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(the case of Ukraine)*

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Legal liability for environmental damage caused by armed conflict: international and national legal aspects (the case of Ukraine)

Responsabilidade jurídica por danos ambientais causados por conflitos armados: aspectos jurídicos internacionais e nacionais (o caso da Ucrânia)

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ABSTRACT: Since the onset of the full-scale invasion of Ukraine, the Russian Federation has employed, and continues to use, various prohibited methods of warfare. The challenge of ensuring environmental protection in current conditions of globalisation lies in the international community's persistent neglect of ecological security. There is a need to develop a comprehensive interstate approach to enhancing legal accountability for environmental damage and improving mechanisms for responding to armed conflicts. The issue of holding the Russian Federation legally accountable for environmental crimes committed on the territory of Ukraine is of critical importance. It requires thorough legal analysis and practical solutions, especially in light of often inconsistent judicial practices that vary significantly across jurisdictions. International law does not address the inevitability of legal liability for environmental harm caused during armed conflict. An essential condition for the documentation of environmental crimes is the involvement of independent, internationally certified experts who can apply modern methodologies for evidence collection and damage assessment, thereby ensuring the verification and credibility of the collected data. The full recovery of Ukraine's economy and infrastructure will only be possible after the cessation of hostilities and the liberation of the occupied territories.

KEYWORDS: Environmental protection; armed conflict; environmental security; legal liability; environmental damage; crimes against the environment.

RESUMO: Desde o início da invasão em grande escala da Ucrânia, a Federação Russa tem utilizado e continua a empregar diversos métodos proibidos de guerra. O desafio de garantir a proteção ambiental nas atuais condições de globalização reside na persistente negligência da comunidade internacional em relação à segurança ecológica. É necessário encontrar a abordagem interestatal mais eficaz e abrangente para reforçar a responsabilidade jurídica por danos ambientais e melhorar os mecanismos de resposta a

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conflitos armados. A responsabilização jurídica da Federação Russa por crimes ambientais cometidos no território da Ucrânia é uma questão de importância crítica. Isso exige uma análise jurídica aprofundada e soluções práticas, especialmente à luz de práticas judiciais frequentemente inconsistentes que variam significativamente entre jurisdições. O direito internacional não prevê a inevitabilidade da responsabilidade jurídica por danos ambientais causados durante conflitos armados. Uma condição essencial para a documentação de crimes ambientais é o envolvimento de peritos independentes, certificados internacionalmente, que possam aplicar metodologias modernas de recolha de provas e avaliação de danos, garantindo assim a verificação e credibilidade dos dados recolhidos. A plena recuperação da economia e da infraestrutura da Ucrânia só será possível após a cessação das hostilidades e a libertação dos territórios ocupados.

PALAVRAS-CHAVE: Proteção do ambiente; conflito armado; segurança ambiental; responsabilidade legal; danos ambientais; Crimes contra o meio ambiente.

Introduction

The military aggression of the Russian Federation is expected to have a long-term negative impact on the environment, both within Ukraine and in transboundary areas. At the 27th UN Conference on Climate Change, it was noted that the Russian Federation, through its actions, has threatened the effectiveness of the entire global climate policy. Ukraine proposed the creation of an international platform for assessing the damage caused to the climate and environment by military operations⁵.

The environmental damage caused by the Russian Federation's military aggression on the territory of our state has already exceeded USD 50 billion. The majority of the estimated losses – approximately USD 30 billion – are due to air pollution. The primary causes of these emissions are forest fires and attacks by the occupiers on energy infrastructure facilities. The war has damaged almost one-third of Ukraine's forests. More than 1,000 documented cases of attacks by the aggressor state have directly resulted in environmental harm, and this number continues to grow every day. The drastic changes and challenges brought about by Russia's armed aggression necessitate the prompt adaptation of Ukrainian legislation to the realities of wartime⁶.

On January 25, 2023, the Parliamentary Assembly of the Council of Europe adopted a Resolution on the negative impact of war on the environment, in which the crime of "ecocide" is defined. As a result of the Russian military aggression against

⁵ OVCHYNKOVA, Yuliia. Russia must be held accountable and pay compensation to Ukraine for environmental crimes [online]. *Ukrainska Pravda. Life section*, 6 March 2023. Available from: <https://life.pravda.com.ua/columns/2023/03/06/253191/> [Accessed: 26 June 2025].

⁶ RIEZNIKOVA, Viktoriia, KOSTYASHKIN, Ivan, LAHOIDA, Tetiana, KRAVETS, Iryna & BOIKO, Antonina. Ensuring property rights under martial law [online]. *Revista Jurídica Portucalense*, No Special, 2023, 253–275. Available from: doi: [https://doi.org/10.34625/issn.2183-2705\(ne\)2023.ic-13](https://doi.org/10.34625/issn.2183-2705(ne)2023.ic-13) [Accessed: 26 June 2025].

