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CURRENT ISSUES OF INTERNATIONAL ENVIRONMENTAL LAW

Through the Lens of Public International Law and Private International Law

Paľuchová (ed.)

FACULTY OF LAW
Comenius University
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Aktuálne otázky medzinárodného práva životného prostredia – z pohľadu medzinárodného práva verejného a medzinárodného práva súkromného

Petra Paľuchová (ed.)

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OBSAH

INTERNATIONAL LEGAL PRINCIPLES FOR ENSURING ENVIRONMENTAL SAFETY

MEDZINÁRODNÉ PRÁVNE ZÁSADY NA ZABEZPEČENIE BEZPEČNOSTI ŽIVOTNÉHO PROSTREDIA

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Abstract: In light of the aggravation of the issue of international security related to the aggression of the Russian Federation in Ukraine, the formation of a clear, international safety policy in all its manifestations, including the environmental component, is defined as an important task of the international community. For this purpose, in the presented work, based on scientific analysis, a specific vision of building an international mechanism for ensuring environmental safety, as a component of international safety, was formed.
It was established that the term "environmental safety" appeared for the first time, as an object of legal regulation, in the resolutions of the UN General Assembly starting from the 80s of the XX century, although there is no explanation of its meaning. At the same time, at the international level, a number of legal documents were adopted, which, on the basis of a special scientific study, are determined to lay the foundations of the legal mechanism for ensuring environmental safety. The work supports the scientific idea of the need to develop at the international level a single regulatory act dedicated to issues of ensuring environmental safety.

Abstrakt: Vo svetle vyostrenia problematiky medzinárodnej bezpečnosti súvisiacej s agresiou Ruskej federácie na Ukrajine sa formovanie jasnej, medzinárodnej bezpečnostnej politiky vo všetkých jej prejavoch, vrátane environmentálnej zložky, definuje ako dôležitá úloha medzinárodnej spoločnosti. Za týmto účelom sa v predkladanej práci na základe vedeckej analýzy sformovala konkrétna vízia vybudovania medzinárodného mechanizmu na zaistenie environmentálnej bezpečnosti ako súčasti medzinárodnej bezpečnosti.
Zistilo sa, že pojem „environmentálna bezpečnosť" sa prvýkrát objavil ako predmet právnej regulácie v rezolúciách Valného zhromaždenia OSN od 80. rokov 20. storočia, hoci neexistuje vysvetlenie jeho významu. Zároveň bolo na medzinárodnej úrovni prijatých množstvo právnych dokumentov, ktoré sú na základe špeciálnej vedeckej štúdie určené položiť základy právneho mechanizmu na zaistenie environmentálnej bezpečnosti. Práca podporuje vedeckú myšlienku potreby vypracovať na medzinárodnej úrovni jednotný regulačný akt venovaný otázkam zaistenia environmentálnej bezpečnosti.

Key words: *international security, international environmental safety, international environmental danger, mechanism for ensuring environmental safety*

Kľúčové slová: *medzinárodná bezpečnosť, medzinárodná environmentálna bezpečnosť, medzinárodné environmentálne nebezpečenstvo, mechanizmus na zaistenie environmentálnej bezpečnosti*

1. INTRODUCTION

Legal regulation of environmental safety was initiated by international legal requirements for environmental protection and the implementation of preventive measures to avoid various types of dangers (nuclear, military, chemical, bacteriological, man-made, etc.), which can negatively affect the state of the environment. Confirmation of the relevance of the problems of environmental safety at the international level was proved by the adoption by the UN General Assembly (hereinafter - UNGA) of a number of important documents, which initiated the introduction of a new attitude to environmental problems – environmental safety. Such documents were, in particular, the resolutions of the UN GA on the creation of a comprehensive system of international security of December 5, 1986 and December 7, 1987, the Resolution "Comprehensive Approach to Strengthening International Peace and Security in Accordance with the UN Charter" of December 7, 1988., as well as Human Rights Council Resolution A/HRC/RES/52/23 of April 4, 2023 "The human right to a clean, healthy and sustainable environment"[1]. Thus, in resolution A/RES/42/93 on a comprehensive system of international peace and security of December 7, 1987[2], The UN General Assembly gave a new impetus to the implementation of the concept of international peace and security, the essence of which is the realization that unresolved environmental problems can easily turn into international tensions and conflicts. Paragraph 10 of this resolution states that "cooperation in the environmental sphere should become an integral part of the comprehensive system of international security."

At the Meeting of the Political Consultative Committee of the Warsaw Pact States (Warsaw, 1988, June), an important document on ensuring environmental safety "Consequences of the arms race for the environment and other aspects of environmental security" was also adopted. It defined the foundations of the concept of international environmental security, designed to contribute to the sustainable and safe development of all states and the creation of favorable conditions for the life of every nation and every person.

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[1] The human right to a clean, healthy and sustainable environment: UN General Assembly resolution A/HRC/RES/52/23 of 4 April 2023. URL: https://documents.un.org/doc/undoc/gen/g23/077/00/pdf/g2307700.pdf?token=gm4XCf6dvZyUmWohoU&fe=true.

[2] On a comprehensive system of international peace and security: UN General Assembly resolution A/RES/42/93 of December 7, 1987. URL: https://documents.un.org/doc/resolution/gen/nro/517/83/img/nro51783.pdf?token=SIYPvFeFyEZUHoMJAr&fe=true.

In the Final Document of the 2005 World Summit (Resolution A/RES/60/1 of the UN General Assembly of September 16, 2005), world leaders agreed on the need for decisive and urgent action to overcome serious and numerous difficulties in solving the problems of climate change, facilitating the transition on environmentally safe energy sources, meeting energy needs and ensuring sustainable development.

The UN Security Council, meeting at the level of heads of state and government (UN Security Council resolution S/RES/1625 (2005) of September 14, 2005), once again confirmed the need to adopt a broad strategy for conflict prevention, which was aimed at eliminating of root causes of armed conflicts, political and social crisis situations, including by promoting sustainable development, where the environmental component plays an important role.

The Resolution of the Human Rights Council A/HRC/RES/52/23 of April 4, 2023 "The Human Right to a Clean, Healthy and Sustainable Environment" defines the need to comply with all international environmental agreements and treaties in order to ensure and guarantee the realization of such rights .

Thus, in international legal documents, although the concept of international environmental safety is not disclosed, a clear tendency to its formation can be found both through the implementation of environmental protection measures and security-oriented measures. Although at first glance legal regulation of international environmental safety does not have its own implementation mechanism, safety measures are implemented by international legal means provided for environmental protection.

In this case, a logical question arises, which norms of international environmental law include measures to ensure environmental safety? To answer this question, let's analyze scientific approaches to this issue.

