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The Criminal Law Aspect of the Violation of Environmental Law in the context of armed aggression against Ukraine

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Abstract

The objective of the study was to analyze, in a comparative legal framework, violations of environmental law in the context of armed aggression against Ukraine. The research method was a dialectical combination of the proven general and private scientific methods of legal knowledge. They emphasize in the Research Results that scientific advances can be used to solve the serious problems that arise in the legal regulation of criminal liability for environmental crimes in the context of armed aggression against Ukraine, as well as in general processes aimed at improving the environmental situation as a whole. It is concluded that the problems of criminal liability for environmental crimes in the context of armed aggression against Ukraine are managed, as far as doctrine is concerned, in the need to study the problems that currently exist in this area, in order to develop effective means of combating environmental crimes. In this regard, the optimization of the solution of environmental protection problems as a result of aggression against our State is possible on the basis of inter-State cooperation.

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Keywords: environmental threats; environmental law; environmental crime; armed conflict; criminal law in armed conflicts.

El aspecto penal de la violación del derecho ambiental en el contexto de la agresión armada contra Ucrania

Resumen

El objetivo del estudio fue analizar, en un marco jurídico comparativo, las violaciones del derecho ambiental en el contexto de la agresión armada contra Ucrania. El método de investigación fue una combinación dialéctica de los métodos científicos generales y privados probados del conocimiento jurídico. Destacan en los Resultados de la investigación que los avances científicos pueden utilizarse para resolver los graves problemas que surgen en la regulación jurídica de la responsabilidad penal por delitos ambientales en el contexto de la agresión armada contra Ucrania, así como en los procesos generales destinados a mejorar la situación ambiental en su conjunto. Se concluye que, los problemas de la responsabilidad penal por delitos medioambientales en el contexto de la agresión armada contra Ucrania se gestionan, en lo concerniente a la doctrina, en la necesidad de estudiar los problemas que existen actualmente en este ámbito, con el fin de desarrollar medios eficaces de lucha contra los delitos medioambientales. En este sentido, la optimización de la solución de los problemas de protección del medio ambiente como resultado de la agresión contra nuestro Estado es posible sobre la base de la cooperación interestatal.

Palabras clave: amenazas ambientales; derecho ambiental; delito ambiental; conflicto armado; derecho penal en conflictos armados.

Introduction

The focus of criminology on crimes and harms committed by and against humans has broadened over time (Brisman and South, 2019).

Normal human activities and their interaction with nature can be disrupted in times of war. As is known, any military conflict is determined by the initial stage of its origin and the final drawing up of the normative-legal basis of the process of regulating the consequences of the conflict. In most wars of the 19th and 20th centuries the main cause of military conflicts was natural resources: oil, coal, gas, timber, diamonds, etc. Almost

all large-scale wars had environmental consequences. An effective way to undermine the economic potential of the enemy and reduce his fighting ability was to influence elements of the biosphere or technogenic objects in the course of military operations. As a consequence of the above, therefore, we can affirmatively say that environmental offenses are an inherent feature of war.

Practice shows that technical, political, economic, national, and other conflicts can lead to negative environmental consequences. For example, military actions, blockades of communication routes, and other forms of conflicts related to the adoption of decisions that cause environmental damage due to the direct destruction of environmental objects. At the same time, inter-ethnic and other conflicts distract from solving a number of traditional environmental problems.

The authors analyzed the criminal law norms that enshrine responsibility for environmental crimes in Ukraine in the context of armed aggression against our state, as well as the analysis of criminal legislation and problems of implementation of criminal responsibility for environmental crimes in foreign countries.

1. Theoretical Framework or Literature Review

It should be noted the fact that so far there is no legal and academic research in the field of environmental law of Ukraine regarding violations resulting from armed aggression against Ukraine. That is why in the sphere of scientific interest there is a question of how the Ukrainian legislation will solve the problems of preventing environmental crimes for the future to protect the environment, as foreign experience could be used for the development of domestic criminal legislation aimed at protecting the environment.

