

**IMPROVING CRIMINAL RESPONSIBILITY
FOR CAUSING DAMAGE TO THE NATURAL ENVIRONMENT
AS A VIOLATION OF THE LAWS AND CUSTOMS
OF WAR THROUGH THE IMPLEMENTATION OF THE NORMS
OF INTERNATIONAL HUMANITARIAN LAW UNDER ART. 438
OF THE CRIMINAL CODE OF UKRAINE**

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INTRODUCTION

In Art. 438 of the Criminal Code of Ukraine are established the signs of crime such a criminal offense as a violation of the laws and customs of war. Until 2014 there was no practice of applying Art. 438 of the Criminal Code of Ukraine. After the beginning of the armed conflict in 2014 and before the full-scale invasion of the Russian Federation into Ukraine in 2022 the practice of applying general criminal articles for the legal qualification of war crimes, including crimes of terrorist nature, was widespread, which was argued by the operation of the legal regime of the Antiterrorist Operation, the recognition of the «LPR» and «DPR» as terrorist organizations and the lack of a declaration of war¹. Instead of, in February, 2024, according to the statistics of the «T4R War Crimes Database», the number of established events of war crimes that are subject to qualification under Art. 438 of the Criminal Code of Ukraine, is 64,345². The rapid increase of the number of criminal offenses that constitute a violation of the laws and customs of war has revealed problematic issues which related to the legal understanding and qualification of this crime. In particular, such issues include establishing the content of the signs, which are defined in international humanitarian law, are given in this article.

The implementation of the norms of international humanitarian law, including norms of the laws and customs of war, to the criminal law of Ukraine, have repeatedly become the subject of researches by scholars, in particular, V. P. Bazov, O. O. Vovk, I. O. Kolotukha, S. P. Kuchevska, V. O. Mironova, S. M. Mohonchuk, M. V. Pidubna, V. P. Popovych, B. V. Romanyuk, M. I. Havronyuk etc. However, to the question of the implementation of norms of international humanitarian law in terms of causing damage to the natural environment as a violation of the laws and customs of war, not enough attention has been paid in these researches.

¹ Павлюк Д., Свиридова А. .Проблемні питання належної кваліфікації воєнних злочинів. *Azones*. URL: <https://azones.law/analytics/problemni-pytannya-nalezhnoyi-kvalifikatsiyi-voennyih-zlochyviv/>

² Статистика бази даних воєнних злочинів Т4Р. *База даних воєнних злочинів Т4Р*. URL: <https://t4pua.org/stats>

P. 1 art. 438 of the Criminal Code of Ukraine defines alternative external manifestations of violation of the laws and customs of war: 1) Cruel treatment to prisoners of war or civilians; 2) expulsion of the civilian population for forced labor, looting of national values in the occupied territory; 3) employing of means of warfare prohibited by international law; 4) other violations of the laws and customs of war which are established by international treaties, consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine; 5) order to perform such actions.

In turn, the disposition of the criminal law norm is formulated in p. 2 art. 438 of the Criminal Code of Ukraine, is formulated in such way, that has the reference to p. 1 of this article but with an additional sign – their combination with intentional murder. The method of presentation, according to which the legislator defined only an approximate list of actions in which a violation of the laws and customs of war can be expressed. It let make conclusion about existence of other violations of the laws and customs of war, except for those specified in p. 1 art. 438 of the Criminal Code of Ukraine³. The signs of certain actions that, in the light of international humanitarian law, constitute a violation of the laws and customs of war, are defined in other articles of the Criminal Code of Ukraine, in particular, violence against the population in the region of hostilities (art. 433), ill-treatment of prisoners of war (art 434), illegal use and abuse of the symbols of the Red Cross, Red Crescent, Red Crystal (art. 435). But we need state the absence of united list of violations of the laws and customs of war, which are scattered into different international treaties and customary law, makes difficulties in establishing of content of the specified violations both in general and in the sense of Articles 433-437, 438 of the Criminal Code of Ukraine.

And although causing damage to the natural environment can be both a consequence of violating the laws and customs of war, and a way of violating them, in art. 438 of the Criminal Code of Ukraine there is no mention of causing damage to the natural environment as a separate form of the actus reus of the criminal offense which is establishes in p. 1 art. 438 of the Criminal Code of Ukraine. But as Peter Maurer, President of the International Committee of the Red Cross says: «Most major armed conflicts between 1950 and 2000 took place in biodiversity hotspots, putting delicate ecological balances at risk... The facts attest to the maelstrom of stress that the environment endures in armed conflict. Over the years, I have seen how prospects are diminishing for the people who depend on it for their survival. The combined impacts of conflict, environmental degradation and climate risks have added new urgency to our work to protect the environment in armed conflict... While a certain amount of environmental

³ Загине́й-Заболо́тенко З.З., Кваша О.О., Чаплюк О. І. Вироки у кримінальних провадженнях про порушення законів та звичаїв (стаття 438 Кримінального кодексу України): окремі особливості техніко-юридичного оформлення. *Юридичний науковий електронний журнал*. 2023. № 6. С. 461–462. DOI <https://doi.org/10.32782/2524-0374/2023-6/107> URL: http://www.lsej.org.ua/6_2023/107.pdf

damage may be inherent to war, it cannot be unlimited, and it is now up to governments and all parties to armed conflict to take action accordingly»⁴.

It gives grounds for a conclusion about the expediency of considering the issue of the possibility of improving the provisions of art. 438 of the Criminal Code of Ukraine in terms of responsibility for causing damage to the natural environment, in particular, through the implementation of the norms of international humanitarian law.

1. International humanitarian law and the qualification of causing damage to the natural environment according to the current version of art. 438 of the Criminal Code of Ukraine

International humanitarian law includes treaties and customary law, the main area of which is human rights during armed conflict. International treaties in sphere of International humanitarian law consists of first of all Geneva Conventions, 1949 and amendment protocols: 1) the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; 2) The Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; 3) the Third Geneva Convention relative to the Treatment of Prisoners of War; 4) The Geneva Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War; 4) Protocol I (1977) relating to the Protection of Victims of International Armed Conflicts; 5) Protocol II (1977) relating to the Protection of Victims of Non-International Armed Conflicts; 6) Protocol III (2005) relating to the Adoption of an Additional Distinctive Emblem. All the mentioned conventions and their protocols have been ratified by Ukraine.