2. SCIENTIFIC APPROACHES TO DETERMINING THE SOURCES OF INTERNATIONAL LAW THAT REGULATE THE ISSUE OF ENSURING ENVIRONMENTAL SAFETY

In order to achieve the tasks of ensuring environmental safety, the efforts of all states must be combined, since none of them is able to achieve the desired level of the environment due to the interdependence and globalization of the modern world. In these conditions, the system of international legal means should acquire a decisive importance. These means are transformed into appropriate norms and principles, specific rights and obligations of states and other subjects of international cooperation, containing various prohibitions, benefits, liability measures, legal guarantees, etc., which in the theory of law are usually called sources of international law, and which are disclosed in such forms as: international treaty, international custom, acts of international conferences or international organizations, which in turn are divided into universal and local international acts. The first are of general nature and are of interest to all subjects of international law. The second, in turn, are divided into regional (those covering a group of states located in one geographical region) and non-regional (those that are not comprehensive in nature, but their regulation does not have a regional focus).

In science, only separate works of Ukrainian scientists, in particular the works of V.I. Andreytsev, N.R. Malysheva, O.V. Zadorozhny, M.O. Medvedeva, Yu.A. Krasnova are devoted to environmental safety.

The analysis of the works of these authors confirms the existence of two established scientific approaches to determining the sources of international law in terms of ensuring environmental safety: narrow and broad. Thus, the representative of the "narrow" scientific approach V.I. Andreytsev associats environmentally dangerous activity with a dangerous substance and believes that the UN Convention on the Transboundary Impact of Industrial Accidents of March 17, 1992 is the basis for distinguishing legal relations for ensuring environmental safety in international environmental law.[3]

As representatives of the "broad" scientific approach, it is appropriate to name N.R. Malysheva, O.V. Zadorozhny, M.O. Medvedeva, Yu.A. Krasnova and O.A. Shompol. N.R. Malysheva supports the scientific position that environmental safety is a certain state of protection of life activities and considers international environmental safety as a state of international relations, under which protection of a person and Earth's ecosystems is ensured at the global and regional levels from the harmful effects of factors of natural and anthropogenic origin[4]. She refers to the sources of international environmental safety law as the majority of international agreements and conventions, which are classified by the level of relations as followes: a) acts on ensuring global environmental safety; b) acts on prevention of transboundary impact of activities under the jurisdiction and control of one state on the environment of other states; c) acts on ensuring environmental safety of certain regions; d) acts establishing mechanisms for guaranteeing the realization of the right to environmental safety[5].

Zadorozhny O.V. and Medvedeva M.O. distinguish three-dimensional understanding of the environmental safety: 1) environmental problems as a threat to political and economic stability; 2) interstate disputes in connection with transboundary pollution or violation of rights regarding the use of common/mutual natural resources, as a source of military conflicts; 3) degradation of ecological systems and depletion of natural resources as a threat to the existence of all mankind.

Taking this into account, they propose to classify acts of international legal regulation of environmentally hazardous activities into: a) environmental protection during armed conflicts;[6] b) legal regulation of the handling of environmentally hazardous materials and

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[3] Andreytsev V.I. Legal regulation of transnational environmental security. The law of environmental safety. Kyiv: Znannia-Press, 2002. P. 91-115.

[4]Malysheva N.R. International environmental safety law: concept, state and features of development. Problems of environmental safety law: teaching manual. Dnipro: NSU, 2016. P. 523-527. (p. 524).

[5] Malysheva N.R. International environmental safety law: concept, state and features of development. Problems of environmental safety law: teaching manual. Dnipro: NSU, 2016. P. 523-527. (P. 531).

[6] „The environment is protected [currently *de lege lata*] primarily only in the form of a war crime committed during an armed conflict. In other cases, the environment is protected only as a secondary object of the crime - a secondary interest protected by law. Whether in addition to the protection of property (destroyed components of the environment are the subject of property rights) or life and health (destruction of human

substances; c) legal protection of the marine and freshwater environment; d) legal protection of atmospheric air and outer space; e) legal protection of Earth's biodiversity; e) legal protection of the Antarctic and Arctic environment; g) regional cooperation on these issues[7].

According to O.A. Shompol, at the international level a system of norms for ensuring environmental safety, which are objectified in international legal documents, has been formed. Their system is quite extensive. The characteristic features of this set of norms are as follows: these norms are based on the laws of nature; their formation is influenced by a set of factors of different directions; they take into account the level of scientific and technical development; are complex; have an anthropocentric focus, etc.[8]

Guided by such approaches, we will carry out an analysis of international legal norms, which, according to the object of legal regulation, are aimed at ensuring environmental safety in both the "narrow" and "broad" sense, which will make it possible to outline the boundaries of such regulation.

3. SYSTEM OF INTERNATIONAL LEGAL SOURCES ENSURING ENVIRONMENTAL SAFETY

At the stage of formation of international environmental law, customary norms were widely applied. According to Art. 38 of the Statute of the UN International Court of Justice, "international custom is evidence of universal practice recognized as a legal norm." The custom is not an official, clearly formalized document. It acquires legal significance as a result of identical or homogeneous actions of states and is expressed by them in a certain form (most often, through long repetition) with the intention to give such actions normative significance.[9] Today, in international environmental law in general and in the legal regulation of environmental safety in particular, international custom mostly takes a contractual form.

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living conditions)." Mareček, L.: Ochrana environmentálnych noriem prostriedkami medzinárodného trestného práva. In: *Bratislavské právnické fórum 2023*. Bratislava : Právnická fakulta UK, 2023. p. 38.

[7]Zadorozhnyi O.V., Medvedeva M.O. International environmental law: textbook / Institute of International Relations of Taras Shevchenko Kyiv National University, 2010. 351 p. (p. 3).

[8] Shompol O.A. Improving the legislation of Ukraine on environmental safety in the context of international legal obligations: autoref. dis. PhD. KNU, Kyiv, 2013. 18 p. (p. 12).

[9] „As to the interpretation of unwritten, customary rules, unlike its approach to methods of treaty interpretation, the Court has hardly ever stated its methodology for determining the existence, content, and scope of the rules of customary international law that it applies. There are only isolated references in the Court's jurisprudence to the inductive and deductive method of law determination. The ICJ employs deductive and inductive methods, depending on the circumstances of the case. If there is sufficiently extensive and convincing practice, then the ICJ uses induction from it to formulate a customary rule. If the practice is not convincing enough, then the customary rule can be formulated by deduction. The inductive method may be defined as inference of a general rule from a pattern of empirically observable individual instances of State practice and opinio juris, as essential components of international customs, which have to be looked for as a first step..." Mareček, L.: Methods of interpretation used by the International Court of Justice in recent cases (2020–2021) In: *Obespečenie edinoobraznogo primenenija prava evrazijskogo ekonomičeskogo sojuza: roľ suda : Meždunarodnaja konferencia*. Minsk: Sud Evrazijskoho ekonomičeskogo sojiuza, 2022. pp. 159-160.

However, for states that have not become Parties to the relevant treaties, international customs continue to apply [10].

Along with this, as noted by N.R. Malysheva, "in the context of the development of the so-called "environmental paradigm" of interstate relations international conferences and acts adopted at them play important role, primarily those held under the auspices of the UN[11]. Such are the 1972 Stockholm Conference on the Environment, on which the Declaration on Environmental Protection was adopted, the 1992 Rio de Janeiro Conference on Environment and Development, on which the Declaration on Environmental Protection and Development was adopted, the 2002 Johannesburg Summit on sustainable development, on which the Declaration on Sustainable Development and the Implementation Plan for Sustainable Development Decisions was adopted, the 2012 UN Conference "Rio+20", on which the final document "The Future We Want" was adopted.