The relevance of this study, given that the leadership of our state is interested in the problems of protecting and improving the environment arising from the ongoing armed aggression against Ukraine, and as a result of which the people of Ukraine suffer seriously, violates their fundamental rights, including, and ecological.

An analysis of scholarly works on violations of environmental law during armed conflicts reveals a clear link between armed aggression against a state and violations of environmental law. For example, Nixon (2018) examines the consequences of environmental law violations and environmental offenses themselves stemming from the Vietnam War, while Cusato (2018) has chosen the same subject of study, but in another country, Kuwait, after the end of that country's war.

As for the relationship of political aspects and environmental law, for this reason, the very concept of environmental security Kornieiev and Melnyk, (2021) as stated by the authors includes a set of measures to ensure a certain state of the natural object and state guarantees to ensure the safe operation of human life.

Undoubtedly, a relevant and significant factor of objective nature is the practical impossibility of receiving and registering information about environmental crimes from the territories not controlled by the Ukrainian authorities (the Autonomous Republic of Crimea and certain territories of Donetsk and Luhansk oblasts).

We note that members of the public, in particular, the International Charitable Organization “Ecology-Law-Human”, make attempts to study the consequences of the war in eastern Ukraine on the environment and public health. However, we agree with the fair comments of Turlova (2017), it does not affect the registration in the established procedural order of environmental encroachments in the specified territories. Consequently, the issue of criminal liability in the scientific circle of domestic scientists remains little researched.

2. Methodology

The methodological basis of the study of the criminal-legal aspect of the violation of environmental law in the context of armed aggression against Ukraine was tested by general scientific and private methods of scientific knowledge, in particular, the dialectical method, methods of formal logic – analysis, and synthesis, comparison, description, classification, methods of induction and deduction, systems, comparative legal and formal-legal methods.

3. Results

Provision of criminal liability for environmental offenses and attribution of their environmental consequences in the context of armed aggression against Ukraine is due to such reasons as:

1. The ecological nature of the act. If we analyze military practice, it is possible to separate a special distinctive tendency - the environment is considered as a direct object of military influence, changing the goals and character of modern war (military conflicts). The distinction of the environmental component of offenses committed during military conflicts from others is that the implementation of specially designed programs (operations) with the purpose

of total destruction or local destruction of the ecological system in the territory of the enemy for the maximum facilitation of the implementation of strategic or operational-tactical tasks.

2. The global nature of the manifestation. The consequences of environmental offenses during armed conflicts are extremely severe and may affect the interests of several states.
3. The consequence of violations of environmental law during armed conflicts is an environmental disaster that threatens human existence. Environmental catastrophe is usually understood as natural disasters or disasters caused by processes of human activity, which have a long-term (often irreversible) negative effect on the environment and human beings, spreading over a fairly large territory.
4. It is always an intentional act. Methods of waging environmental warfare can be: the physical extermination of fauna and flora, the destruction of the environment by various agents of biological, chemical, or physical nature, provoking a man-made disaster through the destruction of environmentally dangerous objects, the impact on the biosphere (its elements), the occurrence of natural disasters have a certain focus. Assessment of the methods of warfare is determined by the possibility and availability of methods of destruction and the tactics of their application.

Environmental offenses in a military conflict are those that are used not only by means specifically designed to destroy the environment but also through the use of weapons systems that originally had a different intended purpose (weapons of mass destruction, conventional weapons, non-lethal weapons, etc.).

The use of military means is complex, which increases the effectiveness of their defeat on the environment. As an example, we can mention the fact that the use of the “Grad” system (field 122-mm multiple rocket launcher BM-21) for firing in an armed conflict leads to the release of hazardous chemical substances - raw materials, semi-products of weapons, which leads to an excess of their concentration in the atmosphere to a level which may be equivalent to the use of chemical weapons.