The first act of international humanitarian law, which contained norms on causing damage to the natural environment, was Protocol I of June 8, 1977. There are provisions about prohibition 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 (p. 3 art. 35). Also these ideas are specified into the provisions of art. 55: «Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisals are prohibited»⁵.

From this it can be seen that in itself causing damage to the natural environment during an armed conflict is not a violation of Protocol I, as it should be characterized by the following signs: 1) damage is result of employing

⁴ Guidelines on the protection of the natural environment in armed conflict. *International Committee of the Red Cross*. 2020. C. 4. URL: <http://surl.li/qrmvf>

⁵ Protocol I relating to the Protection of Victims of International Armed Conflicts (1977). *UNO*. URL: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34_AP-I-EN.pdf

defined methods or means of warfare; 2) damage must be widespread, long-term and severe and harms the health or makes difficult for the population to survive.

But in Section II «Repression of breaches of this Protocol», Part V «Execution of the Conventions and of this Protocol» where breaches and grave breaches of the Protocol I are defined breach of prohibition of employing methods or means of warfare which cause widespread, long-term and severe damage to the natural environment, are not mentioned. However, if we consider the natural environment as a civilian object, which according to p. 1 art. 52 of Protocol I includes all those objects that are not military objects, in view of Part 3 of Art. 85 of Protocol I, causing damage to the natural environment can be considered a serious breach if there are signs specified in p. 3 art. 85 of Protocol I. In particular according to p.3 art. 85 Protocol I as grave breaches are considered acts which are committed wilfully and causing death or serious injury to body or health: a) making the civilian population or individual civilians the object of attack; b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in art. 57, paragraph 2 a) iii); c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in art. 57, paragraph 2 a) iii); d) making non-defended localities and demilitarized zones the object of attack.

Therefore, based on the provisions of p. 1 of art. 52, art. 55, points a.2, a.3, art. 57, point «b» p. 3 of art. 85 in their totality can be stated that causing damage to the natural environment during an armed conflict constitutes a grave breach of the Geneva Conventions and Protocol I in the presence of such signs:

1) damage the natural environment was caused by employing methods or means of warfare and it is connected with causing death or serious injury to body or health;

2) damage the natural environment was result of actions which are connected with attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 a) iii);

3) damage the natural environment should be widespread, long-term and severe or to prejudice the health or survival of the population⁶.

In addition, it should be emphasized that if an element of the natural environment (for example, an elevation of the relief or other natural components of the natural environment) due to its characteristics, placement, purpose or use makes an effective contribution to military operations and complete or partial destruction, the capture or neutralization of which under the existing

⁶ Бринзанська О.В. Заподіяння шкоди навколишньому природному середовищу як порушення законів і звичаїв війни за міжнародним гуманітарним правом. *Часопис Київського університету права*. 2022. № 4-2. С.134. DOI: 10.36695/2219-5521.2-4.2022.24. URL: <https://chasprava.com.ua/index.php/journal/issue/view/88>

circumstances gives a clear military advantage, they can be recognized as military objects, and, therefore, their destruction will not constitute a serious violation of Protocol I.

Beside of the Geneva Conventions, the main international treaties in the field of international humanitarian law include a number of multilateral treaties, the provisions of which provide for prohibitions and restrictions during the conduct of war. Such treaties include provisions about damage to the natural environment: Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques (Environmental Modification Convention), 1976, 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, Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993)⁷.

Although Environmental Modification Convention provides for the obligation of the state itself, and not on the prohibition of a specific kind of behavior of a person, which has the consequence of international legal responsibility of the state, this does not exclude Environmental Modification Convention from the sources of international humanitarian law, on the basis of which the act is assessed as a grave breach of the prohibition of military or any other hostile use of means of influence on the environment. Moreover, the Advisory Service of the International Committee of the Red Cross on International Humanitarian Law interprets the prohibition of military or any other hostile use of means of influence on the environment in the context of «Geneva law», noting that the provisions of the Environmental Modification Convention are supplemented by the provisions of the Protocol I, which directly prohibits causing damage to the natural environment during armed conflicts.

At the same time, the Advisory Service of the International Committee of the Red Cross emphasizes that the Environmental Modification Convention is an instrument of international disarmament law, which, in our opinion, does not allow to interpret it as a criminal legal instrument, although its provisions provide for the obligation of the state to take any measures that the state considers necessary to prohibit and prevent any activity in violation of the provisions of the Convention anywhere under its jurisdiction or control. But despite the absence of any mention about criminal responsibility in the text of this convention, the International Committee of the Red Cross interprets this norm as the obligation of the state to adopt criminal legislation prohibiting the military or any other hostile use of means of influence on the environment on its territory, or of the territory under the jurisdiction or under the control of this

⁷ Вознюк А. А., І. В. Жук, С. С. Чернявський. Кваліфікація та розслідування порушення законів і звичаїв війни: наук.- практ. посіб. Київ : Норма права. 2023. С. 58.

state, as well as on the extraterritorial application of the specified criminal law prohibition⁸.

Preamble of 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, contains provisions about prohibition of employing methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. Integral parts of this Conventions are additional protocols: 1) Protocol I on non-detectable fragments – It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays; 2) Protocol II on prohibitions or restrictions on the use of mines, booby-traps and other devices; 3) Protocol III on prohibitions or restrictions on the use of incendiary weapons; 4) Protocol IV on blinding laser weapons; 5) Protocol V on explosive remnants of war.

According to art. 1 of 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 and annexed Protocols shall apply in the situations referred to in art. 2 common to the Geneva Conventions, 1949 for the Protection of War Victims, including any situation described in p. 4 of art. I of Protocol I to these Conventions⁹.