In addition to the documents of UN conferences, decisions, resolutions, recommendations, memoranda of intergovernmental and other international organizations on issues of ecologically correct behavior to ensure sustainable development are closely related to the relevant group of international acts. All these acts are sources of the so-called "soft law", that is, they are of a recommendatory nature for the states.

Taking into account the large number and heterogeneity of agreements aimed at ensuring of environmental safety at the international level, we will analyze them according to the object of legal regulation. In the literature on international environmental law, it is common to divide the sources of this field of law according to the direction of regulation of relations on the protection of natural resources [12].

However, such division is not constructive enough for international legal protection of environmental safety. The classification of relevant sources according to the level of such relations seems to be the most acceptable. Thus, it would be most optimal to divide such sources into: a) normative acts establishing requirements for the safe use of natural resources; b) normative acts establishing requirements for those types of economic activity that are recognized as environmentally dangerous; c) regulatory acts that introduce separate legal mechanisms for ensuring environmental safety. Such normative acts generally regulate environmental safety both at the global and regional levels.

Let's consider these types of sources in more detail.

A) normative acts establishing requirements for the safe use of natural resources

Atmospheric air pollution as a result of man-made activities remains one of the most urgent problems threatening international environmental safety. In addition to the above-mentioned international documents, in the field of atmospheric air protection there are:

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[10] Malysheva N.R. International environmental safety law: concept, state and features of development. Problems of environmental safety law: teaching manual. Dnipro: NSU, 2016. P. 523-527. (P. 528).

[11] Ibid.

[12] Kravchenko S.M., Andrusevich A.O., Bonain J. Actual problems of international environmental law. Lviv: Ed. center of LNU, 2002. 336 p.

- Convention on Long-Range Transboundary Air Pollution of November 13, 1979 and 8 protocols thereto: relating to the long-term financing of the Joint Program for the Monitoring and Evaluation of Long-Range Air Pollutants in Europe of September 28, 1984; on reducing sulfur emissions or their transboundary flows by at least 30 percent of July 8, 1985; on limitation of emissions of nitrogen oxides or their cross-border flows of October 31, 1988; on the further reduction of emissions of sulfur oxides of June 14, 1994; on the control of emissions of persistent organic compounds and their transboundary flows of November 18, 1991; on heavy metals of June 24, 1998; on persistent organic pollutants of June 24, 1998; on combating acidification, eutrophication and surface ozone of November 30, 1999, etc.;

- The Vienna Convention for the Protection of the Ozone Layer of March 22, 1985 and the Montreal Protocol thereto on Substances that Deplete the Ozone Layer of 1987 and subsequent amendments;

- Stockholm Convention on Persistent Organic Pollutants of May 22, 2001.

Annex 16 to the Convention named "Environmental Protection" can also be attributed to this group of normative acts, which includes two volumes: Volume I: "Aviation noise"; Volume II: "Emissions of aircraft engines" in accordance with the Chicago Convention on International Civil Aviation of December 7, 1944, which defines the procedure for the production and operation of various types of aircraft in compliance with the standards of exposure to atmospheric air.

One of the main tasks of international environmental safety in this context is the protection of atmospheric air, which is associated with the problem of global climate change. The protection of the global climate in the interests of the present and future generations of mankind is stated in the resolution A/RES/43/53 of the UN General Assembly of December 6, 1988 "Protection of the Global Climate in the Interests of the Present and Future Generations of Mankind"[13], which recognizes that climate change is a shared problem for all humanity. Since the climate is a necessary condition that ensures the existence of life on Earth, it is necessary to take appropriate measures to solve the problem of its change on a global scale. In the resolution A/RES/44/207 of the UN General Assembly of December 22, 1989 "Protection of the Global Climate in the Interests of the Present and Future Generations of Mankind"[14] it is confirmed the need for further scientific research of climate change, including the rise in the level of the World Ocean as a result of global warming.

In 1992, at the UN Conference in Rio de Janeiro, the UN Framework Convention on Climate Change was adopted, the purpose of which is to stabilize the concentration of greenhouse gases in the atmosphere at a level that would not allow dangerous

[13] Protection of the global climate in the interests of the present and future generations of mankind: resolution A/RES/43/53 of the UN General Assembly of December 6, 1988. URL: https://documents.un.org/doc/resolution/gen/nro/534/94/img/nro53494.pdf?token=yhCHPHfqhifLYRzWQH&fe=true.

[14] Protection of the global climate in the interests of the present and future generations of mankind: resolution A/RES/44/207 of the UN General Assembly of December 22, 1989. URL: https://documents.un.org/doc/resolution/gen/nro/554/48/img/nro55448.pdf?token=ffaNlXfdM3mHcB6PXI&fe=true.

anthropogenic influence on the climate system, as well as a number of documents to it, in particular: the Kyoto Protocol and the Paris Agreement. The World Ocean is also the most important object of human life support and the entire Earth. The problem of protecting the marine environment from pollution is one of the new challenges and threats capable of disrupting international environmental safety. The world community, as of today, has adopted a significant number of international documents, with the help of which it tries to solve the specified issue. Such international documents include the following:

- UN Convention on the Law of the Sea of December 10, 1982;
- International Convention for the Prevention of Marine Oil Pollution of May 12, 1954;
- International Convention on Intervention in the High Seas in the Case of Accidents Resulting in Oil Pollution of November 29, 1969;
- International Convention on the Prevention of Pollution from Ships of November 2, 1973;
- Bonn Agreement on cooperation in the fight against pollution of the North Sea by oil and other harmful substances (1983);
- International Convention on Oil Pollution Preparedness, Response and Cooperation of November 30, 1990;
- Convention on the Protection of the Black Sea from Pollution of April 21, 1992;
- The Convention for the Protection of the Mediterranean Sea from Pollution of February 16, 1976 and its Protocols: on disposal (1976); on cooperation in the fight against pollution of the sea by oil and other harmful substances in emergency cases (1976); on prevention of sea pollution by discharges from ships and aircraft (1976); on protection against sea pollution from land-based sources (1980), etc.;
- Convention on the Protection of the Marine Environment of the Baltic Sea Region of April 9, 1992
- Convention on Prevention of Marine Pollution by Discharges of Waste and Other Materials of November 13, 1972.
- Cartagena Convention on the Protection and Development of the Marine Environment of the Caribbean Sea Region of 1983;
- Nairobi Convention on the Protection, Rational Use and Development of the Marine and Coastal Environment in the East African Region of 1985;
- The Noumea Convention on the Protection of Natural Resources and the Environment of the South Pacific Region of 1986;
- Convention on the Control of Harmful Antifouling Systems on Ships of 2001;
- Convention on the Protection and Use of Transboundary Watercourses and International Lakes of March 17, 1992.