Disasters of special danger usually occur as a result of ecological wars (or as a consequence of military conflicts with ecological consequences), and terrorist acts with ecological consequences (ecological terrorism). Even the limited use of special means or military equipment against environmentally dangerous technical facilities or components of the biosphere can lead to the inevitable destruction of the environment over a large area.

It should be noted that the appearance in the Criminal Code of Ukraine of a special chapter providing for criminal responsibility for environmental crimes should be considered as an important advanced achievement of legal science in the field of improving the criminal regulation of environmental protection and strengthening criminal liability for damage caused to the natural environment.

However, theoretically, the problem of criminal responsibility for environmental crimes in Ukraine in the context of armed aggression against Ukraine has not been given enough attention, despite the crisis state of the environment in the country during martial law. Criminal protection of the environment in Ukraine is characterized by the extreme imperfection of criminal legal norms, gaps in criminal legislation, and soft sanctions for illegal actions in the environmental sphere.

This is reflected in the fact that the Criminal Code of Ukraine uses the model of an indirect way of protection for environmental elements, based on the fact that the criminal protection is primarily subject to the ownership of environmental objects, rather than the objects themselves directly.

It can be concluded that the environmental offense in the context of armed aggression against Ukraine is a guilty and socially dangerous act or omission enshrined in the criminal law that encroaches on the environmental order and safety of the population and territories of natural resource use in Ukraine, and consists in direct illegal use or impact on natural objects that serve as the public property of the Ukrainian people (Denysyuk *et al.*, 2021).

Regarding the definition of the object and objective aspect of environmental crime in the legislation of Ukraine, the latter allows stating that as the object of environmental crimes in the criminal law acts the totality of social relations, ensuring the protection of the natural environment and environmental safety of society, and the list of direct criminal offenses and objects of environmental crimes can include the environment in general and its individual components. The determining specificity of the objective side of environmental crimes, as well as the way of committing an environmental crime, is an increase in the degree of public danger of this group of criminal acts.

Latency of environmental crime due to the objective aspect of the act is a complex problem, its solution requires the efforts of not only law enforcement, but also the legislative bodies of Ukraine.

4. Discussion

Human societies are fundamentally linked to global environmental systems and are transforming ecological conditions in dramatic ways, such that the current epoch has been termed the Anthropocene (Lengefeld, 2020). The environmental damage or pollution also threatens the rights of future generations to enjoy a clean and healthy environment as an impact of the principle of ubiquity (Ali, 2020). Ecology has a direct, though not the main, influence on the development of forms and methods of armed struggle, and on the nature of warfare.

Active influence on natural processes makes it possible to create simple and economically destructive means that produce results that leave other weapons of mass destruction far behind. Environmentally destructive practices continue to disproportionately affect the poor and disenfranchised as well as more-than-human spaces and lives (Forsyth *et al.*, 2021).

In addition, natural conditions can be influenced remotely, at a considerable distance from the place at which the “strike” is directed, which creates favorable opportunities for covert warfare. Unlike traditional crimes, environmental crimes (and environmental harms) frequently have long-lasting and irreversible effects (Nurse, 2020). It is for this reason that many of the world’s democracies have criminalized violations of environmental law in their legislation.

Over the past four decades, criminal, as opposed to civil or administrative, prosecutions have assumed an increasingly visible role in US environmental law enforcement (Johnson *et al.*, 2020). At the same time, as practice shows, critics of existing systems of justice and regulation have long pointed to the failures of these systems to protect the environment, prevent environmental crimes, and prosecute environmental offenders (White, 2018).

The peculiarity of the institute of environmental norms of criminal law should be defined as its complexity since the system of legal responsibility includes not only criminal but also administrative, land, forest, water, and environmental law norms. At the present stage, the criminal law to combat environmental crimes has undergone significant changes, especially taking into account the ongoing armed aggression against Ukraine.

