

INTERNATIONAL LEGAL MECHANISMS FOR HOLDING THE RUSSIAN FEDERATION ACCOUNTABLE FOR CAUSING ENVIRONMENTAL DAMAGE AS A RESULT OF ARMED AGGRESSION AGAINST UKRAINE / Liudmyla Golovko

doc. Mgr. Liudmyla Golovko, PhD.
Associate Professor
Comenius University Bratislava
Faculty of Law
Department of International Law
and International Relations
Šafárikovo nám. 6,
818 00 Bratislava; Slovakia
liudmyla.golovko@flaw.uniba.sk
ORCID: 0000-0002-3742-2827

Acknowledgement:

Funded by the EU NextGenerationEU
through the Recovery and Resilience
Plan for Slovakia under the project N°
09103-03-V01-00122.

Abstract: *As a result of the armed aggression of the Russian Federation against Ukraine, significant damage was caused to the environment. Official data published by the Ministry of Ecology and Natural Resources of Ukraine regarding the extent of environmental damage already caused indicates catastrophic consequences. That is why it is important to establish the illegality of causing environmental damage as a result of hostilities, to properly collect evidence, establish the amount of damage caused and to hold the Russian Federation accountable for causing this damage. The steps taken by Ukraine to achieve the abovementioned tasks were disclosed. The article analyses existing international mechanisms for environmental protection during armed conflicts and the possibility of holding Russian Federation responsible for environmental damage caused to Ukraine as a result of armed aggression. A conclusion was made about the possibility of holding the Russian Federation accountable for environmental damage according to the customary norms of the law of international responsibility by creating a special international tribunal.*

Key words: *Environmental Damage; Environmental Responsibility; International Environmental Law; Environmental Protection during Armed Conflicts*

Suggested citation:

Golovko, L. (2023). International Legal Mechanisms for Holding the Russian Federation Accountable for Causing Environmental Damage as a Result of Armed Aggression against Ukraine. *Bratislava Law Review*, 7(1), 29-40.
<https://doi.org/10.46282/blr.2023.7.1.354>

Submitted: 01 March 2023

Accepted: 22 May 2023

Published: 30 June 2023

1. INTRODUCTION

Russia's aggression against Ukraine endangers the ecological security not only of Ukraine, but also most of Europe. It is deliberately destroying Ukrainian oil depots, hydrotechnical infrastructure, thermal power plants and other energy facilities, which can make the environment unsuitable for life for a long period. For example, due to targeted strikes on the dam of the Karachunivka Reservoir on the Inhulets River, a large amount of waste and sewage was washed into the river waters. According to the Ministry of Environmental Protection and Natural Resources of Ukraine, due to fires at oil depots, more than 499,000 tons of toxic substances were released into the atmosphere, hundreds of thousands of tons of demolition waste pollute Ukrainian lands (more than

12,000 high-rise buildings, more than 100,000 private houses and more than 500 industrial enterprises were destroyed or damaged in Ukraine).¹ According to the Report of the Ministry from December 10, 2022, Ukraine recorded over 2,200 cases of environmental damage as a result of military actions. The preliminary assessment of environmental damage has already exceeded UAH 1419 billion (EURO 35.5 billion). More than 3 million hectares of Ukrainian forests and more than 0.9 million hectares of protected areas have been damaged, and 600 species of animals and 750 species of plants and mushrooms are under threat due to hostilities.²

Therefore, the issue of holding the Russian Federation accountable for the damage caused to the natural environment is acute. Ukraine faces the task of recording all cases of environmental damage caused by the aggressor, collecting evidence, measuring, and assessing the damage, identifying the culprits, and bringing them to justice, as well as seeking compensation for the damage caused.

International legal mechanisms for holding the Russian Federation accountable for environmental damage caused to Ukraine have not been closely studied. This specific issue we aim to address in our research. The hypothesis of the study is the insufficiency of international legal regulation of environmental protection during armed conflicts in general and holding the aggressor country accountable for environmental damage in particular, and as a result, the need to refer to customary international law and the UN Charter (Article 2(4)) to hold the Russian Federation accountable for environmental damage in Ukraine. The key approach to the study of this topic is the use of general theoretical methods of scientific research. System-functional method, analysis and synthesis, theoretical generalisation made it possible to generalise existing international legal mechanisms aimed at bringing the aggressor country to justice for the environmental damage caused. The first part of the article focuses on the breaches of international humanitarian law. The second part of the article analyses the possibility of holding the Russian Federation accountable for the damage caused to the environment as a result of aggression against Ukraine. The last part of the article is devoted to the process of assessing the environmental damage caused by the aggression of the Russian Federation against Ukraine.

