

СУЧАСНА СИСТЕМА МІЖНАРОДНОГО ПРАВА

УДК 341.3+349.6

RESPONSIBILITY FOR THE ENVIRONMENTAL DAMAGE CAUSED DURING THE ARMED CONFLICT BETWEEN UKRAINE AND THE RUSSIAN FEDERATION: OPPORTUNITIES IN THE ALGORITHM OF PROTECTING NATIONAL INTERESTS

ВІДПОВІДАЛЬНІСТЬ ЗА ЕКОЛОГІЧНУ ШКОДУ, СПРИЧИНЕНУ ПІД ЧАС ЗБРОЙНОГО КОНФЛІКТУ МІЖ УКРАЇНОЮ ТА РОСІЙСЬКОЮ ФЕДЕРАЦІЄЮ: МОЖЛИВОСТІ В АЛГОРИТМІ ЗАХИСТУ НАЦІОНАЛЬНИХ ІНТЕРЕСІВ

ОТВЕТСТВЕННОСТЬ ЗА ЭКОЛОГИЧЕСКИЙ УЩЕРБ, НАНЕСЕННЫЙ ВО ВРЕМЯ ВООРУЖЕННОГО КОНФЛИКТА МЕЖДУ УКРАИНОЙ И РОССИЙСКОЙ ФЕДЕРАЦИЕЙ: ВОЗМОЖНОСТИ В АЛГОРИТМЕ ЗАЩИТЫ НАЦИОНАЛЬНЫХ ИНТЕРЕСОВ

Medvedieva M. O.

Doctor of Law, Professor at the International Law Chair of the Institute of International Relations of Taras Shevchenko National University of Kyiv. E-mail: medvedieva.maryna@gmail.com

Korotkyi T. R.

PhD., Professor at the Department of International and European Law of the National University 'Odesa Law Academy'. E-mail: tymur_korotkyi@ukr.net

Медведєва М. О.

Доктор юридичних наук, доцент, професор кафедри міжнародного права Інституту міжнародних відносин Київського національного університету імені Тараса Шевченка. E-mail: medvedieva.maryna@gmail.com

Короткий Т. Р.

Кандидат юридичних наук, доцент, професор кафедри міжнародного та європейського права Національного університету «Одеська юридична академія». E-mail: tymur_korotkyi@ukr.net

Медведева М. А.

Доктор юридических наук, доцент, профессор кафедры международного права Института международных отношений Киевского национального университета имени Тараса Шевченко. E-mail: medvedieva.maryna@gmail.com

Короткий Т. Р.

Кандидат юридических наук, доцент, профессор кафедры международного и европейского права Национального университета «Одесская юридическая академия». E-mail: tymur_korotkyi@ukr.net

Abstract. *The article considers international customs, treaties and case-law dealing with responsibility for wartime environmental damage and protection of the environment before, during and after armed conflict. The authors provide the analysis of the rules of state responsibility, international humanitarian, criminal, environmental, human rights law, law of the sea, applicable in this field. The article examines the regime of international legal protection of the environment in relation to Ukraine-Russia armed conflict (in Crimea and eastern Ukraine) and analyzes the possibility of invoking responsibility of Russia as a state and imposing individual criminal responsibility for the damage caused to the environment in the course of this conflict. With this view the authors provide the overview of current*

proceedings against Russia in international courts and the scope of environmental harm caused as a result of the Russian aggression against Ukraine.

Keywords: *environmental damage, armed conflict, state responsibility, individual criminal responsibility, Crimea, eastern Ukraine.*

Анотація. *У статті розглядаються міжнародні звичаї, договори та судова практика, що стосуються відповідальності за екологічну шкоду, спричинену військовими діями, та захисту навколишнього середовища до, під час та після збройного конфлікту. Автори здійснюють аналіз норм права міжнародної відповідальності, міжнародного гуманітарного, кримінального, екологічного права, права прав людини, морського права, що застосовуються в цій галузі. Розглянуто режим міжнародно-правової охорони навколишнього середовища у зв'язку з українсько-російським збройним конфліктом (у Криму та східній Україні), проаналізовано можливість притягнення до відповідальності Росії як держави, а також реалізації індивідуальної кримінальної відповідальності за шкоду, завдану навколишньому середовищу в ході цього конфлікту. З цією метою автори здійснюють огляд поточних проваджень проти Росії в міжнародних судах, а також підрахунок обсягу екологічної шкоди, заподіяної в результаті російської агресії проти України.*

