national duty, and the state is obligated to take the necessary measures to preserve it, and not harm it." and rational use of natural resources to ensure sustainable development and guarantee the rights of future generations.

Contrary to the Kuwaiti constitution issued in 1962, it did not include texts referring to the protection of the environment. it did not address the individual's right to a clean environment. Perhaps one of the reasons for this is that the Kuwaiti constitution has not been amended since its issuance, as it is one of the rigid constitutions, as its amendment requires procedures that are more difficult than the procedures for amending ordinary laws.

Its amendment requires the availability of the wills of the National Assembly and the Emir together. In addition, the Kuwaiti constitution is considered one of the short constitutions, as it contains the essential principles and substantive rules, and it referred many issues to ordinary laws (Al-Otaibi, 2018, pp. 35-36).

In Iraq, the previous constitutions did not refer to the protection of the environment from pollution, as the constitutional protection of the environment was included for the first time through the effective 2005 constitution, in Article 33/First, which stipulates that “everyone has the right to live in sound environmental conditions”.

And in Paragraph (Second) of the same article stipulates: “The state guarantees the protection and preservation of the environment and biodiversity”.

It is clear from the above that the Iraqi constitution has indicated in clear and explicit texts the right of the individual to enjoy a healthy and sound environment, as well as ensuring the protection of the environment and biodiversity. And it came in another text: “Designing an environmental policy to ensure the protection of the environment from pollution and the preservation of its cleanliness in cooperation with the regions and governorates that are not organized in a region”.

It is noted that the objective of the text of the article is to find joint cooperation between the federal authorities and the regions for the purpose of protecting and preserving the environment from pollution.

## **The Third Requirement**

### **The Legal Basis for Hazardous Waste at the Level of Ordinary Legislation**

The inclusion of environmental protection from pollution by hazardous waste was not limited to international agreements and state constitutions, but was included in ordinary legislation, whether in penal laws or special laws, by criminalizing illegal acts in dealing with hazardous waste as follows:

#### **First: In the Penal Code**

By looking at the French Penal Code, it is noted that it did not include texts criminalizing the illegal dealing with hazardous waste directly, but it criminalized the attack on the environment in general, as Article (421/2) of the French Penal Code of 1992 stipulates (it also constitutes a terrorist act).

endangering human or animal health or the natural environment. In another text: “The basic interests of the nation include in its concept the independence, integrity and security of its territory, the republican system of its institutions, its means of defense and diplomacy, the protection of its citizens at home and abroad, the preservation of the balance of its natural environment and the essential elements of its scientific, economic, and cultural wealth”.

It is noted from the foregoing that the French legislator considered the attack on the environment as one of the forms of terrorist crimes, and it is one of the formal crimes, as responsibility for it arises without the requirement that actual harm be achieved. He also considered the preservation and protection of the environment among the basic interests of the nation.

Likewise, the amended Egyptian Penal Code No. (58) of 1937 did not include provisions criminalizing dealing with hazardous waste, but it also criminalized assault on the environment in general, in Article (86) stipulating (In the application of the provisions of this law, terrorism means every use of force or Violence, threat or intimidation, which the offender resorts to in implementation of an individual or collective criminal project, with the aim of disturbing public order or endangering the safety and security of the community, if this would harm people or create terror among them or endanger their lives, freedoms, or security, or damage the environment.

It is clear from the text of the article that the Egyptian legislator considered each of the foregoing acts intentionally carried out by the offender that would cause harm to the environment as a terrorist crime.

As for the Iraqi Penal Code No. (111) of 1969, it did not criminalize the illegal handling of hazardous waste directly, but it implicitly stipulated that in Chapter Three of Violations related to Public Health, as Article (497/Third) stipulates that (punishable by imprisonment for a period of time Not to exceed fifteen days or a fine of anyone who intentionally or negligently causes the leakage of gases, fumes, dirty water and other materials that would harm, harass or pollute people.

It is noted from the text of the article that the legislator did not indicate what substances that cause pollution are hazardous waste or not, and perhaps the reason for this is that the crimes arising from dealing with hazardous waste are among the new crimes that the legislator later organized in special laws, and it is also noted through the prescribed penalty. The Iraqi legislator considered the crimes of environmental pollution as violations.