Ukraine, there has been large-scale destruction of the living environment and massive pollution of land, air, and water ecosystems through the use of methods and means of warfare aimed at causing severe and long-term harm to the natural environment⁷.

The resolution acknowledges the need to amend the Rome Statute of the International Criminal Court (hereinafter referred to as the ICC) by introducing a new element to the definition of a criminal act. Including ecocide as a distinct crime under the Rome Statute is both necessary and desirable, considering the insufficient environmental dimension of the currently defined crimes and the growing imperative to protect the environment for future generations⁸. Such amendments would enable Ukraine to pursue legal accountability of the Russian Federation before the ICC for crimes committed against the environment.

The duration and intensity of hostilities negatively affect key environmental protection indicators. Under such conditions, environmental restoration may take 20 to 30 years following the end of the conflict. Therefore, the damage caused must be subject to compensation⁹.

The adaptation of Ukrainian legislation to European standards must reflect national realities and respect constitutional and social values¹⁰. The complete restoration of Ukraine's economy and infrastructure will only be possible after the cessation of large-scale military operations and the liberation of the occupied territories. Consequently, the issue of holding the Russian Federation legally accountable for environmental crimes committed in Ukraine is of utmost urgency and requires in-depth analysis and practical solutions.

Methods

To achieve the stated objective, the dialectical method was employed to examine

⁷ KOSTYTSKYI, Vasyl, KOSTYTSKA, Iryna, MYKITYUK, Mykola and SUKHODOLSKA, Anastasiia. On the issue of legal responsibility for criminal encroachment on the constitutional right to a safe environment during the Russian military aggression in Ukraine [online]. *Environmental Law*, no. 3-4, 2022. Available from: doi: <https://doi.org/10.37687/2413-7189.2022.3-4-4.5> [Accessed: 26 June 2025].

⁸PANIGAJ, Juraj, BERNIKOVA, Eva. Ecocide – a new crime under international law? [online]. *Juridical Tribune*. V. 13, Iss. 1, March 2023. Available from: <http://tribunajuridica.eu/arkhiva/An13v1/1.%20Panigaj.%20Bernikova.pdf> [Accessed: 26 June 2025].

⁹ KRAMPE, Florian, KREUTZ, Joakim and IDE Tobias. Armed Conflict Causes Long-Lasting Environmental Harms [online]. *Environment and Security*, March 2025, vol. 0, no. 0. Available from: doi: <https://doi.org/10.1177/27538796251323739> [Accessed: 26 June 2025].

¹⁰ IVANETS, Ivan. The Impact of European Union's Law and Judicial Practice on the Application of the Principles of Protection of Violated Civil Rights in the Ukrainian Judicial Proceedings [online]. *Revista Jurídica Portucalense*, 2024, 450–469. Available from: doi: [https://doi.org/10.34625/issn.2183-2705\(36\)2024.ic-20](https://doi.org/10.34625/issn.2183-2705(36)2024.ic-20) [Accessed: 26 June 2025].

the dynamics and interrelations between armed conflicts and their environmental impact, which enabled the issue of legal responsibility to be viewed as a continuously evolving system. The historical method was also applied to analyse the genesis and development of international legal norms for environmental protection during armed conflicts, including examining precedents in international judicial practice and historical experiences of environmental damage compensation. The case study method enabled the transition from general theoretical provisions to an in-depth analysis of real-world problems and their possible solutions.

System-structural and system-functional methods made it possible to conceptualise legal liability for environmental damage as a complex system of interrelated elements and determine their role within the broader environmental protection mechanism. This, in turn, helped to reveal the interconnections between different branches of international law (humanitarian, environmental, and criminal) and to assess their influence on the overall effectiveness of legal responsibility. The method of legal forecasting was applied to predict future trends in the development of international environmental law and judicial practice, and to evaluate the potential consequences of various approaches to environmental liability.

Environmental Protection During Armed Conflicts as an Absolute Value

Since the beginning of the full-scale invasion of Ukraine, the Russian Federation has used, and continues to use, various prohibited methods of warfare. Environmental damage can both exacerbate armed conflicts and serve as a resource in the subsequent reconstruction of peaceful spaces¹¹, framing international environmental law as a complementary tool in regulating warfare¹².

At the same time, contemporary security concepts emphasise that the prevention of environmental damage constitutes an integral part of international security. For instance, in the works of Buzan and his co-authors, the environmental dimension is

¹¹ IDE, Tobias. The Dark Side of Environmental Peacebuilding [online]. *World Development*. Vol. 127, 2020, Available from: doi: <https://doi.org/10.1016/j.worlddev.2019.104777> [Accessed: 26 June 2025].