An important role in ensuring environmental safety at the international level also play international agreements dedicated to the forest protection and the fight against desertification. This group of regulatory acts includes, in particular, the International Tropical Timber Agreement of January 27, 2006. It was preceded by the adoption of a number of international agreements on tropical forests: the International Tropical Timber Agreement of

1983, the International Tropical Timber Agreement of 1994. The need to protect tropical forests was also discussed in the Rio de Janeiro Declaration on Environment and Development, other documents adopted at this summit (in particular, in the Forest Principles), the Johannesburg Declaration and the Plan of Implementation of the Decisions adopted at the World Summit on Sustainable Development (September, 2002). In October 2000, the UN Forum on Forests was established, as well as the Partnership for Cooperation on Forests, of which the International Tropical Timber Organization is a member.

The period from January 2010 to December 2020 was declared by the UN General Assembly as the UN Decade for Deserts and Combating Desertification [15].

Of particular importance for international safety are the obligations of states to protect the environment in the process of research and use of outer space. Current international legal acts were adopted in the sixties and seventies of the 20th century, when environmental problems were not taken as seriously as they are taken now. As a result, many of the provisions of these acts have a rather general, declarative nature.

Such international acts include:

- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of January 27, 1967;

- Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 1968;

- Convention on International Liability for Damage Caused by Space Objects of March 29, 1972;

- Convention on Registration of Objects Launched into Outer Space of January 14, 1975;

- Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of December 18, 1979;

- Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting of December 10, 1982;

- Principles Relating to Remote Sensing of the Earth from Space of December 3, 1986, etc.

B) normative acts establishing requirements for specific types of economic activity, which is recognized as environmentally dangerous

This group of normative acts is characterized by the regulation of such activities, which due to their specificity, or in the event of emergency situations, may lead to a negative impact on several natural resources or ecological systems at the same time. Such regulatory acts include:

1. Normative acts on ensuring environmental safety in the military sphere:

[15] Report of the Governing Council of the United Nations Environment Program on the work of its twenty-fourth session: UNGA Resolution 62/195 of December 19, 2007.URL: https://documents.un.org/doc/undoc/gen/n07/475/49/pdf/n0747549.pdf?token=0OPBV76k3qDIEoNnaz&fe=true.

- Geneva Protocol on the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of June 17, 1925.

- Resolution of the UN General Assembly of December 16, 1969 No. 2603 (XXIV) "Questions about chemical and bacteriological (biological) weapons"[16];

- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction, 1972;

- Convention on the Prohibition of Military or Any Other Hostile Use of Means of Influence on the Natural Environment of May 18, 1977.;

- Additional Protocol II of June 8, 1977 to the Geneva Conventions of August 12, 1949, relating to the protection of victims of armed conflicts of a non-international nature;

- Convention on the Prohibition or Restriction of the Use of Certain Types of Conventional Weapons Which May Be Considered to Cause Excessive Injury or to Have an Indiscriminate Effect of October 10, 1980.;

- protocols to the Convention: "On the Prohibition or Restriction of the Use of Mines, Mine Traps and Other Devices" (Protocol II) and "On the Prohibition or Restriction of the Use of Incendiary Weapons" (Protocol III);

- Convention on the Prohibition of the Development, Production and Stockpiling and Use of Chemical Weapons and Their Destruction of January 13, 1993.

However, these international documents are not the only ones in the field of ensuring the environmental safety during military activities. In addition to them another issues are also regulated:

1) ban on nuclear tests: Treaty on the Ban on Tests of Nuclear Weapons in the Atmosphere, in Outer Space and under Water of August 5, 1963; Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968; Treaty on the Comprehensive Ban on Nuclear Tests of September 24, 1996. In all these documents, the problem of protecting the environment and human safety from radioactive contamination can be seen;

2) creation of nuclear-free zones in order to strengthen the non-proliferation of nuclear weapons: the Antarctic Treaty of December 1, 1959; Treaty on the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco); Treaty on the Prohibition of Placing Nuclear Weapons and Other Weapons of Mass Destruction on the Bottom of the Seas and Oceans and in Their Substitutes of February 11, 1971; South Pacific Nuclear-Weapon-Free Zone Treaty (Treaty of Rarotonga); Treaty on a nuclear-weapon-free zone in Southeast Asia (Bangkok Treaty); Treaty on Svalbard of February 9, 1920, etc.;

3) limitation of missile and nuclear weapons and disarmament: Agreement on Measures to Reduce the Risc of Outbrake of Nuclear War of September 30, 1971; Agreement on the Prevention of Nuclear War of June 22, 1973; Agreement on the Elimination of Medium- and

[16] The issue of chemical and bacteriological (biological) weapons: UN General Assembly resolution No. 2603 (XXIV) of December 16, 1969. URL: https://documents.un.org/doc/resolution/gen/nro/258/65/img/nro25865.pdf?token=X6tFDkasFYR6WaVoxw&fe=true.

Short-range Missiles of December 8, 1987; Agreement on the Reduction and Limitation of Strategic Offensive Weapons of July 31, 1991; Agreement between Ukraine and the United States of America on Providing Assistance to Ukraine in the Elimination of Strategic Nuclear Weapons, as well as Preventing the Spread of Weapons of Mass Destruction of October 25, 1993, etc.

Conventions providing for liability for damage caused by a nuclear accident, including that which occurred during the maritime transportation of nuclear materials, also make a significant contribution to ensuring the environmental safety during military activities, such as: the Convention on the Liability of Operators of Nuclear Ships of May 25, 1962 and the Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of December 17, 1971.

We agree with the statement of L. Golovko that despite the significant number of international documents that regulate the issue of environmental protection during military conflicts, the Ukrainian experience has shown their ineffectiveness due to the lack of sanctions norms, which led to their gross violation by the Russian Federation. [17]

2. Normative acts in the field of ensuring environmental safety during the transportation of dangerous goods, which include:

- Rules for the safe transportation of radioactive materials (being developed by the IAEA);
- International Maritime Dangerous Goods Code of September 27, 1965;
- Technical instructions for the safe transportation of dangerous goods by air transport (under development by ICAO);
- The European Agreement concerning the International Carriage of Dangerous Goods by Road of September 30, 1957;
- The Convention concerning International Carriage by Rail (COTIF) of May 9, 1980;
- The European Agreement on the International Carriage of Dangerous Goods by Inland Waterways (VOPNV) of May 26, 2000 and others.

3. Normative acts in the sphere of ensuring nuclear and radiation safety. This group of normative acts in the field of environmental safety law development includes: the Convention of the World Health Organization (WHO) on the Protection of Workers against Ionizing Radiation of 1960; Convention on Early Notification of a Nuclear Accident of 1986; Convention on Assistance in the Event of a Nuclear Accident or Radiation Emergency of 1986; Convention on Physical Protection of Nuclear Material of 1980; Convention on Nuclear Safety

[17] Golovko, L. (2023) International Legal Mechanisms for Holding the Russian Federation Accountable for Causing Environmental Damage as a Result of Armed Aggression against Ukraine. Bratislava Law Review. Vol. 7 No 1. P. 29-40.
Golovko Liudmyla; Gulac Olena; Oleksenko Roman (2023). International legal regulation of environmental protection during armed conflict and the possibility of its application in Ukraine. Proceedings of 23rd International Multidisciplinary Scientific GeoConference SGEM 2023 .URL: https://www.epslibrary.at/sgem_jresearch_publication_list.php?qs=Olena%20Gulac%3B%20Roman%20Oleksenko&criteria=or.

of June 17, 1994; Joint Convention on the Safety of Spent Nuclear Fuel and the Safety of Radioactive Waste of September 5, 1997, etc.