Ключові слова: *екологічна шкода, збройний конфлікт, відповідальність держави, індивідуальна кримінальна відповідальність, Крим, східна Україна.*

Аннотация. *В статье рассматриваются международные обычаи, договоры и судебная практика, касающиеся ответственности за экологический ущерб, причиненный военными действиями, и защиты окружающей среды до, во время и после вооруженного конфликта. Авторы анализируют нормы права международной ответственности, международного гуманитарного, уголовного, экологического права, права прав человека, морского права, применяемых в этой области. Рассмотрен режим международно-правовой охраны окружающей среды в связи с вооруженным конфликтом между Украиной и Россией (в Крыму и восточной Украине), проанализированы возможности привлечения к ответственности России как государства, а также реализации индивидуальной уголовной ответственности за вред, причиненный окружающей среде в ходе этого конфликта. С этой целью авторы осуществляют обзор текущих производств против России в международных судах, а также объема экологического ущерба, причиненного в результате российской агрессии против Украины.*

Ключевые слова: *экологический ущерб, вооруженный конфликт, ответственность государства, индивидуальная уголовная ответственность, Крым, Восточная Украина.*

Research problem setting. The damage caused to the environment of Ukraine as a result of the annexation and occupation of the Crimea by the Russian Federation and hostilities in eastern Ukraine (Donbas area, or Donbas region, or Donbas) is considerable. According to a national non-governmental organization 'Environment-People-Law', it is hard to imagine the scale of damage caused to the environment by the war in Ukraine: United Nations Environment Assembly (UNEA) and the World Bank experts have counted that 24 month of urgent environmental recovery will cost \$ 30 millions; as experts do not have access to the entire territory for the large-scale assessment, it is expected that this sum will grow [16]. The consequences of armed conflict in Ukraine for the environment are possibly less devastating than the consequences of the World War II, Vietnam and Gulf Wars, Kosovo conflict, armed conflicts in Iraq or Syria. Nevertheless, there is serious environmental harm which must be compensated and for which all guilty must bear responsibility.

Analysis of the latest researches and publications. While the topic of responsibility of Russia for acts of aggression, military intervention and annexation are duly elaborated by Ukrainian and foreign authors, the issue of responsibility for environmental damage inflicted during armed conflicts in Donbas and Crimea is poorly examined in academic literature. Publications of Ukrainian authors like A. and N. Andrusevych [23], I. Shulga [32], H. Baliuk [24], O. Shompol [24], L. Poberezhna [30], A. Stanetsky [30], I. Lychenko [27], O. Kravchenko [26], O. Vasyliuk [26] were examined in the article, though they may be regarded as lacking thorough legal analyzes. Meanwhile, our research was based on the ample foreign doctrine related to the protection of the environment during and/or after armed conflicts [11, 12, 17, 19, 20, 22].

The purpose of this article is to examine the regime of international legal protection of the environment in relation to armed conflict and responsibility for wartime environmental damage with a special focus on the Ukraine-Russia armed conflict.

Basic research material. One can find the evidence of the environmental damage inflicted by the armed conflict between Ukraine and Russia in international governmental and non-governmental organizations' studies [25, 28, 29], reports in mass media and academic literature [24, 26, 28] which may be used as a proof base in international or national courts. These studies and reports as well as the works of Ukrainian scholars highlight that war in the Donbas region has devastating consequences for the natural environment and that the environmental damage resulted from the hostilities has different forms. For example, there was a significant pollution by different chemical toxic substances, heavy metals and fragments of metals, as a result of shelling and use of explosives; formation of numerous craters that disfigured the land and destroyed the natural protected areas; extensive fires, accidental and intentional, causing damage to farmlands, forests, national protected areas. In general, more than one-third of the natural reserve territory of Ukraine was burned away [21; 28, p. 48-58]. There were also explosions at mining, chemical, energy, metallurgical factories and other highly hazardous objects leading to accidental emissions and discharges of harmful substances; flooded mines leading to the pollution of waters and soil by toxic and radioactive substances; damage to communications, construction of defensive structures, pits, damage to sewage and water supply systems, etc. Many natural objects were turned into military ones, there were cases of illegal mining, deforestation, poaching and littering of the territories. Explosions and shelling led to forced migration of some species, introduction of invasive species and disturbance of wild animals.