Pursuant to p. 10 art. IV, p. 1 art. V of Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction every year, each State Party during the transportation, sampling, storage and destruction of chemical weapons and their production facilities pays primary attention to compliance with the regime of human safety and environmental protection. Also according to p.3 art. VII each State Party during the fulfilling its obligations arising from this Convention, pays primary attention to compliance with the regime of human safety and environmental protection and, accordingly, cooperates with other participating states in this direction. For fulfilling its obligations arising from this Convention Each State Party shall, in accordance with its constitutional procedures, prohibit natural and legal persons which located anywhere in its territory or in any other place under its jurisdiction, as recognized by international law, from carrying out any activity prohibited by the State- parties to this Convention, by criminalizing these activities and establishing penalties for their commission, and also extends the effect of its criminal legislation adopted to any activity prohibited by a State

⁸ Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques (1976). *UNO*. URL: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=26&clang=_en&mtsg_no=XXVI-1&src=TREATY

⁹ 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 as amended (2001). URL: <https://geneva-s3.unoda.org/static-unoda-site/pages/templates/the-convention-on-certain-conventional-weapons/CCW%20text.pdf>

Party to this Convention, which is carried out anywhere by natural persons who have citizenship according to international law (p. 1 of art. VII)¹⁰.

In view of the above, it can be assumed that the Environmental Modification Convention, 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 and Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction can be considered as a complex international treaty that combines signs of a criminal law instrument, an act of international humanitarian law, and an instrument of international disarmament law.

Summarizing what has been said, it can be concluded that the provisions of Protocol I (articles 35, 52, 55, 57, 85) can be applied when establishing signs of damage to the natural environment as an actual act under the violation of the laws and customs of war, and the provisions of the Environmental Modification Convention, 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 and the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction – for establish certain signs of the act, for example, in terms of identifying signs of weapons or violation of the prohibition of military or any other hostile use of means of influence on the environment as reprisals.

As mentioned above, international humanitarian law consists not only of treaty norms, but also norms of customary law. According to p. «b» art. 38 of the Statute of the International Court of Justice of the United Nations, international custom is the main source of international law, which is «international custom, as evidence of a general practice accepted as law»¹¹. In view of this, international custom has two elements: a material fact, that is, the actual practice of states («good will»), and perception – the recognition of a certain rule as law (opinion juris)¹².

Thus, part of the norms of customary law in the field of environmental protection originate from the provisions of international treaties, which is recognized by the International Court of Justice of the United Nations in case on the continental shelf in the North Sea (1969), provided that the relevant provision of the treaty has a fundamental normative character and is also recognized broadly and representatively. Moreover, in the case «Nicaragua v. United States of America» the International Court of Justice of the United Nations noted the possibility of the parallel existence of contractual provisions and customary norms of international law of identical content.¹³ This is precisely

¹⁰ The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1992). *OPCW*. URL: <https://www.opcw.org/chemical-weapons-convention>

¹¹ Statute of the International Court of Justice of the United Nations (1945). *UNO*. URL: <https://www.icj-cij.org/statute>

¹² Антонович М. Міжнародне право. Київ: Юрінком Інтер.2023. С. 47.

¹³ Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). *ICJ Reports 1986*, p. 14. URL: <https://www.ilsa.org/Jessup/Jessup08/basicmats/icjnicaragua.pdf>

the situation with the prohibition employing of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment and on the obligation to protect the natural environment during the conduct of military operations from widespread, long-term and severe damage, which are established in p. 3 art. 35 and art. 55 of Protocol I and are international customs at the same time¹⁴.

To date, the database «Customary International Humanitarian Law» of the International Committee of the Red Cross has established three norms with the scope of «The Natural Environment» (chapter 14) which regulate general principles on the conduct of hostilities apply to the natural environment (norm 43); Due Regard for the Natural Environment in Military Operations (norm 44); causing serious damage to the natural environment (norm 45). Also provisions on the protection of the natural environment are reflected in the norms of customary law regarding the prohibition or restriction of the use of certain types of weapons. In particular, above all this, it is prohibition of herbicides as a method of warfare if they are aimed at vegetation that is not a military objective (p. «с» norm 76), and prohibition of using herbicides which would cause widespread, long-term and severe damage to the natural environment (p. «е» norm 76)¹⁵.

As stated above, causing damage to the natural environment as a separate sign of actus reus is not enshrined in p. 1 art. 438 of the Criminal Code of Ukraine. However, depending on the specific circumstances, this act may be qualified as the employing of means of warfare prohibited by international law, or other violations of the laws and customs of war provided for by international treaties, which are compulsory and ratified by the Verkhovna Rada of Ukraine.

In particular, in the first case, damage to the natural environment will be a consequence of the employing of means of warfare prohibited by international law. In such a case, for the presence of signs of this act, it is sufficient to establish such a circumstance as the employing of means of warfare prohibited by international law, while the consequence – causing damage to natural environment – will be an optional sign, or to establish a violation of p. 3 art. 35 of Protocol I about prohibition 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, and/or norm of international custom law (norms 43-45, 76 The Customary IHL Database). However, unlike p. 3 art. 35 of Protocol I, which refers to the prohibition of the employing of **methods or means of warfare** that are intended to cause or, as can be expected, will cause widespread, long-term and severe damage to the natural environment and thereby cause damage to the health or survival of the population, in p 1 art. 438 of the Criminal Code of Ukraine, the corresponding sign of actus reus of this crime is defined as the employing of **means of warfare** prohibited by international law. Therefore, the content of the norm established in p. 1 art. 438

¹⁴ Звичасві норми міжнародного гуманітарного права / передм. Т.Р. Короткий, Є.В. Лук'яченко. Одеса: Фенікс. 2017. С. 26.

¹⁵ The Customary IHL Database. *IHL*. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

of the Criminal Code of Ukraine, is much narrower than norm enshrined in p. 3 art. 35 of the Protocol I.

In particular, the employing of means of warfare, prohibited by international law, is the use of objects and substances, weapons, ammunition, military equipment prohibited by the norms of international humanitarian law, capable of causing excessive damage or suffering to a person, excessive damage to material values, or widespread, long-term and severe damage to the natural environment¹⁶.

Prohibited means of waging war are defined in multilateral treaties, including the ones already mentioned 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 and the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction etc. In view of the above «the employing of means of warfare prohibited by international law» in p.1 art. 438 Criminal Code of Ukraine doesn't include the employing of methods of warfare that are intended to cause, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

Also, this norm will not have the signs of damage to the natural environment, which is not related to the employing of means of warfare prohibited by international law. In particular, it may be grave breaches of the provisions of p. 1 art. 52, art. 55, p. a.2, a.3 art. 57, p. «b» p. 3 art. 85 of Protocol I in the presence of the following signs:

1) damage the natural environment was caused by employing methods or means of warfare and it is connected with causing death or serious injury to body or health;

2) damage the natural environment was result of actions which are connected with attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 a) iii);

3) damage the natural environment should be widespread, long-term and severe or to prejudice the health or survival of the population.