¹² MOURATIDI, Yiokasti. You Say Precautions, I Say Prevention: Towards the Systemic Integration of International Humanitarian Law and International Environmental Law. In: KRIEGER, Heike, KALMANOVITZ, Pablo, LIEBLICH, Eliav, PANTAZOPOULOS, Stavros Evdokimos(eds). *Yearbook of International Humanitarian Law*. Vol.25. The Hague: T.M.C. Asser Press, 2024. doi: https://doi.org/10.1007/978-94-6265-619-2_1 [Accessed: 26 June 2025].

considered a key component of both state and societal security¹³. Accordingly, environmental damage during armed conflict should be regarded not merely as a humanitarian or legal issue, but as a key dimension of international security. As Homer-Dixon¹⁴ points out, the degradation of natural resources, pollution, and ecological disasters can serve as catalysts for further violence, economic collapse, and mass displacement. Weak mechanisms of environmental protection not only fail to prevent damage but also exacerbate conflict dynamics and undermine the broader security architecture. From the perspective of critical geopolitics¹⁵, modern wars often instrumentalise the natural environment as both a resource and a means of control, effectively turning nature into a battlefield. Therefore, holding the aggressor accountable for environmental harm is not only an ecological and legal imperative but also a necessary condition for global security and justice.

However, following the environmental devastation caused during the Gulf War (1990–1991), it became evident that the norms of international humanitarian law are insufficient for ensuring adequate environmental protection¹⁶. In this context, *United Nations General Assembly Resolution 47/37 (1992)*¹⁷ reaffirmed that the protection of the environment during armed conflict constitutes an integral part of the observance of international law, placing upon States the obligation to ensure that their actions remain consistent with international environmental standards, even in times of hostilities. The role of international environmental law is to prevent the potential negative consequences of armed conflicts on the environment by formulating relevant principles in international treaties, which states ratify and adhere to during

¹³ BUZAN, Barry, FALKNER, Robert. Great Powers and Environmental Responsibilities: A Conceptual Framework [online]. In: FALKNER, Robert and BUZAN, Barry, (eds.) *Great Powers, Climate Change, and Global Environmental Responsibilities*. Oxford: Oxford University Press, 2022. 14 – 48. Available from: doi: <https://doi.org/10.1093/oso/9780198866022.003.0002> [Accessed: 03 November 2025].

¹⁴ HOMER-DIXON, Thomas F. Environmental Scarcities and Violent Conflict: Evidence from Cases. [online]. *International Security*. Vol.19, no.1, 1994, 5–40. Available from: <https://www.cisec.uni-hamburg.de/en/pdf/data/homer-dixon-1994-environmental-scarcities.pdf> [Accessed: 03 November 2025].

¹⁵ KOOPMAN, Sara, DALBY, Simon, MEGORAN, Nick, SHARP, Jo, KEARNS, Gerry, SQUIRE, Rachael, JEFFREY, Alex, SQUIRE, Vicki, TOAL, Gerard. Critical Geopolitics/critical geopolitics 25 years on. [online]. *Political Geography*. 90. Article 102421, 2021. Available from: doi: <https://doi.org/10.1016/j.polgeo.2021.102421> [Accessed: 03 November 2025].

¹⁶ VAN STEENBERGHE, Raphaël. International Environmental Law as a Means for Enhancing the Protection of the Environment in Warfare: A Critical Assessment of Scholarly Theoretical Frameworks [online]. *International Review of the Red Cross*. Vol. 105, no. 924, 2023, 1568–1599. Available from: doi: <https://doi.org/10.1017/S1816383123000358> [Accessed: 26 June 2025].

¹⁷ UNITED NATIONS GENERAL ASSEMBLY. *Protection of the environment in times of armed conflict: Resolution 47/37*. 25 November 1992. [online]. Available from: <https://digitallibrary.un.org/record/158808?v=pdf> [Accessed: 03 November 2025].

peacetime. These principles include: the prevention and non-infliction of transboundary environmental harm; environmental impact assessment; permanent sovereignty over natural resources; the principle of common but differentiated responsibilities; sustainable development; emergency information disclosure; and the precautionary principle, among others¹⁸. Some of these principles have acquired the status of customary international law. For example, the principle of preventing and not causing transboundary environmental harm imposes obligations on subjects of international law regardless of their participation in the relevant international environmental treaties. A notable illustration is the *Trail Smelter* arbitration case (United States v. Canada, 1938–1941), in which sulfur dioxide emissions from a Canadian smelter caused damage to forests and farmland in the U.S. state of Washington¹⁹. Although the *Trail Smelter* case did not arise from an armed conflict, it established an important precedent: even in the absence of specific international agreements, the arbitration tribunal held that Canada had an absolute obligation to prevent pollution that causes harm to another state, regardless of whether such activity was permitted under domestic law. This case laid the foundation for the modern no-harm rule in international law.