Environmental damage in the Crimea was caused by its annexation and occupation by the Russian Federation in 2014. Ukraine was deprived of the control over its natural resources and right to exploit them in accordance with national policy. Russia has nationalized the Black Sea Oil and Gas Company that had the right to explore and exploit the resources of the Black Sea continental shelf. Russia undertook building of a gas pipe line, power lines and a bridge over Kerch Strait that caused damage to the marine environment and living resources. Apart from the disruption of the water flow between the Black and Azov seas, environmental organizations have warned of irreversible consequences to the area's flora and fauna. Russia conducts military exercises on the territory of landscape parks turning the protected area into military landfills. In May 2017, the Prosecutor's Office for the Crimea initiated criminal proceedings under Article 236 of the Criminal Code of Ukraine for the violation of the rules of environmental safety during the construction of a bridge over Kerch Strait. Ukrainian law enforcement agencies also are investigating the facts of air pollution in the Crimea and the Kherson region due to the release of hazardous substances from the Crimean plants which are under Russian control.

The existence of the international armed conflict in Crimea is a clear fact, which was, *inter alia*, confirmed by the Office of the Prosecutor of the International Criminal Court (ICC) in the Reports on Preliminary Examination Activities [16]. The situation in Crimea is an international armed conflict (armed conflict between two states) governed by the relevant

rules of international humanitarian law (IHL) including occupation regime. With respect to the situation in the Donbas region, the armed conflict is recognized as 'mixed': it is an international (between Russian and Ukrainian armed forces) and non-international (between Ukrainian governmental and anti-government organized armed groups) armed conflict with the potential of the latter being recognized as having international character. Non-international armed conflict in Donbas will be international in character if effective and (or) overall control by Russia of anti-government armed groups that fight against Ukrainian government is proved.

The issue of state and individual responsibility for environmental harm caused during the Ukraine-Russia armed conflict is governed by the rules of general international law, IHL, international criminal, environmental, human rights law and law of the sea, to some extent. The customary rules on state responsibility for internationally wrongful acts were codified in the UN International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001. By virtue of the wording of Article 55 of the Draft, the conditions for the existence of an internationally wrongful act, the content and implementation of the international responsibility of a state [13] in times of armed conflict are governed by IHL rules, which are considered as *lex specialis*. Should there be any loopholes in the specific rules on responsibility for wartime damage, general rules on state responsibility are effectively triggered to govern the issue. Since there is some evidence of the control, instruction and financing of anti-government armed groups by the Russian Federation, we may conclude that their conduct is attributable to this state under Article 8 of the ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts. Russia may be held responsible for environmental or any other damage caused during wartime by its military forces, 'LPR' and 'DPR'. It may be held responsible for the damage caused by private persons under the IHL rules on occupation and due diligence in case an occupation regime is established for this armed conflict and its international character, instead of 'mixed' one, is fully recognized.

Russia also may be responsible for the unlawful conduct of its officials, military personnel and private entities in the occupied Crimea under the IHL customary and treaty rules on occupation and due diligence principle. Customary IHL provides basic rules on the protection of the environment during armed conflicts. The application of customary rules of distinction, military necessity and proportionality to the natural environment in both international and non-international armed conflicts (Rule 43) is repeated by the International Committee of the Red Cross (ICRC) in its study on customary IHL (2005). Rules 44 and 45 are applicable in international, and arguably also in non-international, armed conflicts [12, p. 499]. Accordingly, a belligerent state and, in some instances, dissident armed forces or anti-government armed groups must be held responsible in case of violation of the above-mentioned customary rules of IHL that resulted in excessive, disproportional environmental damage not justified by military necessity and without any precautions taken.

There are international treaties or, at least, parts thereof specially designed for the protection of the environment in armed conflicts. Ukraine and Russia are parties to most of them, thus, they may be applicable in dealing with responsibility for wartime environmental damage. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1977 (Protocol I) has two relevant provisions. Article 35(3) envisages that 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. Article 55 provides almost the same obligation for states [5]. For the international responsibility to arise the environmental damage should necessarily be caused by the respective state in the course of an international armed conflict and meet a cumulative standard: it must be widespread, long-term *and* severe at the same time. It's unlikely that environmental damage caused by the Russian Federation and 'LPR'/'DPR' groups meets the high cumulative standard of Articles 35 and 55 of Protocol I. As J. Wyatt

observes, during the preparatory work on Protocol I the damage was suggested to qualify as widespread if it covers the territory of about 20,000 square kilometers, as long-term if it lasts for several decades and severe if damage to the health or survival of the population is also caused [22, p. 623-625]. The area of so-called 'Donetsk People Republic' and 'Luhansk People Republic' and the theatre of operations in Donbas cover about a third of the Donetsk and Luhansk regions, namely 17,000 square kilometers, thus the territorial scope of Articles 35 and 55 is practically satisfied. It is a challenge, however, to prove the infliction of long-term environmental damage to invoke the responsibility of Russia.