#### **Second: The Legal Basis for Hazardous Waste in Special Laws**

Hazardous waste in France is subject to two laws, the first of which is Law No. (633-75) of 1975 related to waste disposal and the recovery of raw materials, which clarified in the first article what is meant by waste in general, while the second article of it stipulated that these wastes result in harmful effects on the soil, plant or Animals, air or water pollution, generate noise, or have a negative impact on human health or the environment, and the first paragraph of Article Two obligates every person who produces wastes that generally cause harm to

human health and the environment to provide a guarantee for the disposal of these wastes in accordance with the provisions of the law (Jamil, 2016 , p. 15.)

Although the provisions of the law apply to waste in general, it included in Article 8 special types of waste that could cause harmful effects to the environment. Hazardous waste generator or transporter Information about those hazardous wastes and the way they are taken out, transported or disposed of, and was established pursuant to Article 22 of what is known as the National Agency for Recovery and Waste Disposal, whose mission is to establish special units for recovery and treatment and to provide technical assistance to public authorities and projects that have problems related to hazardous waste. . (Abdul Hafez, 2007, pg. 70).

The second legislation was represented by Law No. (629) of 1976 related to the classification of facilities in order to protect the environment. Under Article (10) the competent authorities were required to draw up mandatory plans in coordination with public authorities and governmental and non-governmental organizations at the internal and international levels in order to remove waste,

France also followed several directions for the safe disposal of hazardous waste, so it issued several decisions in this regard, including Resolution No. (638) of 1998 regarding the consideration of environmental protection considerations when packing hazardous waste, and Resolution (374) of 1999 regarding how to dispose and reuse used batteries, and Resolution (1563) for the year 2002 related to how to dispose of used tires and Resolution (727) for the year 2003 regarding the disposal of used vehicles,

The French legislator also imposed taxes on hazardous waste disposal activities that take place without taking into account environmental protection measures (Abu El Ghaith, pp. 322-323).

It is clear from the foregoing that the French legislator has organized everything related to hazardous waste in separate legal texts represented in the definition of waste and its effects and the obligation to provide information on the transfer or disposal of waste, as well as obligating the competent authorities to develop mandatory plans for the purpose of removing such waste.

As for the Egyptian legislation, the rules and provisions related to hazardous waste were regulated in the second chapter of the Environmental Protection Law No. (4) of 1994, as amended under the title "Dangerous Materials and Waste", as Article (29) of it stipulates (It is prohibited to handle hazardous materials and waste without a license from the authority). The competent administrative authority and the executive regulations of this law indicate the procedures and conditions for granting the license and the authority competent to issue it.

The ministers, each within the scope of his competence, in coordination with the Minister of Health and the Environmental Affairs Agency, shall issue a schedule of hazardous substances and wastes referred to in the first paragraph of this article.

It is clear from the text of the article that the legislator has prohibited the circulation of hazardous waste without a license from the competent authorities and has given the competent ministries the right to issue, in coordination with the Minister of Health and the Environmental Affairs Agency, a table of hazardous waste.

He referred to the executive regulation the rules and procedures related to the management of hazardous waste and the designation of the authority competent to set schedules for these wastes after coordination with the Environmental Affairs Agency through the text of Article (30) (The management of hazardous waste is subject to the rules and procedures contained in the executive regulations of this law. The said regulation determines the authority in charge of setting schedules hazardous wastes subject to its provisions, after consulting the Environmental Affairs Agency).

As stated in other texts (it is prohibited to establish any facilities for the purpose of treating hazardous waste without a license from the competent administrative authority after taking the opinion of the Environmental Affairs Agency, the disposal of hazardous waste shall be in accordance with the conditions and standards specified by the executive regulations of this law)

F (It is prohibited to import hazardous wastes or allow their entry or passage in the territory of the Arab Republic of Egypt. Without a permit from the competent administrative authorities, it is prohibited to allow the passage of ships carrying hazardous wastes in the territorial sea or the exclusive economic maritime zone of the Arab Republic of Egypt).