In the presence of the above signs, these violations of the laws and customs of war can be qualified as «other violations of the laws and customs of war provided for by international treaties consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine».

The finding of the sign «provided for by international treaties, consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine», emphasizes that «other violations of the laws and customs of war» include only those are enshrined in ratified international treaties, which in fact takes international custom beyond of the sources of international of humanitarian law, on the basis of which signs of violation of the laws and customs of war

¹⁶ Вознюк А. А., І. В. Жук, С. С. Чернявський. Кваліфікація та розслідування порушення законів і звичаїв війни: наук.- практ. посіб. Київ : Норма права. 2023. С. 57.

accompanied by damage to the natural environment can be established, in the context of the current redaction of art. 438 of the Criminal Code of Ukraine¹⁷.

A significant number of sources of international humanitarian law, on the basis of which signs of violations of the laws and customs of war are established, and the need to interpret them in the context of *actus reus* of the crime which is enshrined in p. 1 art. 438 of the Criminal Code of Ukraine or in the context of grave breaches of the Geneva Conventions and protocols to them launches the issue of improving the provisions of art. 438 of the Criminal Code of Ukraine by implementing certain provisions of international humanitarian law. It fully applies to causing damage to the natural environment as a violation of the laws and customs of war.

2. Issue of correlation between ecocide (art. 441 of the Criminal Code of Ukraine) and violations of the laws and customs of war as damage to the natural environment (art. 438 of the Criminal Code of Ukraine)

Art. 441 of the Criminal Code of Ukraine enshrines the norm about ecocide, which is defined as mass destruction of plant or animal life, poisoning of the atmosphere or water resources, as well as committing other actions that can cause an ecological disaster. We can see the construction of norm about ecocide doesn't have any sign about violations of the laws and customs of war or armed conflict. But despite that art. 441 of the Criminal Code of Ukraine is used in process of qualification of causing damage to the natural environment during war into current investigation and court practice. Usually causing damage to the natural environment during war are qualified under art. 441 of the Criminal Code of Ukraine and p.1 art. 438 of Criminal Code of Ukraine both as ecocide and violations of the laws and customs of war if forms of employing of means of warfare prohibited by international law or other violations of the laws and customs of war which are established by international treaties, consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine. Reference of organs of investigation and court to norm about ecocide is explained the absence of provisions about causing damage to the natural environment during war in p.1 art. 438 of Criminal Code of Ukraine. Other reasons of qualification of causing damage to the natural environment under art. 441 of the Criminal Code of Ukraine and p.1 art. 438 of Criminal Code of Ukraine both as ecocide and violations of the laws and customs of war is undefined signs of causing damage to the natural environment. The obligatory signs of ecocide and violation of the laws and customs of war in form of causing damage to the natural environment is the amount of damage. The signs of causing damage to the natural environment as violations of the laws and customs of war in context of provisions of Protocol I «widespread, long-term and severe»

¹⁷ Бринзанська О.В. Заподіяння шкоди навколишньому природному середовищу як порушення законів і звичаїв війни за міжнародним гуманітарним правом. *Часопис Київського університету права*. 2022. № 4-2. С. 134–139. DOI: 10.36695/2219-5521.2-4.2022.24. URL: <https://chasprava.com.ua/index.php/journal/issue/view/88>

and «be clearly excessive in relation to the concrete and direct overall military advantage anticipated». The damage to the natural environment as the sign of ecocide is characterized by the use of the words «mass destruction» and «ecological disaster». At the first glance both ways of characteristics of signs of crimes are evaluative and full of uncertainty. Really meaning «widespread, long-term and severe» are not defined in act of international law in spite of the formulation are used not only in p. 3 art. 35 of Protocol I but also:

1) in p. «iv» p. «b» p. 2 art. 8-2 of Statute of the International Criminal Court: «Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

2) norm of international custom law about prohibition of causing widespread, long-term and severe damage to the natural environment and prohibition of using herbicides which would cause widespread, long-term and severe damage to the natural environment (norm 45 and p. «e» norm 76, The Customary IHL Database, International Committee of the Red Cross);

3) Draft principles on protection of the environment in relation to armed conflicts adopted by International Law Commission at 73d session in 2022 and submitted to the General Assembly as part of the Commission Report covering the work of that session: Principle 13 «General protection of the environment during armed conflict», according to «subject to applicable international law: (a) care shall be taken to protect the environment against widespread, long-term and severe damage; (b) the use of methods and means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the environment is prohibited»¹⁸;

4) 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 adopted by International Committee of the Red Cross: Rule 2 about prohibition of the use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment¹⁹.

The resemble formulation is enshrined in Environmental Modification Convention, 1976, «widespread, long-lasting or severe effects».

These signs are evaluative and international humanitarian law, Elements of Crimes of International Criminal Court, practice of International Court of Justice of the United Nations and practice of International Criminal Court don't not contain criteria for their determination. In the practice of applying this norm, in particular, the relevant international custom, the cumulative nature of these signs is

¹⁸ Draft principles on protection of the environment in relation to armed conflicts, 2022. UNO. URL: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf

¹⁹ Guidelines on the protection of the natural environment in armed conflict. *International Committee of the Red Cross*. 2020. C.4. URL: <http://surf.li/qrmvf>

emphasized, and the interpretation by individual states of the sign of «long-term» damage as that which lasts 10 years. Also some recommendations about establishing of signs «widespread, long-term and severe damage» are represented in «Guidelines on the protection of the natural environment in armed conflict» of International Committee of the Red Cross, but this organization recognized the absence of understanding of high threshold against which the damage intended or expected must be assessed²⁰. The Guidelines recommend take into account historical backdrop of the environmental provisions of Additional Protocol I and separate interpretations formulation «widespread, long-lasting or severe effects» in Environmental Modification Convention and «widespread, long-term and severe damage» in p. 3 art. 35 of Protocol I and in «iv» p. «b» p. 2 art. 8-2 of Statute of the International Criminal Court: «This situation, in which some States consider similar terms to have different meanings in different treaties, can be explained by the very different scopes and objectives of these instruments related to environmental protection. The Environmental Modification Convention prohibits damage meeting the threshold if such damage results from the military or hostile use of environmental modification techniques, which require a deliberate manipulation of natural processes in the territory of a State Party. For its part, Additional Protocol I protects the natural environment against damage caused by any method or means of warfare, including incidental harm, reaching the required threshold.»²¹ Also Guidelines recommend use contemporary knowledge about the effects of damage on the natural environment. Characteristics of sign «widespread» in Guidelines is based on Recommendations UNEP (UN Environment Programme): «Given this lack of clarity, UNEP has called for a clearer definition of «widespread» to be developed to improve the practical effectiveness of this legal protection.¹⁵¹ It recommends that the precedent set by the Environmental Modification Convention – i.e. a scale of several hundred square kilometres – should serve as the minimum basis for the development of this definition. It should be noted, however, that the practical use and application of the Environmental Modification Convention provisions have so far been limited. Nonetheless, as the only existing legal definition of this term, using it as a starting point from which to consider the type of damage that would be covered avoids the arbitrary attribution of a threshold that has never been fixed. A recent example suggests that in Additional Protocol I «widespread» «probably means several hundred square kilometres, as it does in Environmental Modification Convention». Taking into account the above factors, the meaning of the term «widespread» should be understood as referring to damage extending to «several hundred square kilometres»²².

Speaking about «long-term» Guidelines define, that «Traditionally, in the context of Protocol I, «long-term» is understood to refer to decades, as compared with the Environmental Modification Convention standard of «long-lasting»,

²⁰ Guidelines on the protection of the natural environment in armed conflict. *International Committee of the Red Cross*. 2020. C. 30. URL: <http://surl.li/qmyf>.

²¹ *Ibid.* C. 37.

²² *Ibid.* C. 33.

which is understood as «a period of months, or approximately a season». According to the *travaux préparatoires* of Protocol I, «long-term» refers to the «time or duration» of damage, and some representatives considered that this was to be measured in decades; some of these referred to 20 or 30 years «as being a minimum»²³.

At last according to Guidelines the sign of «severe» for damage to the natural environment can be defined on basement of such provisions: «the threshold of «severe» should be understood to cover the disruption or damage to an ecosystem or harm to the health or survival of the population on a large scale, with normal damage caused by troop movements and artillery fire in conventional warfare generally falling outside the scope of this prohibition...As the meaning of «severe» in the context of Articles 35(3) and 55(1) of Additional Protocol I is understood to cover damage prejudicing the health or survival of the population and ecological concerns, effects involving serious or significant disruption or harm to human life or natural resources should be considered in determining the type of damage that could be covered. In addition, at least to the extent that effects on economic or other assets also result in disruption or damage to the ecosystem or harm to the health or survival of the population, they should also be considered when assessing the meaning of «severe»»²⁴.

Accepting a great value of recommendations their provisions can not be used by judges and investigators because: 1) the Guidelines on the protection of the natural environment in armed conflict adopted International Committee of the Red Cross are not resource of international law or a part of domestic law; 2) they are unofficial results of interpretation of international treaties and international customary law by international organization.

But speaking about ecocide, norm about which has no references to the provisions of international treaty, signs of the crime «mass destruction» and «ecological disaster» can be interpreted in the context of domestic law of Ukraine. For example, calculation of damage to the natural environment can be establishes by state control state organs on the basis of the local acts of domestic law. The system of local acts of domestic law about damage to natural environment consists of acts about damage caused to ground resources, damage caused by air pollution, damage caused to water resources, damage to wildlife and protected areas. First of all these acts are official methods of determining the amount of damage to natural environment approved by orders of the ministries as organs of government. These acts are the part of domestic legislation and they must be used in process of investigation and judicial proceedings.

But ecocide (art. 441 of the Criminal Code of Ukraine) and violations of the laws and customs of war as damage to the natural environment (art. 438 of the Criminal Code of Ukraine) are different crimes: first one is crime against peace and second one – against security of mankind. So, there are joint signs

²³ Guidelines on the protection of the natural environment in armed conflict. *International Committee of the Red Cross*. 2020. C. 34. URL: <http://surl.li/qrmyf>

²⁴ Ibid. C. 38.

of corpus delicti of the both crimes. Joint signs of ecocide and violations of the laws and customs of war as causing damage to the natural environment:

- 1) subject of the crime – natural environment;
- 2) amount of damage to the natural environment as result of actions what are qualified under the art. 438 or art. 441 of the Criminal Code of Ukraine;
- 3) subjective («mens rea») – intentionally action;
- 4) perpetrator – a person who has reached 16 years of age (except military officials).

But also there are dissenting signs of ecocide and violations of the laws and customs of war as causing damage to the natural environment:

1) object of the crime (security of mankind (ecological security) – for ecocide and peace – for violations of the laws and customs of war as causing damage to the natural environment);

2) substantive («actus reus»): violations of the laws and customs of war as causing damage to the natural environment are committed as way of waging war or consequence of waging war and only in the context of armed conflict.

As result, the signs for distinction between ecocide and violations of the laws and customs of war as causing damage to the natural environment are signs of object of the crime and peculiarities of substantive («actus reus») and contextual signs (armed conflict)²⁵.

Also separation between ecocide and causing damage to the natural environment as a violation of the laws and customs of war is observed in the international practice. In December 2021 non-governmental organization Stop Ecocide Foundation sent a Statement to the 20th Assembly of States Parties to the Rome Statute of the International Criminal Court with proposition to enshrine the provision about ecocide in the Statute of International Criminal Court and defined ecocide as ecocide «unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts». ²⁶ It is let make conclusion about in international practice ecocide is considered as unique crime, not as form of war crime. Also it is additional reason to add to Art. 438 of the Criminal Code of Ukraine provisions about causing damage to the natural environment as a violation of the laws and customs of war.