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 1977 (ENMOD Convention) stipulates that each State Party undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting *or* severe effects as the means of destruction, damage or injury to any other State Party [2]. Article I uses the disjunctive 'or' which most scholars, including A. Kiss, interpret in such a way that only one of the three consequences justifies the prohibition of using environmental modification techniques [17, p. 226]. A state having employed them during armed conflict or in peacetime will be held responsible. All three terms ('widespread, long-lasting or severe') are defined in the Understandings Regarding the Convention. There are some problems regarding the possible application of this treaty in Ukraine-Russia armed conflict: it would not apply to the environmental damage caused to Ukraine as its scope is severely circumscribed by its limitation to specific environmental modification techniques defined in Article II of the Convention.

Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980 (Protocol III to the Convention on Certain Conventional Weapons (CCW)) makes it clear that it is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives [7]. Under amendment to Article 1 of the CCW adopted in 2001 the scope of the application of Protocol III to the CCW expanded to non-international armed conflicts that is an important fact for due analysis of the issue of state responsibility for wartime environmental harm.

There are also treaties with specific provisions which stipulate some level of protection to the environment, but indirectly, mostly through the protection of civilian population and civilian objects. As Ph. Sands observes, these rules of treaty law were developed to protect humans and their property, and may only be indirectly protective of an environment which is not intended to be the direct beneficiary of these acts [20, p. 311]. Thus, a belligerent state or an occupying power (in some cases, also anti-government armed groups) may be held responsible for the environmental damage resulting from the violations of the obligations under the provisions of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949), which prohibits the destruction of property belonging to private persons, a state, public authorities, social or co-operative organizations [3], extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (Article 149). Protocol I lies down the principle of distinction between civilian objects and military objectives (Article 48), prohibits attacks that cause excessive collateral damage to civilians or civilian objects (Article 51(5)(b)), grants general protection to civilian objects (Article 52) and objects indispensable to the survival of the civilian population (Article 54(2)), works and installations containing dangerous forces (Article 56), provides rules of precautions in attacks and against the effects of attacks. The ICRC believes that Article 56 should equally apply to other installations, such as chemical plants and petroleum refineries. This a very important observation since in the course of the hostilities in Donbas more than 500 plants were affected, including chemical and other hazardous plants such as Avdiyivka and Yasyniv coke plants, Lysychanskiy refinery,

Kramatorsk machine-tool factory, Luhansk power plant, ‘Stirol’, etc. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (1977) (Protocol II) provides less protection to the environment and, thus, less stringent state and individual responsibility for environmental damage: it foresees the responsibility of anti-government armed groups for the violation of rules granting protection to objects indispensable to the survival of the civilian population [6], works and installations containing dangerous forces (Article 15) and cultural objects (Article 16).

The qualification of the armed conflict in the Donbas area will define relevant rules of international humanitarian law. In case it is recognized as ‘mixed’, *i.e.* international in parallel to non-international armed conflict, different rules of IHL will be applicable to different armed conflicts. As far as non-international armed conflict is concerned, commanders of the anti-government armed groups will be held responsible under the above-mentioned provisions of the Protocol II, Protocol III to the CCW and Ukrainian criminal law, namely Chapter VIII ‘Crimes against environment’ and Article 438 ‘Breach of laws and customs of war’ of the Ukrainian Criminal Code. In case two armed conflicts are recognized as international, both the Russian Federation Armed Forces’ commanders and anti-government armed groups may be held responsible for violations of the above-mentioned provisions of the Geneva Convention (IV), Protocol I and Protocol III to the CCW.