The evolution of this principle is reflected in contemporary international legal standards, as confirmed, for instance, by the advisory opinions of the International Tribunal for the Law of the Sea (ITLOS). In its 2015 *Advisory Opinion for the Sub-Regional Fisheries Commission*²⁰, the Tribunal affirmed that States are under an obligation to exercise due diligence and effective control to prevent significant harm to the environment, including from activities conducted under their jurisdiction or control. Furthermore, in its 2024 *Advisory Opinion on Climate Change*²¹, ITLOS explicitly

¹⁸ INTERNATIONAL LAW COMMISSION. *Draft Principles on Protection of the Environment in Relation to Armed Conflicts* [online]. United Nations, 2022. (A/77/10, Chapter VI, Annex I. Available from: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf [Accessed: 03 November 2025].

¹⁹ RISHABH, Rishika. Responsibility v. Sovereignty: Transboundary Environmental Harm [online]. International Journal of Law, Management and Humanities. Vol. 4, no. 2, 2021, 598–606. Available from: doi: <http://doi.one/10.1732/IJLMH.26106> [Accessed: 26 June 2025].

²⁰ INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion* [online]. 2 April 2015. ITLOS Reports, 2015. Available from: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_2_1-advop-E.pdf [Accessed: 03 November 2025].

²¹ INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion* [online]. 21 May 2024. ITLOS Reports, 2024. Available from:

recognised the preventive obligations of States concerning global environmental threats, thereby reaffirming the universality of the no-harm principle and its applicability even in situations involving armed conflict.

A related principle was reaffirmed in the 2010 case *Pulp Mills on the River Uruguay* (Argentina v. Uruguay) before the International Court of Justice, where the Court emphasised the obligation to conduct an environmental impact assessment in cases involving a real risk of transboundary harm, even when states are not parties to specific environmental conventions²².

In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* (1996), the International Court of Justice stated that the use of nuclear weapons could have catastrophic consequences for the environment. The Court emphasised that the environment is not an abstract notion, but the living space that sustains life and ensures the quality of life and health of present and future generations. The Court also affirmed that respect for the environment is an integral part of international law and recognised a general obligation of states to ensure that activities under their jurisdiction do not cause environmental harm to other states²³.

War is not a basis for the automatic termination of international treaties, particularly environmental treaties, the parties to which have become participants in an armed conflict²⁴. The leading role in the system of international treaties prohibiting the use of specific methods and means of warfare is played by the *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques* (1978). The use of the environment as a means of warfare is prohibited. In particular, it is unacceptable to resort to military or any other use of environmental effects that have large-scale, long-term or significant negative consequences: methods of destruction, causing harm, or causing losses to any other state party²⁵.

https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf [Accessed: 03 November 2025].

²² BRENT, Kerryn Anne. The Certain Activities Case: What Implications for the No-Harm Rule? [online]. *Asia Pacific Journal of Environmental Law*. Vol. 20, no. 12017, 2017, 28–56. Available from: doi: <https://doi.org/10.4337/apiel.2017.01.02> [Accessed: 26 June 2025].

²³ INTERNATIONAL COURT OF JUSTICE. *Legality of the Threat or Use of Nuclear Weapons: Advisory Opinion of 8 July 1996*. In: *Reports of Judgments, Advisory Opinions and Orders*. 1996, pp. 241–242.

²⁴ INTERNATIONAL LAW COMMISSION. *Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries 2011* [online]. In: *Yearbook of the International Law Commission*, 2011, Vol. II, Part Two. Available from: http://legal.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf [Accessed: 26 June 2025].

²⁵ UNITED NATIONS. *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD)* [online]. Geneva, 10 December 1976. In: *United*

Protecting the environment from the effects of hostilities is addressed in Article 55 of *Additional Protocol I to the Geneva Conventions (1949) relating to the Protection of Victims of International Armed Conflicts*. Care must be taken during hostilities to protect the natural environment against widespread, long-term, and severe damage. The use of methods or means of warfare that are intended, or may be expected, to cause such damage to the natural environment, thereby endangering the health or survival of the civilian population, is prohibited²⁶. As a general rule, reprisals against the natural environment are also banned²⁷.

An essential approach to applying international environmental law during armed conflict is the systemic integration of environmental considerations into the laws of war and the identification of legal gaps concerning the restoration of ecosystems following the cessation of hostilities²⁸. Evolving approaches to warfare also alter their potential environmental impact, with modern methods of warfare increasingly becoming a source of novel forms of environmental damage²⁹. In practice, these approaches are further reinforced by the *ICRC Guidelines on the Protection of the Natural Environment in Situations of Armed Conflict (2020)*³⁰, which codify contemporary standards of precaution, proportionality, and the prevention of environmental harm.

Principle 24 of the *Rio Declaration on Environment and Development* (1992) acknowledges the inevitability of war's destructive impact on sustainable development. It affirms the obligation of states to respect international law providing for the protection

Nations Treaty Series, vol. 1108, p. 151. Available from: <https://disarmament.unoda.org/enmod/> [Accessed: 26 June 2025].

²⁶ HULME, Karen. *War Torn Environment: Interpreting the Legal Threshold*. Leiden [The Netherlands]: Brill | Nijhoff, 2004. ISBN: 978-90-04-13848-3.