2. ENVIRONMENTAL WAR CRIMES

International law includes environmental crimes among war crimes. According to Art. 8 of the Rome Statute, the ICC has jurisdiction in respect of war crimes, including the Geneva Conventions of 12 August 1949 and Additional Protocols of 1977. Norms directly aimed at environmental protection during international armed conflicts are contained in Additional Protocol I to the Geneva Conventions, namely Articles 35 and 55. According to Article 35 (3), it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.³ Article 55 is entitled "Protection of the natural environment" and indicates that "1. Care shall be taken in warfare to protect the natural environment against

¹ See Ministry of the Environment (2022). The scale of the damage caused to the environment of Ukraine by the aggression of the Russian Federation shocks the whole world. Available at: <https://www.kmu.gov.ua/news/mindovkilya-masshtabi-shkodi-zavdanoyi-dovkillyu-ukrayini-vid-agresiyi-rf-vrazhayut-ves-svit> (accessed on 01.06.2023).

² See Ministry of Environmental Protection and Natural Resources of Ukraine (2022). Briefing on the environmental damage caused by the Russia's war of aggression against Ukraine. Available at: <https://mepr.gov.ua/en/news/40728.html> (accessed on 01.06.2023).

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), Article 35 (3).

widespread, long-term, and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. 2. Attacks against the natural environment by way of reprisals are prohibited".⁴ Article 35 prohibits the deliberate use of methods and means of warfare, and Article 55 imposes a duty on states to show concern for the protection of the environment during armed conflicts. According to the commentary of the International Committee of the Red Cross to the Protocol 1, articles were drafted separate for the reason that whereas Article 55 relates to the protection of health and survival of the civilian population living in a particular wartime environment, Article 35 relates to the prohibition of unnecessary injury to the environment as a separate object.⁵ Therefore, these two articles do not duplicate themselves. At the same time, a shortcoming of these articles is that they do not appear among the provisions, the violation of which is qualified as a serious violation triggering individual criminal responsibility under Additional Protocol I.

The Additional Protocol I also contains other provisions that are indirectly related to environmental protection. For example, Article 54 prohibits destruction of agricultural areas or irrigation works, Article 56 prohibits attacks on dams, dykes, and nuclear electrical generating stations. According to Article 36, the parties have to determine whether the development or use of a new weapon or method of warfare would be compatible with international law.⁶ Undoubtedly, the norms related to environmental protection should be taken into account during this assessment.

In Article 8(2)(b)(iv) of the Rome Statute, damage to the environment is explicitly prohibited. According to it, war crimes mean "intentionally launching an attack in the knowledge that such attack will cause (...) widespread, 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".⁷ Article 8(2)(b)(iv) is applicable only to international armed conflicts. In addition to the widespread, long-term, and severe environmental damage, the article also requires proof of intent and knowledge that such an attack will cause such damage, as well as that the damage will be clearly disproportionate to the directly expected overall military advantage. This is the reason why international tribunals are reluctant to recognise the fact of committing an international environmental crime.

It is necessary to pay attention to one more detail. As we can see from the provisions of Additional Protocol I and the Rome Statute, to be held liable for environmental damage, the damage must be simultaneously widespread, long-term and severe. Undoubtedly, these terms should be clearly defined. This would facilitate their application in practice.

The international community proposes to supplement the Rome Statute with the crime of ecocide (Mareček, 2022; Ozoráková, 2022; Vashchenko, 2021). The developed

⁴ *Ibid.*, Article 55.

⁵ ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Commentary of 1987. Article 35. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-35/commentary/1987?activeTab=undefined> (accessed on 01.06.2023).

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Available at: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34_AP-I-EN.pdf (accessed on 01.06.2023).