²⁵ Бринзанська О. В. Розмежування екоциду (ст. 441 КК України) та порушення законів та звичаїв війни у формі заподіяння шкоди навколишньому природному середовищу (ст. 438 КК України). *Економіка, фінанси і право*. № 7*2023. С. 82. DOI: <https://doi.org/10.37634/efp.2023.7.17>. URL: <http://efp.in.ua/uk/journal-item/354>

²⁶ International Criminal Court. Statement to the 20th Assembly of States Parties to the Rome Statute of the International Criminal Court. December 2021. URL: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ASP20.GD.StopEcocide.07.12.pdf

3. Implementation of norms of international law as a direction of improvement of the national criminal law

As M. V. Buromenskyi notes, the international and domestic legal orders are not hierarchically dependent and closely interact. It causes the emergence of spheres of common international and national legal regulations with the undoubted primacy of international law²⁷. International justice in terms of criminal prosecution for the most serious international crimes definitely belongs to such areas. However, the jurisdiction of international justice has a subsidiary character in view of the sovereignty of the state, and therefore the function of criminal prosecution for those acts was based on the national criminal law, which determines the influence of international law on national law. International criminal law doesn't have primacy over national criminal law and its norms don't have direct effect in national legal systems. As result the question about the implementation of norms of international law arises. Implementation is the procedure of change of norms of international law into norms of domestic law, the methods of which are transformation, reception and reference²⁸. The transformation consists in the complete revision of the text of the international legal act or its articles and the adoption of domestic law norms that reflect the content of the text of the international legal act. Reception is a textual repetition of the content of the international legal norm in the article of the legal act by the law-making body of the state, under which the legislator makes this norm compulsory in domestic law. A reference is a mention international legal norm in a legal act of domestic law²⁹.

In process of the choice of the method of implementation of the norms of international humanitarian law about damage to the natural environment, we believe that it is necessary to take into account the dynamic nature of the development of international humanitarian law as a whole, as well as norms on the laws and customs of war, on prohibited means and methods of warfare. According to Commentary to The Charter and Judgment of the Nürnberg Tribunal: «It must be added, however, that even if the laws and customs of war apply to aggressive wars, this does not necessarily mean that aggressors and victims have or always will have the same rights and duties under these laws. That is a question which depends on the actual and future content of the laws and customs of war. In this respect, too, the definition of war crimes in the Charter leaves the door open for further developments»³⁰. In view of the development of

²⁷ Міжнародне право: навч. посібник. За ред. М. В. Бурумєнського. Київ: Юрінком Інтер. 2006. С. 64.

²⁸ Ibid. С. 65–66.

²⁹ Ibid. С. 66–67; Піддубна М. Імплементация норм міжнародного кримінального права про воєнні злочини в Кримінальний кодекс України. Дис. на здоб. наук. ступ. канд. юрид. наук. Спеціальність: 12.00.08. Львів. 2020. с. 17; Попович В. П. Імплементация норм міжнародного гуманітарного права у кримінальне законодавство України. Дис. на здоб. наук. ступ. канд. юрид. наук. Спеціальність: 12.00.08. Львів. 2010. с. 76.

³⁰ The Charter and Judgment of the Nürnberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General. *United Nations – General*

the laws and customs of war, the characteristics of war crimes defined by this Charter of the Nürnberg Tribunal should change, and the war crimes listed in point «b» of art. 6 of Charter of the Nürnberg Tribunal is an adequate assessment of the current situation. On this basement it could be drawn conclusions about the impracticality of applying the reception of the provisions about causing damage to the natural environment from Protocol I and norms of customary law.

It should also be taken into account that, as stated in the preamble of the Constitution of Ukraine, «confirming the European identity of the Ukrainian people and the irreversibility of Ukraine's European and Euro-Atlantic course», Ukraine is working towards the ratification of the Statute of the International Criminal Court. Also, on February 24, 2022, Ukraine submitted two applications to recognize the jurisdiction of the International Criminal Court (ad hoc). In particular, these are: 1) Statement of the Verkhovna Rada of Ukraine «Recognition of Ukraine the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity by high-ranking state officials, which led to particularly grave consequences and the mass murder of Ukrainian citizens during peaceful protests in the period from November 21, 2013 year to February 22, 2014» dated February 25, 2014 № 790-VII³¹; 2) Resolution of the Verkhovna Rada of Ukraine «The Statement of the Verkhovna Rada of Ukraine «Recognition of Ukraine the jurisdiction of the International Criminal Court regarding the commission of crimes against humanity and war crimes by high-ranking officials of the Russian Federation and leaders of the terrorist organizations «DPR» and «LPR», which led to particularly serious consequences and mass murder of Ukrainian citizens» № 145-VIII dated 04.02. of 2015³². On March 2, 2022, the Prosecutor of the International Criminal Court announced the beginning of an investigation into the situation in Ukraine based on the referrals received, indicating the general parameters of the jurisdiction defined by these referrals: the focus of the investigation includes any past and present allegations of war crimes, crimes against humanity or genocide which were committed on any part of the territory of Ukraine by any person since November 21, 2013.

Assembly International Law Commission Lake Success, New York 1949. P. 64. URL: https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf

³¹ Заява Верховної Ради України «Про визнання Україною юрисдикції міжнародного кримінального суду щодо скоєння злочинів проти людяності вищими посадовими особами держави, які призвели до особливо тяжких наслідків та масового вбивства українських громадян під час мирних акцій протестів у період з 21 листопада 2013 року по 22 лютого 2014 року» від 25 лютого 2014 року № 790-VII. URL: <https://zakon.rada.gov.ua/laws/show/790-18#Text>

³² Постанова Верховної Ради України «Про Заяву Верховної Ради України «Про визнання Україною юрисдикції Міжнародного кримінального суду щодо скоєння злочинів проти людяності та воєнних злочинів вищими посадовими особами Російської Федерації та керівниками терористичних організацій «ДНР» та «ЛНР», які призвели до особливо тяжких наслідків та масового вбивства українських громадян» № 145-VIII від 04.02. 2015 року. URL: <https://zakon.rada.gov.ua/laws/show/145-19#Text>

In view of the above, it is possible to define several alternative options for the implementation of the provisions of international humanitarian law on causing damage to the natural environment: 1) transformation of the provisions of the relevant provisions of Protocol I and customary law; 2) combination of transformation and reference to the relevant provisions of Protocol I; 3) reception of the provisions of Article 8 of the Statute of the International Criminal Court .