²⁷ INTERNATIONAL COMMITTEE OF THE RED CROSS. *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 [online]. Available from: https://zakon.rada.gov.ua/laws/show/995_199#Text [Accessed: 26 June 2025].

²⁸ SMITH, Tara. *The Protection of the Environment and Natural Resources in Armed Conflict* [online]. In: SAYAPIN, Sergey, ATADJANOV, Rustam, KADAM, Umech, KEMP, Gerhard, ZAMBRANA-TEVAR, Nicolas, QUENIVET, Noëlle (eds). *International Conflict and Security Law*. The Hague: T.M.C. Asser Press, 2022. Available from: doi: https://doi.org/10.1007/978-94-6265-515-7_20 [Accessed: 26 June 2025].

²⁹ HARRISON, Andrea. Review of Underground Warfare, by D. Richemond-Barak [online]. *The American Journal of International Law*. Vol.114, no.1, 2020, 178–183. Available from: <https://www.jstor.org/stable/26891044> [Accessed: 26 June 2025].

³⁰ INTERNATIONAL COMMITTEE OF THE RED CROSS. *Guidelines on the Protection of the Natural Environment in Armed Conflict: Rules and Recommendations Relating to the Protection of the Natural Environment under International Humanitarian Law, with Commentary*. [online]. Geneva: ICRC, September 2020. Available from: https://www.icrc.org/sites/default/files/document_new/file_list/guidelines_on_the_protection_of_the_natural_environment_in_armed_conflict_advance-copy.pdf [Accessed: 03 November 2025].

of the environment during armed conflicts and, where necessary, to cooperate in its further development³¹. Norms prohibiting the use of methods and means of warfare that may adversely affect the environment are enshrined in 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) and its Protocols³².

Legal and judicial mechanisms, including transitional justice and compensation processes, are examined through the principle of full reparation under international law. This includes the definition of the protected object, the use of complex methods for the quantitative assessment of environmental harm, and examples of compensation claims and precedents³³. International humanitarian law contains several provisions addressing environmental damage's short-term and long-term consequences – the so-called “environmental legacy” of armed conflict. However, one of the significant shortcomings of this area lies in the difficulty of defining the threshold of environmental damage, as it must meet the following cumulative criteria: (1) widespread impact; (2) long-term effects; (3) severe magnitude – all of which must be assessed before the commencement of an attack.

As a result, the practical application of the principle of proportionality to environmental damage, which is generally regarded as indirect (collateral) damage, is effectively precluded.

International Law on the Military Use of Environmental Modification Techniques

Land contamination by remnants of armed conflict, such as mines, cluster munitions, and other explosive remnants of war, represents a direct and ongoing

³¹ UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT. *Rio Declaration on Environment and Development*, 3 June 1992 [online]. In: *Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3–14 June 1992)*, Volume I: Resolutions Adopted by the Conference (A/CONF.151/26/Vol.I). Available from: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf [Accessed: 26 June 2025].

³² UNITED NATIONS. *Convention on Certain Conventional Weapons*, 10 October 1980. In: *Report of the United Nations Conference on Certain Conventional Weapons* [online] (Geneva, 10 October 1980) (A/CONF.151/26/Vol.I). Available from: <https://www.un.org/disarmament/the-convention-on-certain-conventional-weapons> [Accessed: 26 June 2025].

³³ KONG, Lingjie, ZHAO, Yuqing. Remediating the Environmental Impacts of War: Challenges and Perspectives for Full Reparation [online]. *International Review of the Red Cross*. Vol. 105, no. 924, 2023, 1441–1462. Available from: doi: <https://doi.org/10.1017/S1816383123000280> [Accessed: 26 June 2025].

environmental impact – its lasting legacy. Therefore, according to the just war theory, decisions must be made to initiate, conduct, and end armed conflict.

In the case concerning Albania for damage to two British warships and the killing of personnel, the Court ruled that Albania bore responsibility under international law. The country failed to inform the crews about the presence of automatic mines on submarines at anchor, thereby violating “elementary considerations of humanity” and the principle of freedom of navigation.

In the case of *Nicaragua v. United States*, the Court found that the United States had breached its obligations under customary international law when, in 1984, it laid mines in Nicaraguan ports without any public or official warning. Such actions constituted violations of the prohibition under international law on using force against another State, interfering in its internal affairs, violating sovereignty, and disrupting peaceful maritime commerce.

As a result of British military exercises in Kenya, several Kenyan victims filed a lawsuit in the High Court in London in 2002. In an out-of-court settlement, they were awarded GBP 4.5 million in compensation, although the British government did not acknowledge full liability.