⁷ Rome Statute of the International Criminal Court. Available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed on 01.06.2023).

concept of ecocide extends to illegal or senseless acts committed with the knowledge that there is a significant likelihood of severe and either widespread or long-term damage to the environment caused by these acts. In 2021 at the annual meeting of the governing body of the ICC, this concept was confirmed (Dawes, 2022). However, the introduction of a novel concept "ecocide" into the Rome Statute is not likely to happen. In any case, this would be about individual criminal responsibility, not accountability of Russian Federation.

In 2016, Russian Federation has withdrawn its signature from the Rome Statute, which it signed in 2000 but did not ratify. The signature was revoked after the ICC published a Report⁸ classifying the Russian annexation of Crimea as an international armed conflict. In 2019, Russian Federation withdrew from the Additional Protocol I to the Geneva Conventions, deliberately trying to avoid responsibility for future crimes. That is why it is not possible to hold Russian Federation accountable for environmental damage based on the norms of international humanitarian law.

3. POSSIBILITY OF HOLDING THE RUSSIAN FEDERATION ACCOUNTABLE FOR THE DAMAGE CAUSED TO THE ENVIRONMENT IN UKRAINE

On October 7, 2022, the Verkhovna Rada of Ukraine (Ukrainian Parliament) appealed the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and the national parliaments of foreign countries, regarding the creation of a special international tribunal on the crime of aggression against Ukraine.⁹ This appeal was supported by European Commission. On November 30, 2022, the European Commission presented options to bring Russian Federation to responsibility which propose to establish *ad hoc* international tribunal or a specialised "hybrid" tribunal (integrated in a national justice system with international judges) to prosecute war crimes committed by Russian Federation in Ukraine.¹⁰ On January 19, 2023, the European Parliament adopted the resolution on the creation of a special tribunal to investigate the crime of Russian aggression against Ukraine.¹¹ Creation of special tribunal could be a good solution to try the crime of aggression of the Russian Federation against Ukraine. At the same time, taking into account the fact that international law includes environmental crimes among war crimes, special tribunal will not consider the issue of responsibility for environmental damage.

Concerning Ukraine, on January 20, 2000, it signed the Rome Statute, but did not ratify it. The obstacle was the conclusion of the Constitutional Court of Ukraine of 2001 that some of the provisions of the document did not comply with the Constitution of

⁸ ICC (2016). Report on Preliminary Examination Activities. Available at: https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf (accessed on 01.06.2023).

⁹ Resolution of the Verkhovna Rada of Ukraine "On the Address of the Verkhovna Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and the national parliaments of foreign countries regarding the creation of a special international tribunal on the crime of aggression against Ukraine". Available at: <https://ips.ligazakon.net/document/T150129> (accessed on 01.06.2023).

¹⁰ European Commission (2022). Ukraine: Commission presents options to make sure that Russia pays for its crimes. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7311 (accessed on 01.06.2023).

¹¹ Press room (2022). Ukraine war: MEPs push for special tribunal to punish Russian crimes. *News: European Parliament*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20230113IPR66653/ukraine-war-meps-push-for-special-tribunal-to-punish-russian-crimes> (accessed on 01.06.2023).

Ukraine.¹² In 2014, Ukraine recognised the jurisdiction of the ICC and granted it the right to investigate crimes committed in Ukraine.

The Parliamentary Assembly of the Council of Europe in Resolution 2436 of April 28, 2022, also claimed about the need to create an international tribunal for the highest Russian political and military leadership.¹³ In the Resolution, the Assembly further invites the UNGA to request an Advisory Opinion from the ICJ on possible limits to the right to veto of permanent members of the UN Security Council based on the legal principles of the prohibition of the abuse of rights and the duty of UN member States to exercise their membership rights in good faith. At the same time, it should be noted that a positive decision on this issue is unlikely because the UN Charter does not provide for any procedure by which its permanent members can be deprived of their right to veto. There is no legal basis for the limitation of the right to veto.

Currently, we are observing the environmentalisation of modern international law. This is evidenced by the decisions of international courts, which reflect the prohibition of causing significant damage to the environment during any activity.