As a result of the implementation of the provisions of international humanitarian law on causing damage to the natural environment in the methods of transformation the provisions of the Protocol I and customary law, p. 1 art. 438 of the Criminal C of Ukraine can be supplemented with the following wording: the employing of methods or means of warfare that could cause widespread, long-term and severe damage to the natural environment, or damage to the natural environment by way of reprisals. Also we propose to add in p. 2 art. 438 of the Criminal Code of Ukraine the provisions about employing of methods or means of warfare that have caused widespread, long-term and severe damage to the natural environment, as well as damage to the natural environment as a result of an attack on the civilian population or a civilian object or works and installations containing dangerous forces.

Taking into account the use of terms, the content of which is disclosed directly in Protocol I or follows from its provisions («methods and means of conducting military operations», «reprisals», «civilian population», «civilian object», «works and installations containing dangerous forces»), according to this model of art. 438 of the Criminal Code of Ukraine , it is advisable to add a note in which to disclose the meaning of these terms. In addition, it should be taken into account that the sign of «widespread, long-term and severe» or the criteria for its calculation are not defined in any act of international law.

As a result of the implementation of the provisions of international humanitarian law about causing damage to the natural environment by combining such methods of implementation as transformation and references to the relevant provisions of Protocol I, p. 2 art. 438 of the Criminal Code of Ukraine can be supplemented with such wording as the employing of methods or means of conducting military operations that have caused widespread, long-term and severe damage to the natural environment or are combined with grave breaches of the Geneva Conventions and protocols thereto. In the footnote of the art. 438 of the Criminal Code of Ukraine it should be noted that all terms are used in the sense I Protocol I on the Protection of Victims of International Armed Conflicts

The implementation of the provisions of international humanitarian law on causing damage to the natural environment through the reception of the provisions of art. 8 of the Statute of the International Criminal Court can be carried out if art. 438 of the Criminal Code of Ukraine «violation of the laws and customs of war» will be unified with art. 8 of the Statute of the International Criminal Court «War Crimes». For the purpose of this Statute, «war crimes» mean Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under

the provisions of the relevant Geneva Convention which are defined in this article; 2) (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts which are defined in this article, among them are intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated (p. «iv» p. «b» p. 2 art. 8 of Statute of the International Criminal Court)³³. The interpretation of a war crime under the Statute of the International Criminal Court is based on the provisions of the Geneva Conventions and their protocols, and damage to the natural environment, despite the differences in redactions of Protocol I and Statute of the International Criminal Court is considered as a consequence of a deliberate indiscriminate attack. In addition, to the compulsory signs of «widespread», «long-term» and «severe» is added another sign, which according to Protocol I is optional – «excessive in relation to the concrete and direct overall military advantage anticipated». Describing of signs of damage to the natural environment as «intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated» is generally complete and sufficiently defined. Also in case of adding of art. 438 of the Criminal Code of Ukraine these provisions this construction should be accompanied by a footnote to determine terms or other guidelines for establishing signs of damage.

CONCLUSIONS

As we said, absence of united list of violations of the laws and customs of war, which are scattered into different international treaties and customary law, makes difficulties in establishing of content of the specified violations both in general and in the sense of Articles 433-437, 438 of the Criminal Code of Ukraine. Whereas from other side we propose it is impossible to create a single universal list of laws and customs of war because international humanitarian law is living instrument, which changes and develops. For purpose of the criminal law and the general principle of legal certainty the signs of every crime must be defined in the article of legal act. It demands to use different possibilities to improve provisions of art. 438 of the Criminal Code of Ukraine, one of them is an implementation of the norms of international humanitarian law in domestic criminal legislation. Implementation is the procedure of change of norms of international law into norms of domestic law, the methods of which are transformation, reception and reference.

³³ Rome Statute of the International Criminal Court. *International Criminal Court*. URL: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

Causing damage to the natural environment isn't defined as violations of the laws and customs of war in art. 438 of the Criminal Code of Ukraine. But such action can be accepted as violations of the laws and customs of war in context of this article of the Criminal Code of Ukraine as employing of means of warfare prohibited by international law or other violations of the laws and customs of war which are established by international treaties, consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine. It depends of the specific circumstances of the crime. Also in current practice of Ukraine causing damage to the natural environment during war can be qualified under art. 441 of the Criminal Code of Ukraine and p.1 art. 438 of Criminal Code of Ukraine both as ecocide and violations of the laws and customs of war if forms of employing of means of warfare prohibited by international law or other violations of the laws and customs of war which are established by international treaties, consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine

Causing damage to the natural environment during armed conflict are regulated by Protocol I (articles 35, 52, 55, 57, 85) and by customary law. The provisions of Protocol I characterize damage to the natural environment in terms of view the prohibited behavior during armed conflict but not as breach or grave breach of Convention or Protocol I. For qualification as breach of Protocol I damage to the natural environment must be «widespread», «long-term» and «severe». For qualification as grave breach of Protocol I damage to the natural environment must have following signs:

1) damage the natural environment was caused by employing methods or means of warfare and it is connected with causing death or serious injury to body or health;

2) damage the natural environment was result of actions which are connected with attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 a) iii);

3) damage the natural environment should be widespread, long-term and severe or to prejudice the health or survival of the population.

Using the given signs defined in Protocol I and in custom law (database «Customary International Humanitarian Law», norm 45-47, 76)

We have found different ways for improving of art. 438 of the Criminal Code of Ukraine in part of causing damage to the natural environment using methods of implementation: 1) transformation of the provisions of the relevant provisions of Protocol I and customary law; 2) combination of transformation and reference to the relevant provisions of Protocol I; 3) reception of the provisions of Article 8 of the Statute of the International Criminal Court. Every way has positive and negative sides, but in our point of view using of every of them must be exercised in the frames of general and universal policy of amendments in art. 438 of the Criminal Code of Ukraine.