Protection of the natural environment during armed conflict is not absolute, as destruction may be justified under the principle of military necessity. This makes it challenging to impose legal responsibility for environmental damage under international humanitarian and criminal law. In such cases, the norms of international humanitarian law act as a *lex specialis, prevailing over general environmental norms according to the principle that lex specialis derogat generali*³⁴. Thus, judicial practice remains highly inconsistent and varies from one state to another. While in peacetime perpetrators of environmental harm are generally held accountable, the principle of inevitability of punishment is not guaranteed during armed conflicts.

International Legal Mechanisms for Holding Armed Aggressors Legally Accountable

An urgent need for the state of Ukraine, amid the full-scale invasion by the Russian Federation, is the development of an effective mechanism for holding

³⁴ HIGHER ATTESTATION COMMISSION OF UKRAINE. *Letter No. 02-72-05/311 dated 2 February 2009 regarding law enforcement practice* [online]. Available from: https://zakon.rada.gov.ua/rada/show/v_311330-09#Text [Accessed: 26 June 2025].

perpetrators legally accountable for environmental damage. The evidentiary process plays a crucial role in the consideration of such cases by international courts. Unfortunately, modern international law lacks a clear definition of the sources and mechanisms for compensating environmental damage, particularly when caused by armed conflict. A summary of the relevant practice is reflected in the *Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001)*, which provide that every internationally wrongful act of a State entails its international responsibility (Article 1). Accordingly, Article 31 stipulates that the responsible State is under an obligation to make full reparation for the injury caused, including financial compensation for damage to the environment, which is subject to quantifiable assessment under Article 36³⁵. Thus, environmental harm gives rise to an obligation on the part of the responsible State to provide compensation and to restore the affected ecosystems.

Neither the Statute nor the Rules of Procedure provide specific requirements for evidence, relying instead on references to international jurisprudence. The International Court of Justice (ICJ) applies an open and discretionary evidentiary standard, the “level of certainty of the seriousness of the allegations”, when assessing specific categories of evidence. Case law establishes the standard of proof ad hoc, which typically becomes apparent only at the final stage of proceedings when the Court delivers its judgment. The Court follows the principle of broad admissibility of evidence, which enables it to consider almost any evidence submitted by the parties. This approach is grounded in the principles of state sovereignty and equality of states in the selection of evidence.

A notable example illustrating the importance of constructing an adequate evidentiary basis is found in paragraph 75 of the ICJ’s Order of 19 April 2017 on Ukraine’s request for provisional measures in the case *Ukraine v. Russian Federation* (concerning the application of the *International Convention for the Suppression of the Financing of Terrorism*³⁶ and the *International Convention on the Elimination of All*

³⁵ INTERNATIONAL LAW COMMISSION. Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries. [online]. In: *Yearbook of the International Law Commission*. Vol.II, Part Two, A/56/10. 2001. Available from: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf [Accessed: 03 November 2025].

³⁶ UNITED NATIONS. *International Convention for the Suppression of the Financing of Terrorism*, 12 September 2002. Law No. 149-IV (Ukraine) [online]. Available from: https://zakon.rada.gov.ua/laws/show/995_518#Text [Accessed: 26 June 2025].

*Forms of Racial Discrimination*³⁷). The Court stated that Ukraine, when referring to: (1) the attack on peaceful demonstrators in Kharkiv; (2) the shelling of Mariupol; (3) the attacks in Volnovakha and Kramatorsk; and (4) the downing of Malaysia Airlines Flight MH17, which resulted in numerous civilian casualties, had failed to provide sufficient evidence substantiating the reliability of the alleged circumstances.

An important precedent in international judicial practice is the *Nicaragua v. Costa Rica Case Judgment*. On 18 November 2010, the Republic of Costa Rica applied before the ICJ to initiate proceedings against the Republic of Nicaragua concerning the “incursion, occupation, and use by the Nicaraguan army of Costa Rican territory”³⁸.

The ICJ recognised Costa Rica’s right to compensation for material damage and instructed the parties to enter into negotiations to reach an agreement on the amount of compensation within one year from the date of the judgment. However, the parties failed to reach a mutually acceptable agreement. As a result, Costa Rica requested the Court to determine the compensation. In its judgment, the ICJ significantly reduced the compensation awarded compared to Costa Rica’s original claims. The Court distinguished between Nicaragua’s obligation to compensate for environmental reparation and Costa Rica’s responsibility to undertake reasonable mitigation measures for foreseeable environmental harm.

Given the recognition of state responsibility for environmental protection, the full burden of environmental reparations through compensation does not necessarily fall entirely on the party responsible for the environmental harm. Applying the concept of “harm and causation” and acknowledging the scientific uncertainty associated with claims of environmental damage, the Court held that such damage may result from multiple concurrent causes.

Therefore, the judgment lacks a well-reasoned analysis regarding short-term and long-term assessment of environmental harm, particularly in the context of complex ecological phenomena, which will undoubtedly have lasting adverse effects on the affected territories. It would have been appropriate for the ICJ to provide a more substantiated justification for the methodology used in calculating environmental

³⁷ UNITED NATIONS. *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965 [online]. Available from: https://zakon.rada.gov.ua/laws/show/995_105#Text [Accessed: 26 June 2025].