It also stated (the owner of the facility whose activity results in hazardous waste, in accordance with the provisions of this law, must keep a record of these wastes and how to dispose of them, as well as the contracting parties to receive these wastes. Record to ensure that the data match reality.

The owner of the facility or the person responsible for its management that produces hazardous waste must purify it and the soil and the place where it was located, if the facility is moved or its activity is suspended.

It is noted from the texts mentioned above that the Egyptian legislator has prohibited the establishment of facilities to treat hazardous waste without a license issued by the competent authorities and in accordance with the law, as well as an absolute ban on importing hazardous waste or allowing its entry or passage in the territory of the state. Or the passage of ships carrying hazardous wastes in the territorial sea or the exclusive economic maritime zone of the state without a permit from the competent authorities. The owner of the facility or the person responsible for managing it by purifying it in accordance with the law.

The regulation of provisions related to hazardous waste in Egypt was not limited to the Environmental Protection Law No. (4) of 1994 and its executive regulations, but were also regulated in the Waste Management Regulation Law No. (202) of 2020 in Chapter Five under the title "Dangerous Substances and Waste" and in several texts Which does not differ much from the texts contained in the Environment Law of 1994, as stated in Article (55) (it is prohibited to handle hazardous materials and waste except after obtaining the approval of the Agency with a license from the competent administrative authority. Those licensed to handle hazardous materials or waste are prohibited from abandoning them or handing it over except to the places designated for that or to the persons authorized to do so).

It is noted on the text of the article that the legislator has also prohibited the handling of hazardous waste without a license from the competent authorities, as well as the abandonment or delivery of such waste to places not designated for it or to persons not authorized to do so. In another text, it is prohibited to import hazardous waste or allow its entry or passage in the territory of the Arab Republic of Egypt. The Suez Canal, as the case may be, and after the approval of the Agency in the manner indicated in this law).

It also prohibited the import, entry or passage of hazardous wastes into the territory of the State, or the passage of ships carrying such wastes in the territorial sea or the exclusive economic zone without a license from the competent authorities. It also stipulated that (it is prohibited to dump hazardous materials or waste into the territorial sea, the continental shelf, the exclusive economic zone or the high seas of the Arab Republic of Egypt).

It is clear that the Egyptian legislator prohibited the disposal of hazardous waste by dumping it in the maritime territory of the state. It also required those responsible for managing or producing hazardous waste to take the necessary precautions to ensure that no harm would occur to the environment, and required the owner of the facility or the person responsible for its management to keep a record of these wastes and how to dispose of them. Obtaining official approvals.

As for the Kuwaiti legislation, the provisions of hazardous waste were regulated in the first chapter of the Environmental Protection Law No. (42) of 2014 as amended, entitled "Management of hazardous, medical and municipal solid waste and sludge" in several texts, represented in the text of Article (27) which states (It is prohibited to import Or export hazardous waste or allow its entry or passage through the territory of the State of Kuwait.

Exceptions are made to the export of hazardous wastes that the state does not have the technical capacity and the necessary facilities, means or appropriate ports to dispose of, and in all cases, the approval of the authority is required to do so.

It is clear from the text of the article that Kuwaiti law has prohibited the import, export, entry or passage of hazardous waste into the territory of the state, then it excluded the export of hazardous waste in the event that the state does not have the technical capacity or the appropriate means to dispose of it after obtaining the approval of the competent authorities.

And another text states: "Hazardous waste, municipal solid waste, health care waste, and all kinds of protectors must be disposed of in accordance with the environmental conditions and standards specified by the executive regulations of this law. It is also prohibited to dispose of all types of waste by direct landfill in sites not designated for the environment".

The law requires that the disposal of hazardous wastes be in accordance with the conditions specified in the law, and it is prohibited to dispose of wastes in locations other than those designated for the environment.

It also required the sources from which hazardous wastes are generated and charged with collecting, transporting and disposing of these wastes to provide the competent authority with their details, while maintaining a special record that includes data related to them.