SUMMARY

In the article is dedicated to issues of improving the provisions of art. 438 of the Criminal Code of Ukraine about criminal responsibility for violation of the laws and customs of war in the way of implementation of the norms of international humanitarian law. There are not provisions about causing damage to the natural environment as violation of the laws and customs of war in art. 438 of the Criminal Code of Ukraine. According to current redaction causing damage to the natural environment can be qualified as employing of means of warfare prohibited by international law and other violations of the laws and customs of war which are established by international treaties, consent to the obligation for them has been granted by the Verkhovna Rada of Ukraine. A significant number of sources of international humanitarian law, on the basis of which signs of violations of the laws and customs of war are established, and the need to interpret them in the context of actus reus of the crime which is enshrined in p. 1 art. 438 of the Criminal Code of Ukraine or in the context of grave breaches of the Geneva Conventions and protocols to them launches the issue of improving the provisions of art. 438 of the Criminal Code of Ukraine by implementing certain provisions of international humanitarian law. There are different ways for improving of art. 438 of the Criminal Code of Ukraine in part of causing damage to the natural environment using methods of implementation: 1) transformation of the provisions of the relevant provisions of Protocol I and customary law; 2) combination of transformation and reference to the relevant provisions of Protocol I; 3) reception of the provisions of Article 8 of the Statute of the International Criminal Court. As result it is established using of every of them must be exercised in the frames of general and universal policy of amendments in art. 438 of the Criminal Code of Ukraine.

References

1. Павлюк Д, Свиридова А. Проблемні питання належної кваліфікації воєнних злочинів. *Azones*. URL: <https://azones.law/analytics/problemni-rytannua-nalezhnoyi-kvalifikatsiyi-voennyih-zlochyniv/>
2. Статистика бази даних воєнних злочинів Т4Р. *База даних воєнних злочинів Т4Р*. URL: <https://t4pua.org/stats>
3. Загиней-Заболотенко З.З., Кваша О.О., Чаплюк О. І. Вироки у кримінальних провадженнях про порушення законів та звичаїв (стаття 438 Кримінального кодексу України): окремі особливості техніко-юридичного оформлення. *Юридичний науковий електронний журнал*. 2023. № 6. С. 461–462. DOI <https://doi.org/10.32782/2524-0374/2023-6/107> URL: http://www.lsej.org.ua/6_2023/107.pdf
4. Guidelines on the protection of the natural environment in armed conflict. *International Committee of the Red Cross*. 2020. С.4. URL: <http://surf.li/qrmyf>
5. Protocol I relating to the Protection of Victims of International Armed Conflicts (1977). *UNO*. URL: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34_AP-I-EN.pdf
6. Бринзанська О.В. Заподіяння шкоди навколишньому природному середовищу як порушення законів і звичаїв війни за міжнародним

гуманітарним правом. *Часопис Київського університету права*. 2022. № 4-2. С. 134. DOI: 10.36695/2219-5521.2-4.2022.24. URL: <https://chasprava.com.ua/index.php/journal/issue/view/88>

7. Вознюк А. А., І. В. Жук, С. С. Чернявський. Кваліфікація та розслідування порушення законів і звичаїв війни: наук.- практ. посіб. Київ : Норма права. 2023. С. 58.

8. Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques (1976). *UNO*. URL: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=26&clang=_en&mtdsg_no=XXVI-1&src=TREATY

9. 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 as amended (2001). URL: <https://geneva-s3.unoda.org/static-unoda-site/pages/templates/the-convention-on-certain-conventional-weapons/S%2Btext.pdf>

10. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1992). *OPCW*. URL: <https://www.opcw.org/chemical-weapons-convention>

11. Statute of the International Court of Justice of the United Nations (1945). *UNO*. URL: <https://www.icj-cij.org/statute>

12. Антонович М. Міжнародне право. Київ : Юрінком Інтер.2023. С. 47.

13. Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). *ICJ Reports 1986*, p. 14. URL: <https://www.ilsa.org/Jessup/Jessup08/basicmats/icjnicaragua.pdf>

14. Звичаєві норми міжнародного гуманітарного права / передм. Т.Р. Короткий, Є.В. Лук'янченко. Одеса: Фенікс. 2017. С. 26.

15. The Customary IHL Database. *IHL*. URL: <https://ihl-databases.icrc.org/en/customary-ihl/v1>

16. Draft principles on protection of the environment in relation to armed conflicts, 2022. *UNO*. URL: https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf

17. Бринзанська О. В. Розмежування екоциду (ст. 441 КК України) та порушення законів та звичаїв війни у формі заподіяння шкоди навколишньому природному середовищу (ст. 438 КК України). *Економіка, фінанси і право*. 2023. № 7. С. 82. URL: <http://efp.in.ua/uk/journal-item/354>

18. Міжнародне право: навч. посібник / за ред. М. В. Буроменського. Київ : Юрінком Інтер, 2006. С. 64.

19. Піддубна М. Імплементція норм міжнародного кримінального права про воєнні злочини в Кримінальний кодекс України. Дис. на здоб. наук. ступ. канд. юрид. наук. Спеціальність: 12.00.08. Львів. 2020. с. 17.

20. Попович В. П. Імплементція норм міжнародного гуманітарного права у кримінальне законодавство України. Дис. на здоб. наук. ступ. канд. юрид. наук. Спеціальність: 12.00.08. Львів. 2010. с. 76.

21. The Charter and Judgment of the Nürnberg Tribunal – History and Analysis: Memorandum submitted by the Secretary-General. *United Nations* –

General Assembly International Law Commission Lake Success, New York 1949. p.64. URL: https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf

22. Заява Верховної Ради України «Про визнання Україною юрисдикції міжнародного кримінального суду щодо скоєння злочинів проти людяності вищими посадовими особами держави, які призвели до особливо тяжких наслідків та масового вбивства українських громадян під час мирних акцій протестів у період з 21 листопада 2013 року по 22 лютого 2014 року» від 25 лютого 2014 року № 790-VII. URL: <https://zakon.rada.gov.ua/laws/show/790-18#Text>

23. Постанова Верховної Ради України «Про Заяву Верховної Ради України «Про визнання Україною юрисдикції Міжнародного кримінального суду щодо скоєння злочинів проти людяності та воєнних злочинів вищими посадовими особами Російської Федерації та керівниками терористичних організацій «ДНР» та «ЛНР», які призвели до особливо тяжких наслідків та масового вбивства українських громадян» № 145-VIII від 04.02. 2015 року. URL: <https://zakon.rada.gov.ua/laws/show/145-19#Text>

24. Rome Statute of the International Criminal Court. *International Criminal Court*. URL: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

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