In society and at the legislative level there should be a different approach to the legal assessment of environmental crimes. Environmental crime refers to the violation of laws intended to protect the environment and human health (Dagras, 2021). Priority should be given not to economic interests concerning material damage caused as a result of armed aggression against Ukraine, but to the restoration and protection of the environmental interests of the Ukrainian people, conditions that are favorable for human life and health.

In environmental protection it is important to implement the following basic principles: ensuring an environmentally safe environment, the formation of a human ecological worldview, and the priority of environmental safety requirements in all areas of the national economy, which is ahead of the nature of environmental protection measures, the greening of material production, the mandatory environmental expertise, the combination of incentives and responsibilities in environmental protection, etc.

Environmental Protection Agencies (EPAs) have been involved in citizen science initiatives for decades, engaging with citizens to protect and restore our environment (Rubio-Iglesias *et al.*, 2020).

The world community has long been aware of the fact that the environment and its components are the common heritage of mankind. All state management in the industrialized world faces social demands to combat problems of environmental pollution and degradation (Steinebach, 2019).

Environmental protection and rational use of its resources is an important problem of our time, in the solution of which the main conditions are trust and mutual understanding between states, conducting a unified environmental policy in their territory, and, most importantly, the development of environmental legislation.

Inter-state legal responsibility takes into account the legal consequences for the subject of international law, who has violated its and international obligations, including in the field of regulation of environmental relations, which include, among other conditions, the duty of the violating state to compensate the damage caused to other subjects of international law, and in some cases to their natural and legal persons.

Issues of international legal responsibility are reflected in the UN Charter, the UN Convention on the Law of the Sea, and other documents. Currently, there are more than 200 bilateral and multilateral treaties in the field of environmental protection. The current (once) international law of state responsibility is shaped by the International Law Commission's Articles on the Responsibility of States for internationally wrongful acts, generally endorsed in state and judicial practice as consonant with custom (Paparinskis, 2020).

In 2020, the Stop Ecocide campaign convened a panel of experts, tasked with drafting a definition of ecocide capable of being incorporated into the International Criminal Court's mandate (Doran *et al.*, 2021). Only through the joint efforts of the global community can we overcome the consequences of environmental violations. Examples are open knowledge-sharing platforms, joint procurement of recycled materials, technical standards on the environmental performance of products or processes, and many others (De Stefano, 2020).

In the long human society, people's awareness of environmental protection has experienced from scratch, distinguished process (Tan *et al.*, 2018). The consequences of environmental crimes are especially noticeable during wars. The consequences of military conflicts on the environment can be obvious: the destruction of industrial facilities, environmental warfare, and indirectly. "Widespread environmental" can be defined as the war that took place in Vietnam. A variety of chemicals were used in the war. Forests and crops were destroyed by napalm over a huge area. Herbicides and defoliantes destroyed vegetation on 360 thousand hectares of cultivated land and affected more than 40% of the areas under crops.

The Vietnam War resulted in large areas of increased soil erosion and acidity, and some plant species and useful microorganisms living in the soil disappeared without a trace. Only 18 out of 150 bird species survived, amphibians and insects were almost completely destroyed, and many species of fish in the rivers. Vietnam was a union of predicament, reflection, and conflict (Nixon, 2018). These are the ecological consequences of this war.

The Iraqi war against Kuwait in 1990-to to 1991 also had grave environmental consequences, even though there was no deliberate use of environmental weapons in this armed conflict. The ecological consequences were lakes of oil, sites of extinguished fires, bird corpses on the coast, and yellowed mango thickets adorning the coastal tropical zone. Scientists note that the clouds of smoke and soot that swept over southern Asia may have affected the rainy seasons and significantly reduced harvests.