As for the Iraqi legislation, it dealt with hazardous waste in the Ministry of Environment Law No. (37) of 2008, as it clarified in Article (1) of Chapter One what is meant by hazardous waste, and it came in another text, "The Ministry seeks to achieve its goals through the following:

(Laying the foundations for the proper management of chemical and biological materials and harmful and hazardous waste).

Then the provisions related to hazardous waste were organized in Section VI of Chapter Four of the Environmental Protection and Improvement Law No. (27) of 2009 under the title "Management of Hazardous Materials and Waste."

The text of the law included forbidding the following:

Second (Transporting, handling, entering, burying, dumping, storing or disposing of hazardous or radioactive waste except by using environmentally sound methods and obtaining official approvals according to instructions issued by the Minister in coordination with the concerned authority).

Fourth (the entry and passage of hazardous and radioactive wastes from other countries into the Iraqi lands, airspace, or marine areas, except after prior notice and obtaining official approvals(

Fifth: Establishing any activity for the purpose of treating hazardous waste without a license from the competent authorities after taking the opinion of the Ministry, and its disposal shall be in accordance with the conditions

and standards specified by instructions issued for this purpose to ensure that no damage to the environment occurs.

It is noted that the Iraqi legislator has prohibited dealing with hazardous and radioactive waste, whether in terms of entry, burial, dumping, or disposal unless environmentally sound methods are used and official approvals are obtained for this. In the fourth paragraph, it is also forbidden to enter and pass these wastes into the territory of the state unless official approvals are obtained, preceded by notifications from the competent authorities,

As for the fifth paragraph, it was forbidden to establish any activity for the treatment of hazardous waste without a license from the competent authorities, and accordingly, the Iraqi legislator stipulated that dealing with hazardous waste be contingent upon obtaining official approvals or licensing from the competent authorities.

## **The Second Topic**

### **Legal Description of Crimes Arising From Handling Hazardous Waste.**

Several questions arise about the legal description of the crimes resulting from pollution with hazardous waste, are they harm crimes or dangerous crimes? Temporary or continuous? Are they intentional or unintentional crimes, and is the right of the victim in these crimes considered a public right or is it a private right only? For the purpose of identifying the description of these crimes, we must divide them in this topic into three demands. We discuss in the first requirement the legal description of the crimes in question in terms of criminal behavior and outcome, and we discuss in the second requirement the legal description in terms of criminal intent. As for the third requirement, we discuss the legal description in terms of the assaulted right In these crimes my agencies:

## **The First Requirement**

### **Legal Description In Terms Of the Material Element**

In order to know the legal description of the crimes arising from the handling of hazardous waste, are they temporary or continuous crimes of danger or harm, we must divide them in terms of behavior and result as follows:

#### **First, In Terms Of Criminal Behaviour**

The nature of the material act constituting the crime is the difference between it being temporary or continuous, regardless of whether this act is positive or negative.

The lesson of continuity is the involvement of the offender in the punishable act in a sequential and renewed manner, as the period preceding this act of those who prepared to commit it and prepare to commit it or the time following it, during which its penal effects continue in its wake, is not considered. His rulings were more severe for the continuation of committing the crime in light of the new rulings (Khalifa, 2017, p. 36.)

The achievement of the result in environmental crimes may be slackened to a time later than the commission of the criminal behavior, as the law does not care much about the results as much as it is concerned with the behavior, it may be difficult in many cases to prove the result in time or place. If no harmful result is achieved or achieved after a long or short time, that is, it does not affect the considerations of the attack on the environment, such as temporary crimes.

As for the spatial aspect, what distinguishes crimes against the environment is that they may exceed the limits of the place in which they occurred, so the pollution extends to a place beyond the place in which it occurred, whether within the territory of the state or to the territories of another state, causing damage to human life and the natural environment (Al-Hamdouni, p. 111).

Therefore, it is difficult to describe environmental crimes as only temporary or continuous crimes, as we find temporary crimes that take place and end as soon as the act is committed, for example the crime of establishing a facility for the purpose of treating hazardous waste without a license from the competent administrative authority.