4. Normative acts on ensuring environmental safety of industrial facilities. This subgroup of regulatory acts includes, in particular, the Convention on the Transboundary Impact of Industrial Accidents of March 17, 1992. The Convention regulates relations regarding the prevention of major industrial accidents, ensuring preparedness for them, and liquidation of consequences of a transboundary nature. Various aspects of cross-border cooperation as a special sphere of cross-border foreign economic activity are regulated in order to avoid major industrial accidents with cross-border consequences and the most effective ways of their elimination, if it was not possible to prevent their occurrence, etc.

C) normative legal acts that introduce mechanisms for ensuring environmental safety

This group of international legal instruments provides for the establishment of various mechanisms to ensure environmental safety at the global or regional levels. Appropriate mechanisms include: measures to assess the impact of planned activities on the environment; guaranteeing public participation at all stages when making environmentally important decisions; measures of international responsibility and compensation for damage caused as a result of violations of international norms of environmental safety, etc. Acts of this group are the most numerous and diverse. The most important of them include, in particular:

- The Convention on Environmental Impact Assessment in a Transboundary Context of February 25, 1991 and its Protocol on Strategic Environmental Assessment of May 21, 2003;
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (concluded in Aarhus on June 25, 1998, entered into force on October 30, 2001);
- Normative acts establishing legal responsibility for violations of international norms on environmental safety:
- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment of 1993;
- Basel Protocol on Liability and Compensation for Damage Caused by Transboundary Transportation of Hazardous Wastes and Their Disposal;
- Protocol on Civil Liability and Compensation for Damage Caused by Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents of May 1, 2003.

4. CONCLUSIONS

The legal content of the concept of international environmental safety consists in the acceptance by the subjects of international law of the obligation to refrain from any activities that may threaten the natural balance of ecological systems, living and non-living elements of the environment. At the same time, it does not matter at what level the relevant negative

consequences are possible: national, regional or global. The very essence of the concept of environmental safety consists in the creation of a collective, universal safety system that unites all the states of the planet. This means that it is unacceptable to strengthen the safety of some states to the detriment of others, and it is not appropriate to create isolated environmental safety systems. Environmental safety, like political security, is equal and indivisible for all subjects of international law. The already mentioned concept is aimed at protecting not only those territories that are under the sovereignty of any state, but also at the protection of territories with an international regime: the open sea, the air space above the open sea, outer space, and the seabed beyond national jurisdiction.

The main area of effort from the point of view of the concept of environmental safety is the prevention of an environmental disaster, which is characterized by irreversible harmful consequences for the environment. Achieving this goal, in turn, involves solving the following tasks: protection and preservation of the quality of the environment, its improvement, rational use and reproduction of natural resources. Prevention of harmful man-made disasters, especially of a global nature, can also be named as a separate task.

The peculiarity of all the listed areas of ensuring environmental safety is that they are not possible exclusively within the framework of international law, but require appropriate legislative regulation at the national level. This means that every state, when exercising its sovereign rights in relation to the environment and natural resources, must comply with international standards and requirements. Stopping ongoing environmental degradation and climate change on the planet is possible only by creating a single international legal environmental space that will allow to coordinating the efforts of the world community in the field of environmental safety.

In fact, the concept of international environmental safety significantly intervenes into the principles of sovereignty and non-interference in the internal affairs of a sovereign state. If we recognize that environmental safety is indivisible, then we can talk about the formation of a fundamentally new non-contractual obligation of states to rationally use and protect the environment. This means that environmental policy ceases to be a purely internal matter of each state, and gross violations of environmental standards give the international community the right to resort to coercive measures (sanctions) against individual states. It is quite possible that the further development of the concept of environmental safety will lead to the emergence of generally recognized rules of environmental behavior of states, the violation of which will be considered as an infringement on the international legal order as a whole.

In connection with the significant volume of international legal norms aimed at regulating the issue of ensuring environmental safety, Ukraine, as a member of the international community, at one time took the initiative to develop a single international regulatory act that would comprehensively define the strategy of environmental protection

and anthropoprotection activities, the so-called "Ecological Constitution of the Earth". [18] We believe that the adoption of such a document will be able to overcome conflicts and defects of international and domestic legislation in terms of the definition of generally accepted concepts, such as "rational nature management", "environmental protection", "environmental safety", etc., as well as to end scientific disputes about the presence (lack of) ensuring environmental safety as a separate area of legal regulation.

In addition, we consider appropriate the proposal of a number of scientists regarding the expediency of forming such international bodies in the UN system as the Environmental Security Council, which should be given the status of an international specialized organization and empowered with broad powers to ensure a safe environment, coordinate international environmental cooperation, etc., as well as the International environmental court, as part of the new world legal order based on the Ecological Constitution of the Earth.

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IMPLEMENTATION OF INTERNATIONAL STANDARDS IN THE FORMATION OF AN APPROPRIATE LEVEL OF LEGAL LIABILITY FOR CORRUPTION OFFENSES IN THE FIELD OF LAND RELATIONS IN UKRAINE

IMPLEMENTÁCIA MEDZINÁRODNÝCH ŠTANDARDOV PRI TVORBE PRIMERANEJ ÚROVNE PRÁVNEJ ZODPOVEDNOSTI ZA KORUPČNÉ TRESTNÉ ČINY V OBLASTI POZEMKOVÝCH VZŤAHOV NA UKRAJINE

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Abstract: The UN International Convention against Corruption, the Council of Europe Civil and Criminal Conventions against Corruption, which were finally ratified by the Ukrainian Parliament in 2006, set out a number of Ukraine's obligations in the area of preventing and combating corruption. However, despite the existence of relevant anti-corruption provisions in the Criminal Code of Ukraine, it was only in 2014 that a basic anti-corruption law was adopted and administrative liability for corruption-related offenses was introduced.

The opening of the land market increases the likelihood of corruption risks, so the introduction of an effective institution of legal liability for corruption and related offenses in the field of land relations is an extremely important factor that minimizes the risks of corruption in the field under study.

The purpose of the study is to analyze the level of implementation of anti-corruption provisions in Ukrainian legislation, to identify issues in the context of ensuring legal liability for corruption and related offenses in the field of domestic land relations, and to formulate the author's conclusions and proposals. An effective methodology for analyzing the research issues was the use of logical and semantic, systemic and structural, historical and comparative legal methods of scientific knowledge.