The armed conflict in the form of occupation of Crimea is international in character and is respectfully governed by the relevant rules of international humanitarian law including rules on occupation. The Hague Regulations outline the obligations of the occupying state to safeguard the capital of the properties, public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and administer them in accordance with the rules of usufruct [1], not to undertake any seizure of, destruction or wilful damage to historic monuments (Article 56). Similarly, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) imposes obligations on any state in occupation of the whole or part of the territory of another state to support the competent national authorities of the occupied state in safeguarding and preserving its cultural property [4]. Russia could be held responsible for destruction, appropriation and transformation of Crimean natural resources, including natural reserves, wetlands, sands, oil and gas deposits in the continental shelf, cultural objects, including Chersonesse, and damage to the environment caused by building of a gas pipe line, power lines and a bridge over the Kerch Strait, as well as by polluting the air, in violations of the above-mentioned provisions of the Geneva Convention (IV), the Hague Regulations and the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. It is important to note that pursuant to Article 91 of Protocol I and Article 3 of the Hague Convention (IV), a belligerent party violating the provisions of the Geneva Conventions, Protocol I or the Hague Regulations shall be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

Individual responsibility for the environmental damage caused during international armed conflict is governed by international criminal law. Under Article 8(2)(b)(iv) of the Rome Statute of the ICC [8], as J. Wyatt stipulates, an armed forces’ commander or an ordinary soldier of a belligerent state may be held responsible if: first, the cumulative standard of ‘widespread, long-term and severe damage’ to the natural environment is met; second, there must be two distinct mental elements: (1) an intent to launch an attack; (2) the knowledge that such an attack will cause environmental damage; (3) the knowledge that the damage would be clearly excessive in relation to the concrete and direct overall military advantage anticipated [22, p. 627].

Though Ukraine is not a party to the Rome Statute, however, the Government of Ukraine lodged two declarations accepting the ICC’s jurisdiction over alleged crimes committed on its territory from November 2013 to February 2014 (concerns crimes against

humanity in the context of the ‘Maidan’ protests) and from February 2014 onwards, with no end date (concerns crimes against humanity and war crimes allegedly committed by senior officials of the Russian Federation and leaders of terrorist organizations ‘DPR’ and ‘LPR’) [16]. The ICC Reports on Preliminary Examination Activities focus on war crimes and crimes against humanity. Russian and anti-government groups commanders are unlikely to be held responsible under Article 8(2)(b)(iv) of the Rome Statute as it poses very stringent requirements. In the alternative, it is possible to recognize crimes against the environment as a means of committing other crimes – war crimes and (or) crimes against humanity. Another available alternative is to prove that the destruction of natural resources in the occupied Crimea and Donbas constitute an element of the ‘destruction of civilian objects’ crime.

There are plenty of international treaties providing protection for the environment before and during peacetime and confirming main principles of international environmental law. The controversy lies with the question whether such environmental agreements still apply in times of armed conflicts. The interpretation of the provisions of the Vienna Convention on the Law of Treaties (1969) concerning the impossibility of performing a treaty and fundamental change of circumstances [10] brings us to the conclusion that war is not a reason for the automatic termination of treaties, including environmental ones, concluded between parties to the armed conflict during peacetime. This conclusion is endorsed by the ILC Draft Articles on the Effects of Armed Conflicts on Treaties (2011). This means that a party to an armed conflict, which violates the provisions of multilateral or bilateral environmental treaties, is responsible for the damage inflicted by such violation.

The aggression of the Russian Federation against Ukraine in the form of annexation and occupation of Crimea and hostilities in the Donbas region resulted in direct and indirect environmental damage. First of all, we must admit that all bilateral Ukrainian-Russian agreements in the field of environmental protection concluded before the occupation of Crimea and war in eastern Ukraine continue to be in force. Russia is responsible for violations of these treaties and is obliged to make reparations for inflicted damage in accordance with international law. Some other bilateral environmental initiatives were also put into question after the aggression of Russia, namely the functioning of Black Sea Euro-region and Black Sea Eco-Corridor. Second, Ukraine has lost access to its natural and cultural objects. At the moment of the annexation of Crimea by the Russian Federation, there were 196 objects of protected areas on the peninsular, 44 of them with the national status [14]. Ukraine has lost access to these objects along with access to wetlands of international importance (6 of 39 Ukrainian Ramsar sites are located in Crimea), the World Heritage Site – Chersonese, and other cultural property. Third, Ukraine was deprived of the ability to comply with its obligations under some multilateral environmental agreements covering the territories occupied by Russia and territories under the control of anti-government armed groups. As A. Andrusevych and N. Andrusevych put it, Ukraine is not able to comply with its obligations under several multilateral environmental agreements including Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (1998), Convention for the Protection of the Black Sea against Pollution (1992), Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971), UNESCO Convention concerning the Protection of World Cultural and Natural Heritage (1972) [23]. Russia's aggression has led to Ukraine's impossibility to fulfil its obligations under the United Nations Framework Convention on Climate Change (UNFCCC) (1992), Kyoto Protocol (1997) and Paris Agreement (2015), since monitoring of greenhouse gases in the temporarily occupied territories of the Donetsk and Luhansk regions and in the occupied Crimea is complicated, and sometimes impossible. In addition, at the Conference of the Parties to the UNFCCC in Bonn in November 2017, Ukraine opposed the inclusion by Russia the greenhouse gases emissions in the annexed Crimea and Sevastopol for the period of 1990-2015 into its own national report [31].