Including what are considered continuous crimes that last for a period of time and the will of the offender interferes with the punishable act in a sequential manner, such as the management of hazardous waste in violation of the law (Salami, 2016, p. 15)

Accordingly, it can be said that the crimes arising from dealing with hazardous waste are crimes of a dual nature, some of which are temporary as a crime of transporting, entering or dumping ... hazardous waste, and others are a continuous crime such as a crime of handling or passing of hazardous waste.

#### **Second: In Terms of the Criminal Outcome**

Most of the crimes decided by the legislator at the present time are still crimes of harm, and they are in which the offender, by his criminal behavior, harms the interest subject of criminal protection. With crimes with a material outcome such as murder, theft, breach of trust and fraud, and with the recent development and the advancement of technical means, some criminal legislation has stipulated crimes of endangerment, in which the

legislator is satisfied with arranging criminal behavior as a danger to the right subject of criminal protection without entailing actual harm, and this danger is the threat. With harm, this danger is itself a consequence punishable by law because it is a change in the external environment in which the crime is integrated (Abu Khatwa, 1999, p. 13-14.)

In other words, danger crimes are characterized by the fact that the effects of material behavior in them involve a possible attack on the right or interest under protection, and both harm crimes and endangerment crimes participate in prejudice to the interests and social values that the legislator is keen to protect.

The criterion for distinguishing between harm crimes and endangerment crimes is that the result takes a different picture in each of them, while the criminal behavior in the harm crime leads to material and moral damage to one of the rights protected by law, the effects of criminal behavior in the crime of endangerment represent a possible aggression against the right or just threat of danger, as the punishment in the crime is based on the potential harm resulting from material effects, which are rare with the possibility of its occurrence (Amin, 2016, pg. 57).

When the legislator dealt with the elements of the environment in this way, he intended from that to protect the various elements of the environment, given the special features that characterize them by criminalizing acts that pose a threat to a specific danger, as he made the basis for criminalization to be this danger, and the legislator's goal in this matter is that the valuable qualities characterized by the environment, it is difficult to deal with it normally, if it is one of the values with which it is difficult to identify the victim in particular, determine the damage he sustained, the extent of this damage and its complications, and how many people are likely to be affected at this time or at any other time. For this reason, we find that criminalization. He focused on the act simply because he threatened to pose a specific danger to the public interest or private interest (Al-Malkawi, 2009, p. 73).

Environmental crimes differ in general from traditional crimes because they are characterized by the breadth of their scene and scope and therefore difficult to control in a short time and prevent their spread. Also, these crimes do not recognize the political borders of the state, as they are an international cross-border crime if it comes to polluting the air environment and the difficulty of controlling it and the impossibility of restriction. From its space, which helps the spread of polluted air due to the high wind speed, temperature and humidity related to the atmosphere, so it is one of the most dangerous types of pollution resulting from cross-border crimes (Shaiban, 2018, pp. 9-10.)

Thus, the legislator's criminalization of dangerous behavior in a stage prior to the realization of the harm is an effective legislative means to combat actions that would prejudice the environment in order to prevent the aggravation of its effects and prevent its spread. Determining the law applicable to the criminal incident and specifying the court with jurisdiction over the case. Expansion of dangerous crimes helps to overcome these problems and develop a solution to the problem of the stability of the causal relationship between behavior and the criminal outcome in the case where the source of the environmental damage is not precisely defined, due to the multiplicity of sources that contribute. In environmental pollution in the event that the pollution is far-reaching, as well as adopting this type of crime provides the greatest protection for the environment, especially since many of them are difficult to prove (Bo Khalfa, previous source, p. 60)

We conclude from the foregoing that the crimes arising from dealing with hazardous waste are considered dangerous crimes, as the legislator has criminalized the acts of transporting, handling, burying, dumping, storing, disposing, entering and passing hazardous and radioactive waste without obtaining official approvals, or establishing any activity for the purpose of treatment. Hazardous waste without a license, without requiring the achievement of a criminal outcome harmful to the forms of criminal behavior.