In addition, international experience shows that in practice, there have already been cases of compensation for environmental damage caused during armed conflicts. One of the examples is Decision adopted by the UN Compensation Commission (UNCC) created by UN Security Council Resolution 687 to resolve cases related to the war in the Persian Gulf between 1990 and 1991 concerned damage to the environment in direct connection with the Iraqi army's invasion of Kuwait. UNCC was created in 1991 by a decision of the UN Security Council to settle compensation for Iraq's invasion of Kuwait in 1990. In the Resolution, Iraq was held responsible for all damages, both those caused to the environment and the depletion of natural resources. According to the Resolution, a fund to pay compensation for claims was created and a commission to administer the fund was established.¹⁴ The Iraqi government recognised the authority of the UNCC and fulfilled all its demands. The total amount of compensation allocated was \$52.4 billion, of which \$5.26 billion were for environmental and public health damage caused in Kuwait and neighbouring countries by large-scale air, water and soil pollution from oil-well fires and oil spills, as well as other remnants of the conflict (Sand, 2005). This example is a small glimmer in the decision-making activity of international institutions, which takes into account environmental damage and establishes international legal responsibility for the damage caused during armed conflicts.

Regarding the possibility of creating a UN compensation commission in the case of Ukraine, it will also be problematic, since Russian Federation would most likely use the right of veto in the Security Council. Compensation commission for Ukraine can be created by concluding an agreement between the interested states. At the same time, the work of the commission can be organised according to the example of the Iraq-Kuwait Compensation Commission. In the Iraq-Kuwait case, the UN Security Council established a deduction to the compensation fund from Iraqi oil exports, which took place under the control of the UN. This ensured the possibility of reparations.

¹² Opinion of the Constitutional Court of Ukraine in the case based on the constitutional submission of the President of Ukraine on the provision of an opinion on the conformity of the Constitution of Ukraine with the Rome Statute of the International Criminal Court (Rome Statute case) of July 11, 2001, N 1-35/2001. Available at: <https://zakon.rada.gov.ua/laws/show/v003v710-01#Text> (accessed on 01.06.2023).

¹³ Parliamentary Assembly of the Council of Europe. Resolution 2436 (2022). Available at: <https://pace.coe.int/en/files/30024/html> (accessed on 01.06.2023).

¹⁴ Security Council Resolution 687(1991) of 3 April 1991: Iraq-Kuwait Resolution. Available at: <https://peacemaker.un.org/iraqkuwait-resolution687> (accessed on 01.06.2023).

For Ukraine, the example of the UNCC is relevant from the point of view of the basis of Iraq's responsibility for environmental damage. The central principle of the Resolution 687 is that the wrongful act which has engaged Iraq's State responsibility is the violation of Article 2(4) of the UN Charter (illegal invasion and occupation of Kuwait) and other norms prohibiting aggression, not violations of the law of armed conflict (Greenwood, 1996). Ukraine can also use this legal basis.

In each case, if it is not possible to hold Russian Federation responsible for the environmental damage caused on the basis of the norms of international humanitarian law, it will be responsible according to the customary norms of international law. The law of international responsibility, codified in the Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001, adopted by the International Law Commission, can be used. Article 1 of the Draft Articles reflects a long established principle of international law that "every internationally wrongful act of a state entails the international responsibility of that state".¹⁵ There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State (Article 2). According to the scientists (e.g., Greenwood, 1996; Mackielo, 2009) this principle applies to breaches by a state of its international obligations relating to the environment, just as much as it does to breaches of other international obligations. According to Article 31 of the Draft Articles, the responsible state is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

Customary international law also has some provisions aimed at protection of the environment. International Court of Justice in its "Advisory Opinion on the Legality of the threat or use of nuclear weapons" stated that environmental protection is becoming an integral part of the customary law of armed conflict (Singh, 2010). According to paragraph 41 of the Advisory Opinion, "conditions of necessity and proportionality is a rule of customary international law". The ICJ found that "States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality" (Article 30).¹⁶

Regarding which court Ukraine can apply to bring the Russian Federation accountable for the damage caused to the environment, there are no procedural rules which would regulate this issue. Therefore, there is a need to address the ICC to bring the president of the Russian Federation and other persons responsible for war crimes to justice, including for widespread, long-term and severe damage caused to the environment and, through prosecution of the president, to demand compensation for damages from the Russian Federation.