It is stated that the current anti-corruption legislation of Ukraine, although in historical retrospect in good condition, as well as the mechanism for its implementation, still requires significant improvement, changes and political will to strictly comply with it. Despite the active fight against corruption, there is a need to improve and harmonize the system of anti-corruption laws, in particular, the terminology, implement the current Anti-Corruption Strategy in terms of preventing and combating corruption in the field of land relations, and strictly enforce anti-corruption legislation in terms of bringing perpetrators to justice.

Key words: *international standards, Implementation of international standards, legal responsibility, administrative responsibility, corruption offenses, corruption-related offenses, sphere of land legal relations, anti-corruption legislation*

1. INTRODUCTION

Corruption in its various manifestations still remains an acute problem for Ukraine, being an obstacle to its economic development and effective European integration. The high level of corruption poses a threat to the development of both society as a whole and individual sectors of its activities, including land, while making it impossible to effectively invest in new projects that could bring the country to a higher level of development and ensure the welfare and well-being of the population.

For example, Ukraine received 36 points out of 100 in the Corruption Perceptions Index (CPI) for 2023, and now our country ranks 104th out of 180 countries. Among our western neighbors, Romania's score remained unchanged (46 points, 63rd place), while Poland lost another 1 point, but remained one of the leaders in CPI among the countries close to us - with 54 points, it ranks 47th. But now Poland shares this position with Slovakia, which has added 1 point over the year and also scored 54 points. And Moldova, like Ukraine, added 3 points and caught up with Hungary, whose score remained unchanged, allowing them to share 76th place with 42 points[1].

A separate and most prominent corruption risk in the area under study is the opening of the agricultural land market, which is a driving mechanism for the development of new corruption schemes[2]. After all, land relations are perhaps the most popular area for the practice of "unjust enrichment." In particular, the main anti-corruption body of our country (the National Agency for the Prevention of Corruption) has identified the "top 30 corruption schemes in the land sector" and proposed algorithms for minimizing them.

2. THEORETICAL AND LEGAL BASIS OF THE STUDY

The UN International Convention against Corruption, the Council of Europe Civil and Criminal Conventions against Corruption, which were finally ratified by the Ukrainian Parliament in 2006, stipulate a number of Ukraine's obligations in the area of preventing and combating corruption. In particular, it concerns, first of all, the introduction of a whole range of anti-corruption instruments into the system of national legislation of any country, namely:
1. Active involvement of the public in the development and implementation of the state anti-corruption policy;

[1] Corruption Perceptions Index — 2023. URL: https://ti-ukraine.org/research/indeks-spryjnyattya-koruptsiyi-2023/

[2] Krasnova Y., Golovko L., Hunko L., Medynska N., Sandeep Kumar Gupta. (2021). An assessment of the legal framework governing land ownership is evolving in Ukraine, Materials Today: Proceedings, 2214-7853.

2. Establishment of a separate state body to perform the functions of formulating and implementing anti-corruption policy;
3. Adoption of the relevant national basic anti-corruption law;
4. Competitive and transparent procedures for the selection of employees of anti-corruption bodies;
5. Formation of a whole system of anti-corruption mechanisms, including registers of declarations of public officials; registers of corrupt officials and whistleblowers;
6. Possibility to report anonymously on the facts of corruption violations;
7. Introduction of an appropriate level of legal liability for corruption violations;
8. Development and implementation of state and local anti-corruption programs with the elimination of corruption risks and ways to minimize them, including in the field of land relations.

Therefore, such requirements have been actively implemented in the regulatory framework and national practice of Ukraine since 2014.

However, despite the existence of relevant anti-corruption provisions in the Criminal Code of Ukraine, it was only in 2014 that a basic anti-corruption law was adopted and administrative liability for corruption-related offenses was introduced[3].

In the context of the introduction of an effective anti-corruption mechanism in the field of land relations, the State Anti-Corruption Strategy adopted in mid-2022[4] identifies a number of anti-corruption risks in the land sector among fifteen separately identified areas. In addition, the State Program for the Implementation of the current State Anti-Corruption Strategy for 2023-2025[5] clearly outlines measures to minimize such risks, deadlines, responsibilities and funds for their implementation. For the first time, the National Agency for the Prevention of Corruption conducts daily monitoring of the implementation of the envisaged tasks and presents its results online in the public domain[6].

Therefore, the openness of such information, its constant monitoring and control over efficiency and effectiveness is perhaps the most objective indicator of the interest of the state and society in achieving real results and successful anti-corruption activities of the state, in particular, in the most important area of public relations for our country[7].

Since the sphere of land relations has been undergoing reform throughout the existence of our country, and this is especially true during the opening of the land market, the

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[3] On Prevention of Corruption: Law of Ukraine of 14.10.2014 No. 1700-VII. URL: http://zakon.rada.gov.ua/laws/show/1700-18.

[4] On the Principles of State Anti-Corruption Policy for 2021-2025: Law of Ukraine of 20.06.2022 No. 2322-IX1. URL: https://zakon.rada.gov.ua/laws/show/2322-20#Text.

[5] On approval of the State Anti-Corruption Program for 2023-2025: Resolution of the Cabinet of Ministers of Ukraine; Program, Measures of 04.03.2023 No. 220. URL: https://zakon.rada.gov.ua/laws/show/220-2023-%D0%BF#Text.

[6] Information system for monitoring the implementation of the state anti-corruption policy. URL: https://dap.nazk.gov.ua/.

[7] Hulak, O., Golovko, L., & Holoviy, L. (2022). Legal liability for corruption and related offenses in the field of land relations. Law. Human. Environment, 13(1), 73-80. https://doi.org/10.31548/law2022.01.009.

progression of corruption risks is growing rapidly, and therefore, there is a need to develop effective ways to overcome them. One of the preventive elements of corruption risks is the awareness of responsibility for unlawful acts[8].

At the same time, the analysis of statistical data showed that the number of persons against whom verdicts/decisions on corruption offenses committed by them came into force in 2022 was 624. And the National Agency for the Prevention of Corruption's breakdown of these cases by area of activity gives us reason to believe that corruption risks in the field of land relations are among the highest.

"Corruption" is the basic definition for bringing to legal liability, and according to Article 65-1 of the Law of Ukraine "On Prevention of Corruption", all four types of legal liability are provided for for committing corruption or corruption-related offenses: *criminal, administrative, civil and disciplinary.*

The Law of Ukraine "On Prevention of Corruption" of 2014 regulates two types of relevant offenses: "corruption-related offense" and "corruption offense", which are distinct from each other. A *"corruption offense"* is defined as an unlawful act with signs of corruption, and its peculiarity lies in the existence of three types of legal liability: *criminal, civil and disciplinary.*

At the same time, an "*offense related to corruption*" does not include any signs of corruption (as a criminal offense), but such an act violates the requirements established by the Law of Ukraine "On Prevention of Corruption".

As Mareček explains, offenses like corruption, despite being defined under international law, are not crimes under international law, but treaty-based crimes. The modality of liability implementation by states can be administrative, civil, or criminal, and may or may not include the responsibility of legal persons.[9]

3. ADMINISTRATIVE LIABILITY

The legal regulation of prevention and counteraction to corruption in the field of land relations is based on the application of legal liability, where the most common type is

[8] Ladychenko V., Yara O., Uliutina O., Golovko L. (2019) Environmental liability in Ukraine and the EU, 2019. European Journal of Sustainable Development, 8, issue 2, p. 261-267.