³⁸ INTERNATIONAL COURT OF JUSTICE. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment of 16 December 2015 [online]. ICJ Reports, 2015. Available from: <https://www.icj-cij.org/case/150> [Accessed: 03 November 2025].

damage, particularly in light of the scientific interconnection between state responsibility for preventing, remedying, and mitigating such harm.

In assessing the “weight, reliability, and probative value of the evidence,” the Court places particular emphasis on the following factors: (1) the testimony of individuals possessing direct and first-hand knowledge; (2) information that has been widely disseminated but, upon closer examination, originates from a single source—such communications, regardless of their quantity, are treated as evidence attributable solely to the original source; and (3) evidence that confirms facts or conduct adverse to the interests of the State represented by the party submitting the evidence.

The ICC operates based on the Rome Statute, which contains numerous evaluative and discretionary legal concepts. Within this framework, factors such as public interest, the political resonance of cases, political will, and the interpretation of specific issues by the majority of the international community play a significant role. The Rome Statute sets a high evidentiary threshold for prosecuting environmental crimes.

At the same time, in matters of reparations, the Statute recognises as victims both natural and legal persons who have suffered harm due to any crime within the Court’s jurisdiction. Thus, the harm does not necessarily have to result from an environmental crime *per se*; it may arise from any offence adjudicated by the Court.

An essential step for Ukraine was the adoption of Resolution No.2433 of 28 April 2022 by the Parliamentary Assembly of the Council of Europe, entitled “*Consequences of the continued aggression of the Russian Federation against Ukraine: the role and response of the Council of Europe*”. In this resolution, the Assembly expressed its full support for the investigation of international crimes committed by the Russian Federation in Ukraine. It advocated for the establishment of an international tribunal³⁹. On 19 January 2023, the European Parliament adopted a resolution supporting the establishment of a special international tribunal to prosecute the crime of aggression committed by the Russian Federation against Ukraine⁴⁰. This special tribunal is intended to complement and reinforce the efforts of the ICC and its Prosecutor in

³⁹ PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE). *Resolution of 27 April 2022: Europe Has Come to Realise the Threat Posed by Russia to the Whole of European Civilisation* [online]. Available from: <https://r2p.org.ua/rezolyuucziya-parye/> [Accessed: 26 June 2025].

⁴⁰ UKRINFORM. *European Parliament Adopted Decision on Establishment of Tribunal for Crime of Aggression against Ukraine* [online]. 19.01.2023 13:26. Available from: <https://www.ukrinform.ua/rubric-politics/3655298-evroparlament-uhvaliv-risenna-pro-stvorennia-tribunalu-za-zlochin-agresii-proti-ukraini.html> [Accessed: 26 June 2025].

investigating allegations of genocide, war crimes, and crimes against humanity committed on the territory of Ukraine.

We are convinced that thoroughly preparing a robust evidentiary base, selecting an appropriate legal strategy during case proceedings, and presenting a confident and well-substantiated position will significantly enhance Ukraine's prospects for a favourable outcome in international judicial proceedings⁴¹.

Undoubtedly, the Russian Federation has violated numerous norms of international law and must therefore be held accountable for its actions. Ukraine has the right to reparations. The source of reparations for Ukraine has not yet been fully determined. However, Ukraine's partner states have the opportunity to introduce provisions into their national legislation stipulating that, in the event the act of aggression is recognized by a decision of the UN Security Council or by a resolution of an emergency special session of the UN General Assembly, the aggressor state shall be held liable for all damage resulting from hostilities, irrespective of the outcome of the war. In such cases, the property of the aggressor state and affiliated individuals located in the territory of other countries may be used to compensate the injured state for its losses, based on decisions issued by the courts of the respective countries⁴².

In *The Prosecutor v. Ahmad Al-Faqi Al-Mahdi* (2017), the International Criminal Court (ICC) issued its first Order for Reparations⁴³, marking the first instance in which the Court awarded damages. Notably, the order included guarantees of non-repetition, aimed at preventing the recurrence of similar crimes by addressing the institutional and structural roots of the violations. Such measures are particularly relevant in cases involving serious human rights violations or crimes committed by States that require systemic reform, and a similar approach may be applicable in the present context. Therefore, the search for effective legal mechanisms to ensure reparations for Ukraine and to hold the armed aggressor legally accountable remains ongoing.

⁴¹ STRELNYK, Viktoriia. *The Issue of Legal Responsibility of the Russian Federation for Offences in the Field of Environmental Protection: International Legal Aspect* [online]. In: Collective monograph. Riga: Baltija Publishing, 2023, 254–261. Available from: doi: <https://doi.org/10.30525/978-9934-26-331-6-30> [Accessed: 26 June 2025].