4. THE PROCESS OF ASSESSING THE ENVIRONMENTAL CONSEQUENCES OF THE AGGRESSION OF THE RUSSIAN FEDERATION AGAINST UKRAINE

The process of assessing the environmental consequences of an interstate armed conflict should be carried out immediately, from the moment the conflict began. Investigations of international crimes committed by Russian Federation in Ukraine have

¹⁵ Draft Articles on Responsibility of States for Internationally Wrongful Acts. (2001). Available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed on 01.06.2023).

¹⁶ ICC (1996). Advisory Opinion on Nuclear Weapons. Available at: <https://www.icj-cij.org/case/95> (accessed on 01.06.2023).

already begun. In March 2022, the ICC has been investigating Russia's war crimes in Ukraine committed on the territory of Ukraine since 2013. On April 5, 2022, the ICC joined the Joint Investigation Team (JIT) set up by Ukraine, Poland, and Lithuania (other EU member states are also involved in its work). Eurojust is also a member of the JIT. The joining of the ICC to the JIT is undoubtedly a positive step as it will make the investigation more coordinated and efficient.

Office of the Prosecutor General of Ukraine together with international partners has created a public database "Prosecute #RussianWarCrimes" (<https://warcrimes.gov.ua/en/>), where citizens can report war crimes and crimes against humanity committed by the Russian military in Ukraine. This information is being collected for submission to the ICC and the possible future special tribunal after its creation to convict specific individuals involved in war crimes. Through the website, it is possible to send videos and photos, as well as any information. A positive moment is that reports and evidence about war crimes are collected from citizens in a unified manner.

Human rights organizations of Ukraine also have repeatedly provided the ICC with evidence of crimes committed by the Russian military since 2014, including evidence of environmental crimes. These organization take soil samples, make videos, take photos, etc. The largest work in this area was carried out by the NGO "Ecology. Law. Human Being"¹⁷ and Center for Environmental Initiatives "Ekodia".¹⁸ It is important to gather a complete evidence base, so the more actors are involved in helping to gather evidence, the better the outcome will be.

In addition, a special official website of the Ministry of Environmental Protection and Natural Resources of Ukraine¹⁹ and the mobile application "EkoZagroza" was created in Ukraine, through which Ukrainians can report all the facts of environmental crimes that they have witnessed. For example, about the forest fires; burning of military equipment; spillage of petroleum products or poisonous substances into the soil or water body; emission of poisonous substances (chlorine, ammonia, hydrogen sulfide, hydrocyanic acid, nitric acid) into the air, etc. Anyone can view all the reliable information about the damage caused to the environment of Ukraine as a result of the armed aggression of the Russian Federation on this website or in the mobile application. Among other things, it is possible to familiarise with the following information: data from monitoring systems regarding air quality and the level of radiation pollution throughout Ukraine; current facts of environmental threats caused by the Russian invaders.

On November 7, 2022, the UNGA adopted resolution calling for Russia to pay reparations to Ukraine. It recommended its member states the creation of international register for damages caused to Ukraine by Russian aggression, which will serve as a record of evidence of damage caused and claims arising from Russia's violations of international law for all natural and legal persons, as well as the State of Ukraine, with a view to providing reparations.²⁰ Although UNGA resolutions are not legally binding, they have political weight and certainly such an international register should be created, and it should reflect all evidence of environmental damage.

¹⁷ Екологія. Право. Людина. Available at: <http://epi.org.ua/pronas/> (accessed on 01.06.2023).

¹⁸ Центр екологічних ініціатив "Екодія". Available at: <https://ecoaction.org.ua/> (accessed on 01.06.2023).

¹⁹ Dashboard with data on environmental threats. *EcoZagroza*. Available at: <https://ecozagroza.gov.ua/en> (accessed on 01.06.2023).

²⁰ UNGA Resolution (2022). Furtherance of remedy and reparation for aggression against Ukraine, A/ES-11/L.6. Available at: <https://www.justsecurity.org/wp-content/uploads/2022/11/N2267912.pdf> (accessed on 01.06.2023).

The procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation was approved by the Cabinet of Ministers of Ukraine in Resolution No. 326 of March 20, 2022 "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation". This Order establishes the procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation, starting from February 19, 2014. It defines main directions for determining damage and losses, including damage caused to the natural environment in the following directions:

- losses of the land fund – direction, which includes damage and destruction of the fertile soil layer and damage caused by pollution and clogging of land resources;
- losses of subsoils - direction, which includes subsoil losses caused by their arbitrary use;
- damage caused to water resources - a direction that includes pollution, clogging, depletion and other actions on water resources that can worsen water supply conditions, harm people's health, cause a decrease in fish stocks and other objects of water fishing, deterioration of conditions of existence of wild animals, a decrease in soil fertility and other adverse phenomena due to changes in the physical and chemical properties of waters, a decrease in their ability to natural purification, a violation of the hydrological and hydrogeological regime of waters;
- damage caused to atmospheric air - a direction that includes damage caused by emissions of pollutants into atmospheric air;
- loss of the forest fund - a direction that includes the loss and damage of forests and forest areas, and related costs;
- damage caused to the nature reserve fund - a direction that includes damage caused to the territories and objects of the nature reserve fund, and related costs.²¹

In April 2022, the Ministry of Environment approved the Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law,²² and approved the Methodology for calculating unorganised emissions of pollutants or a mixture of such substances into the atmospheric air as a result of emergency situations and/or during martial law and determining the extent of the damage caused.²³

Soils are considered contaminated if negative quality changes are detected in their composition. At the same time, changes can be caused not only by the appearance in the aeration zone of new pollutants that were not there before, but also by the content

²¹ Resolution of the Cabinet of Ministers of Ukraine No. 326 of March 20, 2022 "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation". Available at: <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text> (accessed on 01.06.2023).

²² Order of the Ministry of Environment Protection and Natural Resources of Ukraine of 04.04.2022 No. 167 "On the approval of the Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law". Available at: <https://zakon.rada.gov.ua/laws/show/z0406-22#Text> (accessed on 01.06.2023).

²³ Order of the Ministry of Environment Protection and Natural Resources of Ukraine of 13.04.2022 No. 175 "On the approval of the Methodology for calculating unorganised emissions of pollutants or a mixture of such substances into the atmospheric air as a result of emergency situations and/or during martial law and determining the amount of damage caused". Available at: <https://zakon.rada.gov.ua/laws/show/z0433-22#Text> (accessed on 01.06.2023).

of dangerous substances that exceed their maximum permissible concentration. Land is considered polluted if there are extraneous objects, materials, waste and/or other substances without appropriate permits on the land plot, which appeared on this land plot as a result of emergency situations and/or armed aggression and hostilities. The facts of soil pollution and/or land clogging, as well as their scale, can be established by authorised persons who, within the limits of the powers provided for by law, carry out state supervision (control) of compliance with the requirements of the legislation on environmental protection, in particular, but not exclusively, by inspection of plots of land, data of remote sensing of the earth, studies of obtained soil samples, processing of the conclusions of any examinations, explanations, certificates, documents, materials, information received, in particular, from any sources, operational reports of individuals and legal entities etc.²⁴

Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law determines the calculation of the mass of unorganised emissions of polluting substances or mixtures of such substances into the atmospheric air due to emergency situations and/or during the martial law, the list of which is specified in Appendix 1 to this Methodology, and the determination of the amount of damage caused by such emissions. The facts of the unorganised emission of pollutants or mixtures of such substances into the atmospheric air, as well as their scale, are established by authorised persons who exercise state supervision (control) in the field of environmental protection, in particular, but not exclusively, by inspection of the place of the event, data of remote sensing of the earth, laboratory studies of atmospheric air, processing of the conclusions of any examinations, explanations, references, documents, materials, information received from any sources, operational reports of individuals and legal entities, etc.²⁵

The collection of evidence and the assessment of the extent of environmental damage are extremely important. After all, international courts are very strict in evaluating the evidence submitted by the parties.

5. CONCLUSION

Russian Federation prepared for its aggression against Ukraine and possible legal actions aimed at holding it accountable for the damage caused in general and environmental damage in particular. In 2019, it withdrew from the Additional Protocol I to the Geneva Conventions. Since September 16, 2022, Russian Federation is not a member of the Council of Europe, and even decisions of the ECtHR regarding actions taken before that date will most likely be ignored.