[9] „description of incorporation obligations of states – to incorporate distinct crimes or definitions into their distinct national legal systems. In this... case an individual is not direct, but indirect addressee of international rule, which is primarily addressed to states. Hence, its criminal liability cannot derive from international law." Mareček, L.: Criminal liability of legal persons under international law - retrospection and current status In: *The Lawyer Quarterly*. Vol. 10, No. 4 (2020), p. 423. And Mareček, L.: Zodpovednosť právnických osob za zločiny podľa medzinárodného práva. In: *Justičná revue*. Vol. 70, No. 1 (2018), pp. 72–74. „...a legal person is not criminally liable under international law. On the other hand, he has to bear the consequences of its actions, whether of criminal, civil or administrative nature. However, this responsibility will not result from international law directly, but its basis is the fulfillment of the implementation obligation by the state. Its responsibility thus follows from national law..." Mareček, L.: Odpovědnost právnických osob za zločiny podle mezinárodního práva In: *COFOLA 2021: sborník příspěvků mladých právníků, doktorandů a právních vědců*. Brno : Masarykova univerzita, 2021. p. 83.

administrative liability, in fact, for corruption-related offenses, where offenses in the field of land relations are their component, which is ratified by the current version of Chapter 13-A of the Code of Administrative Offenses of Ukraine entitled "Administrative Offenses Related to Corruption" and the Law of Ukraine "On Prevention of Corruption".

Analyzing the sanctions provided for in Chapter 13-A of the Code of Ukraine on Administrative Offenses, we can state the following types of liability: 1) a fine; 2) confiscation of income, remuneration, and gifts obtained through the commission of an administrative offense; and 3) deprivation of the right to hold certain positions/engage in certain activities.

4. CIVIL LIABILITY

Since the institute of civil liability is a part of private law, which regulates personal non-property/property relations based on the principles of legal equality of their participants, as opposed to the basics of service law as part of a more comprehensive, administrative law, in the context of public relations, which involve inequality of parties and their certain hierarchy, the list of corruption articles in civil law is not distinguished. At the same time, at the end of 2019, the so-called mechanism of "civil confiscation of assets obtained through illegal means" was introduced.

Thus, civil liability for this type of offense arises from contractual or obligation law, and the peculiarity of such offenses is that corrupt actions cause material damage.

5. CRIMINAL LIABILITY

At the same time, the broadest palette of such violations, and therefore liability, is provided for in the Criminal Code of Ukraine, however, unlike, in particular, the Code of Ukraine on Administrative Offenses, and ignoring the rules of rulemaking, without systematic presentation in one structural element. For example, the note to Article 45 of the Criminal Code of Ukraine contains a list of articles that establish criminal liability for corruption offenses, with only the following criteria being distinguished 1) the presence/absence of "abuse of office" in the commission of a corruption criminal offense; and 2) the commission of a "corruption-related criminal offense", which legitimately includes only two articles, namely, liability for false information in e-declarations (as a result of the Decision of the Constitutional Court of Ukraine of 27.10.2020 No. 13, including the inappropriateness of criminal liability for an offense that does not contain signs of a "criminal corruption offense").

It is this provision (Article 45 of the CCU) that regulates the impossibility of exempting a person from criminal liability on the basis of effective remorse if the latter has committed a corruption criminal offense and a corruption-related criminal offense for the first time. This imperative is explained, in particular, by the threat of corruption as a phenomenon and the state's interest in overcoming it as soon as possible.

In accordance with the amendments made on June 29, 2021, the note to the said article of the Criminal Code of Ukraine was supplemented with a list of articles considered "criminal offenses related to corruption". This update created an additional terminological conflict, since the previous version of the article used the meaning of only a corruption criminal offense, and the Law of Ukraine "On Prevention of Corruption" does not contain such a term.

6. DISCIPLINARY LIABILITY

Violation of labor or official discipline in connection with violation of corruption legislation entails disciplinary liability. At the same time, such a terminological characterization of corruption offenses is absent in the anti-corruption regulatory framework.

In particular, disciplinary liability may either "accompany" other types of liability, penalties under which are imposed on a person for committing corruption-related acts, or be imposed separately. In any case, if there is relevant information, the head of the body is obliged, either on his or her own initiative or in accordance with the order of other specially authorized anti-corruption entities, to initiate an internal investigation and make a decision on its outcome.

7. CONCLUSIONS AND PERSPECTIVES

The issue of amending Article 1 of the Law of Ukraine "On Prevention of Corruption" remains relevant, because despite the existence of legal liability for corruption and corruption-related offenses in the form of criminal, administrative, civil and disciplinary liability, there is no clear terminological definition for each type of offense. Since the current regulatory framework in relation to the offenses we are studying is quite complex and conflicting, as it operates with a number of categories: "corruption offense"; "offense related to corruption" (Article 2 of the Law of Ukraine "On Prevention of Corruption"); "corruption criminal offense"; "criminal offense related to corruption" (Article 45 of the Criminal Code of Ukraine) and "administrative offense related to corruption" (Chapter 13-A of the Code of Ukraine on Administrative Offenses) and requires appropriate systematization in the basic anti-corruption law of Ukraine.

The opening of the land market also increases the likelihood of corruption risks, so the introduction of an effective institution of legal liability for corruption and related offenses in the field of land relations is an extremely important factor that minimizes the risks of corruption in the field under study. Accordingly, the current domestic anti-corruption legislation, although in a historical retrospective in good condition, as well as the mechanism for its implementation, still requires significant improvement, changes and political will to strictly comply with it. Despite the active fight against corruption, there is a need to improve and harmonize the system of anti-corruption laws, in particular, the terminology, to comply with the current Anti-Corruption Strategy with a structural unit for preventing and combating

it, specifically in the field of land relations, and to strictly comply with anti-corruption legislation regarding the prosecution of perpetrators.

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INTERNATIONAL LEGAL REGULATION OF PROTECTION OF ENVIRONMENT DURING ARMED CONFLICTS[1]

MEDZINÁRODNOPRÁVNA ÚPRAVA OCHRANY ŽIVOTNÉHO PROSTREDIA POČAS OZBROJENÝCH KONFLIKTOV

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Abstract: The aim of the article is to analyze the international legal norms that are aimed at prevention or at least reduction of the negative impact of military actions on the environment and give an answer to whether the existing international legal regulation is sufficient. Some proposals to strengthen existing regime of protection of environment during armed conflicts were made.

Abstrakt: Cieľom príspevku je analyzovať medzinárodné právne normy, ktoré sú zamerané na prevenciu alebo aspoň zníženie negatívneho vplyvu vojenských akcií na životné prostredie a dať odpoveď na to, či je existujúca medzinárodná právna úprava postačujúca. Boli predložené návrhy na posilnenie existujúceho režimu ochrany životného prostredia počas ozbrojených konfliktov.