Different scholars pay a special attention to post-conflict environmental management.

For example, C. Bruch, D. Jensen, M. Nakayama, J. Unruh, R. Gruby and R. Wolfarth underline that although international environmental law generally does not consider whether or how it applies in the post-conflict setting, “post-conflict work needs to become more established within natural resource and environmental policy” [11, p. 93, 96] and that one of the primary challenges in post-conflict recovery and peace building is to shift the relevant time frame from the immediate future to longer-term management [11, p. 59]. There are several ways to implement post-conflict management plans. First, the UN or other international organisation may establish a special body dealing with the questions of post-conflict management, responsibility and liability. Second, a future peace treaty may provide for the obligations of states to restore the environment damaged by the conflict and tackle the problem of remnants of war on land and sea. Third, states parties to the armed conflict may ask for help relevant international organizations, such as UNEP or the World Bank, in undertaking a post-conflict environmental assessment.

The law of the sea, together with IHL, may be applied not only in relation to the protection of the environment after armed conflicts from remnants of war on sea or protection of the marine environment during hostilities by restricting means and methods of warfare. The United Nations Convention on the Law of the Sea (UNCLOS) arbitral proceedings are useful instruments in dealing with responsibility of belligerent states for the damage to natural resources of the continental shelf or marine environment. On 14 September 2016, Ukraine instituted arbitration proceedings against the Russian Federation under the UNCLOS. Ukraine argues that Russia brutally violates its rights as the coastal state in maritime zones adjacent to the Autonomous Republic of Crimea in the Black Sea, Sea of Azov, the Kerch Strait and asks the arbitral tribunal to enforce its maritime rights by ordering the Russian Federation to cease its internationally wrongful actions in the relevant waters, to provide Ukraine with appropriate guarantees that it will respect Ukraine’s rights under UNCLOS, and to make full reparation to Ukraine for the injuries the Russian Federation has caused [18]. Ukraine’s claim concerns the takeover of deposits of mineral resources and unlawful extraction of oil and gas from Ukraine’s continental shelf in the Black Sea; unlawful fishing and preventing Ukrainian fishing companies from fishing in Crimea’s offshore waters; building of a gas pipe line, power lines and a bridge over Kerch Strait; and conducting research on the Black Sea bed without Ukraine’s consent. There is a chance the constituted arbitral tribunal will decide on the issue of environmental damage, especially that inflicted by Russia’s takeover of mineral resources deposits and building of a gas pipe line, power lines and a bridge over the Kerch Strait.

Conclusions. Russia’s occupation of the Crimea peninsula and its use of force in eastern Ukraine threatened the very existence of international security system and international legal order. The Ukraine-Russia armed conflict continues to take away a heavy toll on military personnel and civilian population. It also has produced considerable damage to the environment that has to be compensated once the armed conflict is settled.

Both international humanitarian customary and treaty law contains implicit and explicit rules to hold a belligerent state responsible for causing serious or other damage to the environment during armed conflict or violating its obligations as an occupying power. There are also additional grounds to impose criminal responsibility for environmental damage inflicted during the armed conflict under international criminal law. Nevertheless, these rules pose stringent and imprecise thresholds, which make them hardly applicable.

International courts and tribunals are reluctant to apply high thresholds of Protocol I and other rules of international humanitarian and criminal law on the responsibility for causing widespread, long-term and severe damage to the natural environment. Besides, a state causing environmental damage may rely on the principle of military necessity to justify this damage, especially if such necessity is considered to be sufficiently high. Apart from general international law together with international humanitarian and criminal law, international

environmental, human rights law, and law of the sea may provide a useful roadmap for dealing with different issues of wartime environmental damage.

There are some mechanisms that have already been resorted to or may still be applied by Ukraine to invoke the responsibility for direct and indirect environmental damage of the Russian Federation as a belligerent and occupying power and to impose criminal responsibility on its Armed Forces commanders as well as commanders of anti-government armed groups. However, these mechanisms are subject to the qualification of the armed conflict in Donbas. IHL of non-international armed conflicts provides less protection to the environment and, thus, less stringent state and individual responsibility for environmental damage.