## **The Second Requirement**

### **Legal Description In Terms Of the Moral Element**

The moral element in the crime expresses the will that contradicts the materiality of the crime and brings it into existence, as it represents the psychological force that reveals the will of the offender and his inner position towards achieving aggression in the crime. The Latin states that there is no crime without fault (Al-Hamdouni, previous source, p. 127).

This error may take two forms, the form of criminal intent in intentional crimes and the form of unintentional error in non-intentional crimes. And that the law is punishable and his will directed to implement it (Abdul Amir, 2019, p. 49).

Environmental pollution crimes are like other crimes in which the moral element takes two forms: criminal intent in intentional crimes and unintentional error in non-intentional crimes. The same is a judicial orientation in France and England.

And the United States of America, as responsibility for environmental crimes, in particular crimes of polluting rivers and seas with industrial waste, is established on the basis of material responsibility, regardless of the moral element in its traditional form (intention and error), and this is justified by the difficulty of proving the moral element in environmental crimes (Al-Mutairi and Al-Mutairi, 2020, p. 342).



However, the adoption of the material character raises a problem, especially in determining who is responsible for the crime in the event of multiple defendants, and it is possible that those who may be unaware of the existence of this pollution will be convicted. The adoption of the material character of the environmental crime is due to the fact that the crime is not a purely physical entity, but rather it is a legal creature consisting of objective elements related to the act and personal elements related to the perpetrator. The personal elements of the crime reveal the importance of the personal concept in the Penal Code, which means that there is no conviction without fault, regardless of the extent of the damage or the severity of the danger resulting from the accused's act (Barkawi, 2017, p. 171).

It should be noted that the Iraqi legislator did not take the idea of the materiality of environmental crime, which means that it is not possible to establish criminal responsibility for this type of crime on a material basis. In order to achieve environmental crime, it is necessary to take the form of criminal intent and unintentional error, and the evidence for this is the reference to the amended Iraqi Penal Code No. (111) of 1969, which divided the elements of crimes into two material and moral elements. The moral element was interpreted as being based on criminal intent or error, which indicates that the policy of The criminal legislator does not favor the idea of physical crimes (Khader, 2010, p. 184).

As well as what was stated in the Iraqi Environmental Protection and Improvement Law No. (27) of 2009 in Article (32) which states: "Anyone who caused by his personal action, negligence or negligence or by the actions of those under his care, control or control of persons or followers shall be held responsible. Or violating laws, regulations, and instructions, causing damage to the environment, and he is obligated to compensate and remove the damage within an appropriate period....

In spite of that, the Iraqi legislator has overlooked the possibility of committing crimes related to hazardous waste by mistake.

We conclude from the foregoing that the legal description of the crimes arising from dealing with hazardous waste in terms of its moral aspect may be intentional crimes if the perpetrator has criminal intent, and may be unintentional crimes if the perpetrator has no criminal intent, error may exist either in the form of negligence, lack of precaution, or Failure to observe laws, regulations and instructions.

### **The Third Requirement**

#### **Legal Description In Terms Of the Infringed Right**

The question arises about the legal description or the nature of the infringed right in the crimes arising from the handling of hazardous waste. Is it a public right and therefore crimes related to hazardous waste constitute an attack on the public interest, or is it a private right that constitutes an attack on the private interest only, and to know the nature of this right we must search For the victim of these crimes. As environmental pollution crimes differ from traditional crimes, in most cases, the damage affects the right holder and does not exceed it to prejudice other interests, but sometimes it affects collective interests. By purely environmental damage, such as that which results in the death of a rare species of animals or birds, or leads to the death of wildlife or the death of trees, or the polluted water becomes unusable, so the whole community will be affected due to the economic, social and environmental effects resulting from it (Berkaoui, previous source, p. 86).

Accordingly, these crimes may constitute an assault on persons, as in the crime of pollution of river water, the victim is the person who used the contaminated water, and it claimed his life or caused health damage, and the crime of air pollution can also be identified directly, as the pollution caused harm to those who inhaled the air and caused him Diseases as a result of this, or the victim is public funds. The marine, water, terrestrial and air environments are considered public funds. Pollution of sea water with oil left over from ships is an attack on the marine environment, which is public funds. In this case, the victim is the state with the regional beaches or the individuals who live near Including the pollution of forests, trees, natural pastures, birds and plants, it constitutes an attack on the environment and at the same time the victim is the public funds (Al-Hamdouni, previous source, p. 113).