The latter circumstance is a sign of environmental warfare. Through an examination of the practice of the UNCC, the overarching purpose of this paper is to draw attention to some problematic dimensions of the compensation regime for the environmental impact of the 1990–91 Gulf War, and thus raise questions on its capacity to influence future responses to environmental damage in the context of contemporary armed conflicts (Cusato, 2018). It should also be noted that military conflicts lead to a decrease in population in a particular region, which cannot but affect the environment.

Environmental criminal law provides for measures targeting the most serious environmental offenses and improving the enforceability of environmental provisions (Solodov and Zebek, 2020). Consequences of violations of environmental law in the context of armed aggression against Ukraine are difficult to predict, but it is possible to provide for responsibility for them, in particular criminal responsibility.

Thus, Section VIII of the Criminal Code of Ukraine provides the basis of criminal liability for environmental violations, which specifies the main points of combating crimes against the environment and lists the most

dangerous criminal offenses in the field of environmental security (Criminal Code of Ukraine, 2001).

As to the violations of environmental law in the context of armed aggression against Ukraine, in accordance with this section of the Criminal Code, they are: violations of the rules of environmental security, pollution or damage of land, pollution of atmospheric air, destruction or damage to objects of the flora (Criminal Code of Ukraine, 2001). Article 68 of the Law of Ukraine “On Environmental Protection” points out that violation of Ukrainian legislation on environmental protection leads to disciplinary, administrative, civil, and criminal liability (Law of Ukraine on Environmental Protection, 1991).

It should also be noted that in the Resolution of the Plenum of the Supreme Court of Ukraine “On judicial practice on cases of crimes and other offenses against the environment” the generic object is defined as “the constitutionally guaranteed right of citizens to a safe environment, as well as public relations in the sphere of protection and reproduction of the natural environment, rational use of natural resources, ensuring environmental safety of human life” (Resolution of the Plenum of the Supreme Court of Ukraine, 2010).

Due to globalization and advanced technology, negative environmental consequences resulting from industrial and commercial operations worldwide (Al Agba, 2018). The current ecological situation in Ukraine has extremely negative parameters (Ladychenko *et al.*, 2019). Ukraine is characterized by a high concentration of industrial potential, the basis of which is the coal mining, metallurgical, chemical, agricultural industry, machine-building, and energy.

Over a long period of operation of these facilities, a large amount of industrial waste with a high content of toxic and poisonous substances has accumulated and stored in dumps, sumps, and tailings dumps. Combined with the high population density and developed infrastructure, these factors create additional risks for Ukraine regarding violations of environmental law on its territory during an armed conflict.

In the context of armed aggression against Ukraine, the issue of nuclear safety is relevant for our country. The definition of “nuclear safety” is contained in Article 1 of the Law of Ukraine “On Nuclear Energy Use and Radiation Safety” as compliance with norms, rules, standards, and conditions of nuclear materials use ensuring radiation safety, as well as compliance with acceptable limits of radiation impact on personnel, population and natural environment established by safety norms, rules and standards (Law of Ukraine on Nuclear Energy Use and Radiation Safety, 1995).

According to Article 3 of the Law of Ukraine On Nuclear Energy Use and Radiation Safety, one of the main tasks of nuclear legislation is to define the basic principles of radiation protection of people and the natural environment, and one of the basic functions of the state administration body in the field of nuclear energy use and radiation safety (Law of Ukraine On Nuclear Energy Use and Radiation Safety, 1995) is to implement the Nationwide Targeted Environmental Program for Radioactive Waste Management (Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030, 2019).

The countries, in which the technology of active influence on the environment for military purposes is sufficiently developed, can carry out a policy of “ecological blackmail” against the states that do not develop such technologies, and also do not create funds for control and counteraction to environmental violations. An example of such blackmail is the aggression against Ukraine, namely the seizure of the Chornobyl nuclear power plant and threats to use nuclear and chemical weapons on the territory of our state.