⁴² KUZNETSOVA, Maryna, STRELNYK, Viktoriia, BATURYNETS, Bohdan, KLESHCHENKO, Oleksii. The Issue of Legal Responsibility of the Russian Federation for Offences Committed through Armed Aggression [online]. *Legal Scientific Electronic Journal*. No. 6, 2023, 620–622. Available from: doi: <https://doi.org/10.32782/2524-0374/2023-6/144> [Accessed: 26 June 2025].

⁴³ INTERNATIONAL CRIMINAL COURT. *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15, Reparations Order, 17 August 2017 [online]. Trial Chamber VIII. The Hague: International Criminal Court, 2017. Available from: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1803eb94b.pdf> [Accessed: 03 November 2025].

Conclusions

By invading Ukraine, the Russian Federation has violated fundamental principles of international law, ranging from the unlawful use of force and the territorial integrity of a sovereign state to a blatant disregard for international humanitarian law norms and fundamental human rights and freedoms. Accordingly, the European Union's statement condemns Russia's invasion of Ukraine as a violation of Article 2(4) of the UN Charter, as a crime of aggression under the Rome Statute of the ICC, and as a breach of peremptory norms of international law⁴⁴.

The challenge of addressing environmental protection in the current context of globalisation lies in humanity's persistent neglect of environmental security issues. The search for the most effective and comprehensive intergovernmental approach to tackling environmental security remains highly relevant⁴⁵, particularly concerning enhancing state legal responsibility for environmental damage and improving mechanisms for responding to armed conflicts.

The military aggression against Ukraine, in blatant disregard of all norms of morality and humanity, poses a significant challenge to the international community, which must respond adequately. The global community is confronted with questions regarding its capacity to develop effective means to prevent armed aggression. There is an urgent need to find answers, adopt new approaches, and make extraordinary decisions⁴⁶. Existing mechanisms for compensating environmental damage caused by the war in Ukraine have proven ineffective. The search for legal instruments to hold the Russian Federation legally accountable for crimes committed against Ukraine as a result of its armed aggression requires the involvement of all international partners⁴⁷.

An essential and highly urgent task for contemporary environmental legal doctrine

⁴⁴ DUGARD, John. The Choice Before Us: International Law or a Rules-Based International Order? [online]. *Leiden Journal of International Law*. Vol.36, no.2, 2023, 223–232. Available from: doi: <https://doi.org/10.1017/S0922156523000043> [Accessed: 26 June 2025].

⁴⁵ STRELNYK, Viktoria, MYRONENKO, Tetiana, CHURILOVA, Tetiana, HRES, Nataliia. Legal Support of Industrial Accident Prevention [online]. *Journal of Advanced Research in Law and Economics*. Vol.9, no.7(45), 2019, Available from: doi: [https://doi.org/10.14505/jarle.v10.7\(45\).23](https://doi.org/10.14505/jarle.v10.7(45).23) [Accessed: 26 June 2025].

⁴⁶ ATAMANOVA, Yuliia, TSIRAT, Hennadii. State Immunity and New Challenges to International Law [online]. *LCF Law Group*. 13.07.22. Available from: <https://lcf.ua/thought-leadership/international-arbitration/sudovij-imunitet-derzhavi-ta-novi-vikliki-pered-mizhnarodnim-pravom> [Accessed: 26 June 2025].

⁴⁷ CHURILOVA, Tetiana, STRELNYK, Viktoria. Problems of Compensation for Environmental Damage to Ukraine Caused by the Armed Aggression of the Russian Federation [online]. *Environmental Law*. no. 3–4, 2022, 91–95. Available from: doi: <https://doi.org/10.37687/2413-7189.2022.3-4-4.18> [Accessed: 26 June 2025].

and law enforcement in Ukraine is to develop an effective mechanism for assessing the damage caused to the environment by the Russian Federation's military actions against Ukraine, as well as to identify feasible and effective means of reparations for the harm inflicted.

A crucial requirement for documenting environmental crimes is the involvement of independent, internationally certified experts who employ modern methodologies for accurately recording and quantifying the damage inflicted, thereby ensuring the verification of relevant data and precise calculation of damages. There is a continuous search for compelling arguments that can motivate decisive action to address this issue.

European integration can play a pivotal role in Ukraine's post-war reconstruction and compensation for environmental damage caused by the conflict. External support, including infrastructure financing, can be directed toward environmental restoration and modernisation in accordance with the principles of the green economy and sustainable development. Grant programs and tax incentives can stimulate sectors with a positive environmental impact, such as green energy and sustainable agriculture. These measures will also promote the development of digital tools for monitoring and protecting natural resources. Partnerships with international financial institutions create favourable conditions for financing environmentally significant initiatives.

The shared aspiration of all Ukrainians and the international democratic community is to ensure that the Russian Federation is held legally accountable at the global level for crimes unprecedented in the 21st century. Legal professionals, public officials, and civil society must exert every effort to present robust and credible evidence in international proceedings against the aggressor.

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