As a result of our research, we came to the conclusion that there are substantive norms of international law, which may be applicable (Article 2(4) of the UN Charter, customary international law), but there are no procedural rules which would regulate which court could hold the Russian Federation accountable for environmental damage.

²⁴ Order of the Ministry of Environment Protection and Natural Resources of Ukraine of 04.04.2022 No. 167 "On the approval of the Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law". Available at: <https://zakon.rada.gov.ua/laws/show/z0406-22#Text> (accessed on 01.06.2023).

²⁵ Order of the Ministry of Environment Protection and Natural Resources of Ukraine dated 13.04.2022 No. 175 "On the approval of the Methodology for calculating unorganised emissions of pollutants or a mixture of such substances into the atmospheric air as a result of emergency situations and/or during martial law and determining the amount of damage caused". Available at: <https://zakon.rada.gov.ua/laws/show/z0433-22#Text> (accessed on 01.06.2023).

And this is definitely a gap in international law. Therefore, the only way we see is to turn to the ICC with the aim of bringing the president of the Russian Federation Vladimir Putin and other persons responsible for war crimes to justice, including for widespread, long-term and severe damage to the natural environment. Since the president is the official representative of the state, the damage caused to Ukraine, including environmental damage, will have to be compensated by Russia.

A determining factor in the preparation of lawsuits before international courts is the formation of an appropriate evidence base. Therefore, Ukraine's quick reaction to create all the conditions for collecting evidence of environmental damage is the right decision and can serve as a model for other countries that may find themselves in a similar situation.

BIBLIOGRAPHY:

- Dawes, J. (2022). It is time to make ecocide an international crime. *OpenGlobalRights*. Available at: <https://www.openglobalrights.org/it-is-time-to-make-ecocide-an-international-crime/> (accessed on 01.06.2023).
- Greenwood, Ch. (1996). State Responsibility and Civil Liability for Environmental Damage Caused by Military Operations. *International Law Studies*, vol. 69, 397-415. Available at: <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1521&context=ils> (accessed on 01.06.2023).
- Mackielo, A. L. (2009). Core Rules of International Environmental Law. *ILSA Journal of International & Comparative Law*, 16(1), 257-299. Available at: <https://nsuworks.nova.edu/ilsajournal/vol16/iss1/11> (accessed on 01.06.2023).
- Mareček, L. (2022). ICJ: Ukraine v. Russian Federation (Order of 16 March 2022 in the Case Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide). *Bratislava Law Review*, 6(2), 139-148. DOI: <https://doi.org/10.46282/blr.2022.6.2.307>
- Ozoráková, L. (2022). The Road to Finding a Definition for the Crime of Genocide –the Importance of the Genocide Convention. *The Law & Practice of International Courts and Tribunals*, 21(2), 278-301. DOI: <https://doi.org/10.1163/15718034-12341475>
- Sand, P. H. (2005). Compensation for Environmental Damage from the 1991 Gulf War. *Environmental Policy and Law*, 35(6), 244-249. Available at: https://www.researchgate.net/publication/292506890_Compensation_for_environmental_damage_from_the_1991_Gulf_War (accessed on 01.06.2023).
- Singh, A. P. (2010). Protection of environment during armed conflict: is a new frame of laws necessary? *Journal of the Indian Law Institute*, 52 (3/4), 453-466. Available at: <http://www.jstor.org/stable/45148534> (accessed on 01.06.2023).
- Vashchenko, Y. (2021). Access to Modern Energy Services through the Prism of Children's Rights: An Overview from the Perspectives of the Convention on the Rights of the Child and the Policy and Law Approaches of Certain EU Member States and Ukraine. *International Comparative Jurisprudence*, 7(1), 75-87. DOI: <http://dx.doi.org/10.13165/j.icj.2021.06.006>
- Dashboard with data on environmental threats. *EcoZagroza*. Available at: <https://ecozagroza.gov.ua/en> (accessed on 01.06.2023).
- Draft Articles on Responsibility of States for Internationally Wrongful Acts. (2001). Available at:

- https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed on 01.06.2023).
- European Commission (2022). Ukraine: Commission presents options to make sure that Russia pays for its crimes. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7311 (accessed on 01.06.2023).
- ICC (1996). Advisory Opinion on Nuclear Weapons. Available at: <https://www.icj-cij.org/case/95> (accessed on 01.06.2023).
- ICC (2016). Report on Preliminary Examination Activities. Available at: https://www.icc-cpi.int/sites/default/files/iccdocs/otp/161114-otp-rep-PE_ENG.pdf (accessed on 01.06.2023).
- ICRC. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Commentary of 1987. Article 35. Available at: <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-35/commentary/1987?activeTab=undefined> (accessed on 01.06.2023).
- Ministry of Environmental Protection and Natural Resources of Ukraine (2022). Briefing on the environmental damage caused by the Russia's war of aggression against Ukraine. Available at: <https://ecozagroza.gov.ua/en/news/103> (accessed on 01.06.2023).
- Ministry of the Environment (2022). The scale of the damage caused to the environment of Ukraine by the aggression of the Russian Federation shocks the whole world. Available at: <https://www.kmu.gov.ua/news/mindovkilliya-masshtabi-shkodiv-zavdanoyi-dovkilliyu-ukrayini-vid-agresiyi-rf-vrazhayut-ves-svit> (accessed on 01.06.2023).
- Opinion of the Constitutional Court of Ukraine in the case based on the constitutional submission of the President of Ukraine on the provision of an opinion on the conformity of the Constitution of Ukraine with the Rome Statute of the International Criminal Court (Rome Statute case) of July 11, 2001, N 1-35/2001. Available at: <https://zakon.rada.gov.ua/laws/show/v003v710-01#Text> (accessed on 01.06.2023).
- Order of the Ministry of Environment Protection and Natural Resources of Ukraine of 04.04.2022 No. 167 "On the approval of the Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law". Available at: <https://zakon.rada.gov.ua/laws/show/z0406-22#Text> (accessed on 01.06.2023).
- Order of the Ministry of Environment Protection and Natural Resources of Ukraine dated 13.04.2022 No. 175 "On the approval of the Methodology for calculating unorganised emissions of pollutants or a mixture of such substances into the atmospheric air as a result of emergency situations and/or during martial law and determining the amount of damage caused". Available at: <https://zakon.rada.gov.ua/laws/show/z0433-22#Text> (accessed on 01.06.2023).
- Parliamentary Assembly of the Council of Europe. Resolution 2436 (2022). Available at: <https://pace.coe.int/en/files/30024/html> (accessed on 01.06.2023).
- Press room (2022). Ukraine war: MEPs push for special tribunal to punish Russian crimes. *News: European Parliament*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20230113IPR66653/ukraine-war-meps-push-for-special-tribunal-to-punish-russian-crimes> (accessed on 01.06.2023).

- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34_AP-I-EN.pdf (accessed on 01.06.2023).
- Resolution of the Cabinet of Ministers of Ukraine No. 326 of March 20, 2022: "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation". Available at: <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text> (accessed on 01.06.2023).
- Resolution of the Verkhovna Rada of Ukraine "On the Address of the Verkhovna Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and the national parliaments of foreign countries regarding the creation of a special international tribunal on the crime of aggression against Ukraine". (2015). Available at: <https://ips.ligazakon.net/document/T150129> (accessed on 01.06.2023).
- Rome Statute of the International Criminal Court. Available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> (accessed on 01.06.2023).
- Security Council Resolution 687(1991) of 3 April 1991: Iraq-Kuwait Resolution. Available at: <https://peacemaker.un.org/iraqkuwait-resolution687> (accessed on 01.06.2023).
- UNGA Resolution (2022). Furtherance of remedy and reparation for aggression against Ukraine, A/ES-11/L.6. Available at: <https://www.justsecurity.org/wp-content/uploads/2022/11/N2267912.pdf> (accessed on 01.06.2023).
- Екологія. Право. Людина. Available at: <http://epl.org.ua/pronas/> (accessed on 01.06.2023).
- Центр екологічних ініціатив "Екодія". Available at: <https://ecoaction.org.ua/> (accessed on 01.06.2023).