From its very beginnings, transnational law has engaged with the categories of ‘global’, ‘local’, and ‘territory’— the very concepts which are challenged by Anthropocene realities (Webster and Mai, 2020). There are many ways to count green crimes at the local, national, and international levels (Lynch, 2019).

Environmental crimes in the context of armed aggression against Ukraine, exist on three levels, in particular, in our opinion, are: cruel treatment of animals, destruction of historical and cultural monuments - environmental crimes against public health and public morals (national, local level), violation of safety rules at nuclear energy facilities and at explosive facilities - environmental crimes against public safety (international level), ecocide - environmental crime. Only a small number of the cited examples allow us to assert the global nature of the danger of environmental crimes committed in the context of armed aggression against Ukraine since they involve significant harm to human life and health and the environment.

It is obvious that in today’s world there are already ways of activities affecting the environment with a military purpose, and that the consequences of any armed conflict are the commission of environmental offenses. Such methods are, for example, destruction of the ozone layer, scattering and formation of clouds and clouds, initiation of earthquakes, creation of tidal waves, like tsunamis, influence on tropical cyclones, and use of atmospheric currents to transfer radioactive and other substances.

As an example, blackmail of one state against another during an armed conflict regarding the possibility to use nuclear weapons or the threat to destroy a nuclear power plant, as is the case in the context of

armed aggression against Ukraine. The Nuclear Treaty underlies grave implications for an environment that may ensue from the use or testing of nuclear weapons or other nuclear explosive devices (Upadlahyay, 2017).

It is clear that each of these methods poses a danger not only to the participants of the armed conflict, but also to other states, so it is important to make appropriate changes to the Criminal Code of Ukraine with criminal liability for these threats or use of nuclear weapons.

The national natural resources of Ukraine need special criminal law protection. Thirty years of human rights refer to a set of generations that directly or indirectly affects all human beings and future generations (Beigi, 2019). Accordingly, the environmental damage caused by violations of environmental law due to armed aggression against Ukraine remains an important issue in the development of questions of responsibility in the field of environmental protection in Ukraine.

Restorative justice is a process whereby all the parties with a stake in a particular offense come to voluntarily to collectively resolve how to deal with the aftermath of the offense and its implications for the future (Wijdekop, 2019; (Babanina *et al.*, 2021) Legislating criminal liability for environmental offenses in the context of armed aggression against our state in domestic law is necessary. In summary, it is clear that the nation has reached a point at which decisions about the way forward in environmental protection need to be made (Olden, 2018).

Conclusions

Based on our research, we can conclude that the main violations of environmental law in the context of armed aggression against Ukraine are:

1. Purposeful technogenic influence by “non-military” means on certain areas of the biosphere, which will inevitably cause natural disasters on the territory of our state in the future, weather and climate changes, ozone holes, destruction of ecosystems, violation of mental and physical health of the population of Ukraine.
2. Purposeful influence on the natural environment to create unfavorable conditions for human life: the destruction of the environment, the enemy, equipment, and weapons, undermining the economic potential of Ukraine, and psychological and physical pressure on the enemy.
3. Causing harm to the enemy by affecting his environment: pollution or contamination of air, water, soil, destruction of flora and fauna.

Violations of environmental law in the context of armed aggression

against Ukraine can be considered as a set of actions, or measures taken by the enemy over a long period, with a certain intensity of armed conflict, the parties to which as the main (or primary) means use destruction (significant destruction) of the environment, the consequence of which may be an environmental disaster.

Analysis of criminal legislation indicates that, firstly, there are still legal gaps in the regulation of the studied public relations, which requires early elimination. Secondly, at the moment, crimes in the field of nature protection in the context of armed aggression against Ukraine, although they do not represent an increased public danger, environmental damage is much more serious than property damage since its consequences are inevitable.

The above indicates the relevance, importance, and timeliness of the chosen topic of the study on the nature of environmental crimes, causes, and conditions of their commission, as well as the need to develop a system of preventive measures in the area under study.

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