Environmental damage or environmental crimes are not in Ukraine's application filed before the ICJ, however, they may be argued before other forums, such as the European Court of Human Rights, UNCLOS arbitral tribunal and ICC proceedings. Given the fragmented and limited subject of the claim submitted to the ICJ and limited territorial scope of the claim under the UNCLOS arbitration proceedings, Ukraine should work towards the development and issuing a Consolidated Claim against Russia, which would include arguments to claim reparation for environmental damage caused in the course of its aggression. Ukraine may rely on the practice of various compensation commissions on consolidated claims and to ensure the inclusion of the provisions establishing a bilateral Ukraine-Russia claims commission dealing with compensation for environmental damage into a future peace treaty with Russia.

In the alternative, Ukraine may institute relevant criminal and civil proceedings before its national courts based on the rules of international and national law. International treaty and customary law does not allow a state to invoke immunity from jurisdiction before a court of another state in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State [9].

Whatever path Ukraine follows to protect its national interests, it has to bring forward the facts of direct participation of the Russian Armed Forces in military operations on the territory of Ukraine; the Russian control over anti-government armed units; breach by the Russian Armed Forces and anti-government armed groups of customary and treaty rules of international humanitarian law. Ukraine also has to record and calculate environmental damage, provide proper reasoning and justification for cause-effect link between the aggression of Russia against Ukraine, the acts of the Russian Armed Forces and anti-government armed units, on the one hand, and damage caused to the environment of Ukraine, on the other. The absence of uniformly elaborated methodology and properly documented fixation of wartime environmental damage by state officials and relevant agencies of Ukraine make it quite a struggle to perform the task, not to mention the ongoing armed conflict. In most cases there is no documentally confirmed data concerning who exactly (military personnel or civilian persons) or what side of the conflict (Armed Forces of the Russian Federation, anti-government armed groups or anti-terror forces of Ukraine) caused damage to the environment.

Despite the fact, that there are limited options for Ukraine to invoke state responsibility and impose individual criminal responsibility for wartime environmental harm under international law in force, we believe Ukraine should seize every opportunity to protect its national interests, which also includes claiming full reparation of damage caused by the Russian Federation aggression which is a crime under international law.

References

1. Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907 [Electronic resource]. – Mode of access: <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0631.pdf>.

2. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, 10 December 1976. [Electronic resource]. – Mode of access: <https://www.state.gov/t/isn/4783.htm>.
3. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949. [Electronic resource]. – Mode of access: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf
4. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954. [Electronic resource]. – Mode of access: http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.
5. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977. [Electronic resource]. – Mode of access: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf.
6. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977. [Electronic resource]. – Mode of access: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf.
7. Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 10 October 1980. [Electronic resource]. – Mode of access: [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/B409BC0DCFA0171CC12571DE005BC1DD/\\$file/PROTOCOL+III.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/B409BC0DCFA0171CC12571DE005BC1DD/$file/PROTOCOL+III.pdf).
8. Rome Statute of the International Criminal Court, 17 July 1998. [Electronic resource]. – Mode of access: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.
9. UN Convention on Jurisdictional Immunities of States and Their Property, 2 December 2014. https://treaties.un.org/doc/source/recenttexts/english_3_13.pdf.
10. Vienna Convention on the Law of Treaties, 23 May 1969. [Electronic resource]. – Mode of access: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>.
11. Bruch C., Jensen D., Nakayama M., Unruh J., Gruby R., Wolfarth R. Post-Conflict Peace Building and Natural Resources // Yearbook of International Environmental Law. – 2009. – Vol. 19, No. 1. – P. 58-96.
12. Customary International Humanitarian Law: Vol I Rules / Henckaerts J.-M., Doswald-Beck L. (eds.). – Cambridge: Cambridge University Press, 2005. – 628 p.
13. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries // Yearbook of the International Law Commission. – 2001. – Vol. II(2). – P. 31-143.
14. Environment-People-Law. Ramsar Sites of the Crimea Can Suffer From Military Bases, 14 September 2015. [Electronic resource]. – Mode of access: <http://www.epl.org.ua/en/environment-en/environment-and-war/epl-documents/1844-ramsar-sites-of-the-crimea-can-suffer-from-military-bases>.
15. Environment-People-Law. UNEA Got Interested in the Environmental Impact of War in the East of Ukraine. [Electronic resource]. – Mode of access: <http://www.epl.org.ua/en/environment-en/environment-and-war/epl-documents/2227-unea-got-interested-in-the-environmental-impact-of-war-in-the-east-of-ukraine>.
16. International Criminal Court. Preliminary Examination: Ukraine. [Electronic resource]. – Mode of access: <https://www.icc-cpi.int/ukraine>.
17. Kiss A. International Humanitarian Law and the Environment // Environmental Policy and Law. – 2001. – Vol. 31. - P. 223-231.
18. Ministry of Foreign Affairs of Ukraine. The Hearing of the Case Ukraine v. Russian Federation under UNCLOS will Start at the Beginning of 2017. - 23 December 2016. [Electronic resource]. – Mode of access: <http://mfa.gov.ua/en/press-center/news/53422-na-pochatku-2017-roku-rozpochnetysya-rozglyad-spravi-ukrajina-proti-rosijsykoji-federaciji-zgidno-z>

