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ENVIRONMENTAL PROTECTION IN THE CONTEXT OF ARMED CONFLICTS

The paper analyzes the international legal framework for environmental protection during armed conflicts. The author analyzes the decisions of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention) and Protocol I to the Geneva Conventions as international documents containing provisions on environmental protection in armed conflicts.

Keywords: *environmental protection, armed conflicts, Protocol I to the Geneva Conventions, ENMOD Convention.*

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ОХОРОНА ДОВКІЛЛЯ В УМОВАХ ЗБРОЙНИХ КОНФЛІКТІВ

У роботі проаналізована міжнародно-правова база щодо охорони довкілля під час збройних конфліктів. Проведено аналіз рішень Конвенції про заборону військового або будь-якого іншого ворожого використання техніки, що змінює навколишнє середовище (конвенція ENMOD) та Протоколу I до Женевських конвенцій як міжнародних документів, які містять положення про захист довкілля в умовах збройних конфліктів.

Ключові слова: *охорона довкілля, збройні конфлікти, Протокол I до Женевських конвенцій, Конвенція ENMOD.*

Armed conflicts inevitably generate a number of negative consequences, among which attention is primarily drawn to human casualties, material damage, territorial, demographic and political changes. Until the twentieth century, it was not customary to pay attention to the damage caused to the environment, and therefore the problem of studying the consequences of environmental destruction is one of the most under-researched topics in domestic science [1].

The ruthless exploitation of natural resources, mass destruction of flora and fauna that occurs during armed conflicts poses a direct threat to sustainable development, peace and security of a particular state, and in some cases, the region or the world as a whole, as the damage to the environment and natural resources is long-term.

It is a mistake to believe that the environment began to suffer from wars from the moment the first gunpowder shell exploded or when hundreds of thousands of military vehicles began to actively pollute the atmosphere. The damage to the environment began when numerous trap pits were deliberately made during military operations, killing animals by the hundreds, or when digging trap pits contributed to soil degradation, or when rivers were poisoned, rivers, wells and other water sources (in some cases, bloody massacres themselves caused poisoning of soil and water¹), or when forest fires aimed at destroying the enemy army hiding in them contributed to the disruption of entire ecosystems².

The damage caused by military actions to nature increased many times over in the twentieth century with the emergence of new powerful military equipment (primarily aircraft and ships), as well as nuclear³, chemical and bacteriological weapons, the use or even testing of which can cause environmental damage that could not have been imagined before.

Therefore, it is not surprising that environmental protection during armed conflicts has not been given due importance for the vast majority of history. Prior to the Vietnam War, experts in international humanitarian law did not see a link between military operations and environmental damage, nor did they consider the environment to be a special good of significant value. This is understandable, since the development of environmental law began only in the seventies of the twentieth century, when awareness of the need to protect the environment began to develop more intensively.

The problem of artificially altering the environment for military or other hostile purposes was put on the international agenda in the early 1970s.

¹ For example, after the Battle of Kulikovo, more than 100,000 corpses were left on the battlefield. Even more numerous mass graves were made during the First and Second World Wars. Decomposing corpses caused considerable damage to the soil and underground water sources, and thus contributed to environmental pollution.

² For example, after the victory over Carthage, the Romans covered all the outskirts of the city with salt, making the soil completely unsuitable for any vegetation.

³ After the end of World War II and until the end of the twentieth century, there were 1880 nuclear weapons tests. It is not surprising that radioactive radiation on the planet's surface reached 2% of the natural background by 1963.

The international legal framework for environmental protection during armed conflict consists of customary and treaty norms. The instruments that protect the environment during armed conflict can be divided into those that provide explicit protection and those that provide implicit protection. We will focus on the analysis of actions that provide explicit protection, namely customary norms, the ENMOD Convention, Protocol I to the 1949 Conventions and the Rome Statute.

The rules of international customary law set forth in a study conducted by the International Committee of the Red Cross contain three rules for protecting the environment during armed conflict [2].

Rule 43 enshrines three general principles of warfare that apply to the natural environment. According to the first principle «no part of the natural environment may be attacked, unless it is a military objective». The second principle provides for: «destruction of any part of the natural environment is prohibited, unless required by imperative military necessity». The content of the third principle is as follows: «launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited».

Rule 44: «Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimise, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions».

Rule 45: «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 environment is prohibited. Destruction of the natural environment may not be used as a weapon».

In 1976, the Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification Techniques [3] (hereinafter: ENMOD Convention) was signed. States Parties to the Convention pledged not to engage in military or any other hostile use of environmental modification techniques having widespread, long-term or

serious effects as a means of destroying, injuring or causing damage to another State Party (Article I).

In 1977, Protocol I to the Geneva Conventions of 1949 (hereinafter: Protocol I) was signed, the provisions of which (Articles 35, 55) prohibited the use of methods or means of warfare which are intended to cause or are likely to cause widespread, prolonged and severe damage to the environment [4]. While Article 35(3) exclusively protects the environment, Article 55(1) takes into account the effects that damage to the environment may have on human beings. It follows that Article 35(3) and Article 55(1) complement each other, ensuring the protection of both the environment as such and people.

A linguistic interpretation of these articles leads to the conclusion that all standards must be met in the aggregate in order to deal with prohibited methods or means. It should also be noted that, in addition to protecting the environment from extensive, long-term and serious damage, the prohibition of the use of methods or means of warfare that are intended to cause or are expected to cause such damage also prohibits retaliatory attacks on the environment.

The analysis of the content of the provision on environmental war crimes in the Statute of the International Criminal Court [5], in turn, shows that the decision on environmental war crimes in the Rome Statute was a step backwards in relation to Protocol I.

A review of the practice of environmental protection during armed conflicts in the context of the normative analysis of the above-mentioned international acts demonstrates the existence of several problems:

- lack of a generally accepted definition of armed conflict;
- lack of a generally accepted interpretation of the concept of the standard of extensive, long-term and serious environmental damage;
- inconsistency of international acts in formulating the content of the norm, namely the answer to the question: is it necessary for the application of environmental protection norms during armed conflicts that large, prolonged and serious

environmental damage occurred cumulatively or is the alternative occurrence of the above standards sufficient;

- linking the application of environmental protection norms during armed conflicts only to international armed conflicts;
- lack of clear boundaries in the application of environmental norms in armed conflicts between international humanitarian law and international environmental law.

These problems complicate the practical application of international environmental law during armed conflicts.

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