There is also a group of crimes called crimes without a victim, which may not harm a specific person and may occur in some of its forms with the consent of its parties, and then there is no motive for a person to report these crimes, or the availability of these crimes with their elements may be doubtful to the victim, as Not every act that pollutes the environment is in the eyes of the street a sinful act. Its provisions, especially if they require a degree of technical and legal know-how, or these means are characterized by a degree of difficulty and complexity, which leads to the reluctance of people to report these crimes, so it is entrusted to specialized bodies for environmental protection to receive communications only (Shamseddine, 2012, p. 41).

We conclude from the foregoing that the right of the victim in the crimes arising from the handling of hazardous waste is a general right, that is, it is not limited to damage or threat to the interest of specific persons, but is related to the interest of society, because the victim of these crimes is not only human but also other elements of the environment.

## Conclusion

After we finished studying the basis of the crimes arising from the handling of hazardous waste and their legal description, we reached a number of results and proposals, represented by the following:

### First / Results

- 1- International and regional agreements have been concluded regarding the control of the transport of hazardous wastes and limiting their effects. The most important of these agreements is the Basel Convention of 1989, which the Iraqi legislator kept pace with the comparative legislation by joining it.
- 2- The Iraqi legislator forbade dealing with hazardous waste in Article (20) of the Environmental Protection and Improvement Law No. (27) for the year 2009, which is the same as the comparative legislation.
- 3- The Iraqi legislator stipulated that dealing with hazardous waste should be preceded by obtaining official approvals or licensing from the competent authorities.
- 4- Crimes related to hazardous waste are considered dangerous crimes that are punishable by the legislator simply by committing one of the forms of criminal behavior.
- 5- The right of the infringed in the crimes arising from the illegal handling of hazardous waste is a general right that is not limited to humans only, but constitutes an attack on all elements of the environment.

### Second, the Suggestions

- [1] We propose to the Iraqi legislator to amend the text of Article (20) of the Environmental Protection and Improvement Law No. (27) for the year 2009, by prohibiting the entry or passage of hazardous waste absolutely into the territory of the state by making the text "it is prohibited the entry or passage of hazardous waste into the Iraqi region" ”.
- [2] We suggest that the Iraqi legislator expand the criminalization of dealing with hazardous waste, such as banning exports and permitting the entry of hazardous waste, or the failure of the owner of the facility or activity to keep a record of hazardous waste, or failure to take the necessary precautions... to provide the greatest degree of protection for humans and other elements of the environment.
- [3] We suggest that the Iraqi legislator stipulates the possibility of committing crimes related to hazardous waste by mistake if the law for the protection and improvement of the environment equates intentional and mistaken. Contrary to the general rules that require that there be a difference in the level of criminalization and punishment according to the will of the offender and his criminal gravity, which necessitates dividing these crimes into intentional and unintentional.
- [4] We suggest that the legislator stipulates in the Iraqi Penal Code that the crimes arising from the illegal handling of hazardous waste are considered terrorist crimes, as some comparative legislation went to, because the attack on the environment in general constitutes a threat to the security and safety of society.