konvencijeju-oon-z-morsykygo-prava.

19. Orellana M.A. Criminal Punishment for Environmental Damage: Individual and State Responsibility at a Crossroad // *Georgetown International Environmental Law Review*. - 2005. - Vol. 17, No. 4. - P. 673-696.
20. Sands Ph. *Principles of International Environmental Law*. – Cambridge: Cambridge University Press, 2003. - 2nd ed. – 1116 p.
21. Vasyliuk O., Shyriaieva D., Kolomytsev G., Spinova J. Steppe protected areas on the territory of Ukraine in the context of the armed conflict in the Donbas region and Russian annexation of the Crimean Peninsula // *Grassland Research and Conservation (Bulletin of the Eurasian Dry Grassland Group)*. – 2017 – Vol. 1, No. 33. – P. 15–23.
22. Wyatt J. Law-Making at the Intersection of International Environmental, Humanitarian and Criminal Law: The Issue of Damage to the Environment in International Armed Conflict // *International Review of the Red Cross*. – 2010. – Vol. 92, No. 879. – P. 593-646.
23. Андрусевич Н., Андрусевич А. Окупація Криму: екологічні загрози // *Суспільство і довкілля: аналітичний огляд*. – Березень 2014. [Electronic resource]. – Mode of access: www.rac.org.ua/fileadmin/user_upload/documents/policy_reviews/2014/2014_Mar_M.pdf.
24. Балюк Г., Шюмпол О. Національні та міжнародно-правові проблеми регулювання охорони довкілля і забезпечення екологічної безпеки під час збройних конфліктів // *Адміністративне право і процес*. – 2015. – Т. 2, №12. – С. 142–158.
25. *Воєнні дії на сході України – цивілізаційні виклики людству*. - Львів: ЕПЛ, 2015. - 136 с.
26. Кравченко О., Василюк О., Войціховська А., Норенко К. Дослідження впливу військових дій на довкілля на Сході України // *Схід*. – 2015. - №2. – С. 118–123.
27. Личенко І.О. Проблеми екологічної безпеки тимчасово окупованих територій Донецької та Луганської областей та організаційно-правові засади їхнього вирішення // *Вісник Національного університету “Львівська політехніка”*. – 2016. - №845(87). – С. 279-284.
28. *На межі виживання: знищення довкілля під час збройного конфлікту на сході України*. - К., КІТ, 2017. - 88 с.
29. *Оцінка екологічної шкоди та пріоритети відновлення довкілля на сході України / ОБСЄ*. – К.: ВАІТЕ, 2017. – 90 с.
30. Побережна Л.Я., Станецький А.І. Оцінка потенційних екологічних ризиків внаслідок проведення антитерористичної операції // *Науково-технічний журнал «Техногенно-екологічна безпека»*. – 2017. - №2. – С. 45-52.
31. Україна виступила проти включення даних про викиди парникових газів у Криму до звіту РФ [Електронний ресурс] / *ZIK*. - 15 листопада 2017. – Режим доступу: https://zik.ua/news/2017/11/15/ukraina_vystupyla_protvy_vklyuchennya_danyh_pro_vykydy_parnykovykh_gaziv_u_krymu_1206245.
32. Шульга Є. Міжнародно-правова охорона навколишнього середовища від впливу військових конфліктів: проблеми ефективності // *Международный научный журнал “Интернаука”, Серия “Юридические науки”*. – 2017. – Т.1, №1. – С. 63-69.