## References

- [1] Hajar Qareh, Hajar Qareh, (2020), Environmental Protection from Hazardous Waste in the Light of the Provisions of Public International Law, Master's Thesis, Larbi Ben M'hidi University - Oum El Bouaghi - Department of Law,
- [2] Dr. Rana Mosbah Abdel Mohsen, (2018).The problem of hazardous waste and its treatment in the light of Egyptian legislation, Faculty of Law - Tanta University,
- [3] Mohammed Rashid Al Shehhi, (2010), International Liability for Damage Resulting from the Transport and Storage of Hazardous Waste, Dubai Police Academy Publishing House,
- [4] Dr. Ahmed Suleiman Al-Otaibi, (2018),The legal basis for the right of the individual to a clean environment, Journal of the Kuwaiti International Law College, Issue 3,
- [5] Thamer Jamil, (2016).International Liability for the Damage Caused by Nuclear Waste, Master Thesis, Faculty of Law - Mansoura University,
- [6] Dr. Muammar Rateeb Abdel Hafez, (2007), International Responsibility for the Transport and Storage of Hazardous Waste, Dar Al-Nahda Al-Arabiya,
- [7] Dr. Mahmoud Abul Ghaith, International Responsibility for the Unsafe Disposal of Hazardous Waste, Dar Al-Nahda Al-Arabiya, no publication year,
- [8] Faisal Boukhalfa, (2017).Environmental crime and ways to combat it in Algerian legislation, PhD thesis, University of Batna - Faculty of Law,
- [9] Abdel-Sattar Younes al-Hamdouni, Criminal Protection for the Environment, House of Legal Books, Egypt - UAE, no year of publication.
- [10] Muhammad Islam Salmi, (2016).crimes against the environment in Algerian legislation, a master's thesis, Muhammad Khider University - Faculty of Law,
- [11] Dr. Ahmed Shawqi Abu Khatwa, (1999), Crimes of Public Endangerment, Dar Al-Nahda Al-Arabiya,

- [12] Bashir Muhammad Amin, (2016), Criminal Protection of the Environment, PhD thesis, Al-Jilali Al-Yabis University - Faculty of Law,
- [13] Ibtisam Saeed Al-Malkawi, (2009). The Crime of Polluting the Environment, House of Culture for Publishing and Distribution,
- [14] Kenza Shaiban, (2018), National Criminal Protection for the Environment, Master's Thesis, Faculty of Law and Political Science - Law Department,.
- [15] 15. Muhammad Aref Abdul-Amir, (2019), The Crime of Environmental Pollution, Master's Thesis, Middle East University,.
- [16] Dr. Osama Madloul Al-Mutairi and Dr. Faisal Farraj (2020) Al-Mutairi, Penal Protection Guarantees for the Environment in the Arab Gulf Countries, South Valley University International Journal of Legal Studies, Fifth Issue,
- [17] Abdel-Rahman Barkawi, Criminal Protection for the Environment, PhD thesis, Jilali Al-Yabis University - Faculty of Law, (2017).
- [18] Dr. Nasser Karimish Khader, , (2010) Environmental crime and the penalties prescribed for it in Iraqi legislation, research published in Dhi Qar Literature Journal, No. 2
- [19] Dr. Ashraf Tawfiq Shams Al-Din, (2012). Criminal Protection for the Environment, Dar Al-Nahda Al-Arabiya, second edition,

## **Second: Laws and Constitutions:**

- [1] Article (114/III) of the Iraqi constitution for the year 2005.
- [2] Article (3) of the French Environmental Charter of 2004, which was ratified in 2005.
- [3] Article (four) of the French Environment Charter of 2004 of the French Constitution of 1958 amended in 2008.
- [4] Article (410) of the French Penal Code No. (683) of 1992.
- [5] Article (31) of the Egyptian Environmental Protection Law No. (4) of 1994, as amended.
- [6] Article (32) of the Egyptian Environmental Protection Law No. (4) of 1994, as amended.
- [7] Article (33) of the Egyptian Environmental Protection Law No. (4) of 1994, as amended.
- [8] Article (62) of the Waste Management Regulation Law No. (202) of 2020.
- [9] Article (64) of the Waste Management Regulation Law No. (202) of 2020.
- [10] See Articles (56, 59) of the Waste Management Regulation Law No. (202) of 2020.
- [11] Article (29) of the amended Kuwaiti Environmental Protection Law No. (42) of 2014
- [12] See Article (31) of the amended Kuwaiti Environmental Protection Law No. (42) of 2014.
- [13] Article (4/19) of the Ministry of Environment Law No. (37) of 2008.
- [14] Article (20) of the Iraqi Environmental Protection and Improvement Law No. (27) of 2009.

## **Third: international agreements**

- [1] See Annex I of the Convention Categories of Hazardous Wastes and Annex III Hazard Characteristics. Fourth of the 1989 Basel Convention