Key words: *international environmental law, environmental damage, environmental protection during armed conflicts*

Kľúčové slová: *medzinárodné právo životného prostredia, škody na životnom prostredí, ochrana životného prostredia počas ozbrojených konfliktov*

1. INTRODUCTION

Armed conflicts cause enormous damage to people and infrastructure in settlements where they take place. But they also cause extensive damage to the environment. Military operations, movement of heavy equipment, construction of fortifications, mining of territories, fires, detonation of enterprises with hazardous materials, etc. affect all components of the environment, not to mention the threats that can cause damage to nuclear power plants. All of the above requires proper international legal regulation of environmental protection during armed conflicts. The purpose of the article is to analyze the

[1] VEGA 1/0713/23 "International legal protection of environmental rights – quo vadis?.

existing international documents in this sphere, to identify their advantages and disadvantages, as well as to make recommendations for its improvement.

2. PROTECTION OF THE ENVIRONMENT BY THE NORMS OF HUMANITARIAN LAW

A study conducted by the International Committee of the Red Cross (ICRC) distinguishes three rules of customary international law that must be applied to the protection of the environment during armed conflicts:

the general principles of warfare (principle of distinction, prohibition of destruction of property not justified by military necessity and principle of proportionality) are applied to the natural environment (Rule 43);

protection and preservation of the environment should always be taken into account when choosing methods and means of warfare (Rule 44);

the use of methods and means of warfare which are intended to cause, or are expected to cause, large-scale, long-term and serious damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon (Rule 45). [2]

Rule 43 according to the ICRR is applicable both in international and non-international, armed conflicts, rules 44 and 45 – in international and "arguably" non-international armed conflicts. Rule 45 have also been codified in Additional Protocol I to the Geneva Conventions in Articles 35(3) and 55(1) (prohibit warfare methods which can cause widespread, long-term and severe damage to the environment).[3] According to the commentary of the ICRR, article 35(3) was drafted in order to prevent unnecessary injury to the environment and article 55(1) in order to protect health and survival of the civilian population. Therefore, as the ICRR explains, these articles do not duplicate each other. [4] The Convention on Certain Conventional Weapons of 1980 also confirms Rule 45.[5]

The Additional Protocol I also contain provisions that are indirectly related to environmental protection. For example, Article 54 prohibits to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive,

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[2] Henckaerts Jean-Marie, Doswald-Beck Louise. International Committee of the Red Cross. Customary International Humanitarian Law. Volume I. Rules. Cambridge: Cambridge University Press, 2005. ISBN 978-0-521-00528-9.

[3] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1).

[4] ICRC. Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Commentary of 1987. Article 35. Retrieved from: https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-35/commentary/1987?activeTab=undefined.

[5] 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 as amended on 21 December 2001.

whether in order to starve out civilians, to cause them to move away, or for any other motive. Article 56 prohibits attacks on dams, dykes, and nuclear electrical generating stations. Article 36 establishes a norm according to which states in the study, development, acquisition or adoption of a new weapon, means or method of warfare are under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by norms of international law. This rule should apply not only to specific types of weapons that are already prohibited, but also to weapons that by their very nature cause excessive injuries. Undoubtedly, the norms related to environmental protection should be taken into account during this determination.

At the same time, we should dwell on the shortcomings of the above-mentioned provisions of the Additional Protocol I. Firstly, Additional Protocol I does not specify what should be understood by "widespread, long-term and severe damage to the natural environment", which complicates the application of this provision. More than that environmental damage must meet three cumulative conditions (must be widespread, must have long-term effects, and must be severe). That is why it is nearly impossible to meet these conditions. Secondly, articles 35 and 55 do not appear among the provisions, the violation of which is qualified as a serious violation triggering individual criminal responsibility under Additional Protocol I. Fourthly, Additional Protocol I is applied only to international armed conflicts. Fifthly, the Protocol does not provide a mechanism for monitoring of its compliance.

As a result, as Mareček, L. claims, jurisprudence in the field of environmental war crimes is not developed. [6] The International Military Tribunal for Nuremberg condemned Jodl for using scorched earth tactics, which do not directly affect the environment, but primarily involve the destruction of food, transport infrastructure and other potentially useful for the enemy's armed forces. [7]

Some weapons standardly used during armed conflicts are capable of causing disproportionate damage and injuries to human lives as well as to the environment in which they are used. Part of these weapons is covered by 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. This Convention limits the use of combat means exceeding war expediency. Already in the preamble, the authors of the Convention point to the importance of environmental protection as follows: "it is forbidden to use methods and means of warfare that follow or can be expected to cause far-reaching,

[6] Mareček, L. (2022). ICJ: Ukraine v. Russian Federation (Order of 16 March 2022 in the Case Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide). *Bratislava Law Review*, volume 6 (2), 139-148. DOI: https://doi.org/10.46282/blr.2022.6.2.307.

[7] Mareček, L. (2023). Ochrana environmentálnych noriem prostriedkami medzinárodného trestného práva. Bratislavské právnické fórum 2023: právny štát v medzinárodnom práve a medzinárodné právo v právnom štáte / Ondrej Ružička, Veronika Ťažká (zost.). Bratislava : Právnická fakulta Univerzity Komenského v Bratislave, 2023. 132 s. ISBN 978-80-7160-700-7. S. 24-40.

long-lasting and severe damage to the environment...".[8] Protocol III to this Convention explicitly enshrines the protection of the environment during armed conflicts. It stipulates that "forests and other types of vegetation may not be the object of an attack with incendiary weapons, except when such natural features are used to cover, conceal or camouflage combatants or other military objectives, or if they are themselves military objectives".[9] Protocol II, as amended in 1996, prohibits or restricts the use of landmines (both anti-personnel and anti-vehicle), booby-traps and certain other explosive devices.[10] The use of these landmines leads not only to the death of people, but also causes significant damage to the natural environment and prevents the restoration of agricultural lands. Therefore, the adoption of the Protocol II to the Convention is significant for environmental protection.

International multilateral treaties limiting the use of certain weapons were also adopted. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972 aims to achieve effective progress towards the general and complete disarmament of states from biological and toxic weapons under strict and effective international control, including the prohibition and destruction of all types of weapons of mass destruction. It states that it is in the interest of all humanity to completely eliminate the possibility of using chemical weapons. The introduction of the Convention obliges each contracting state to never and under no circumstances develop, manufacture, otherwise acquire, stockpile, or store chemical weapons or directly or indirectly provide chemical weapons to anyone, that they will not use chemical weapons and will not engage in any military preparations for the use of chemical weapons. At the same time, the provisions of the convention oblige the state to destroy all chemical weapons that it owns or has in its possession or that are located in any place under its jurisdiction or control, that is, especially on its territory.[11] However, it also stipulates the obligation to destroy all chemical weapons that the state has left on the territory of another contracting state. Thus, the Convention serves as a preventive mechanism of cooperation with other contracting states in the protection of people and the environment.

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[8] 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. 1981. URL: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0811.pdf.

[9] Protocol III to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. 1983. URL: https://treaties.unoda.org/t/ccwc_p3.

[10] Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II, as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. https://treaties.un.org/pages/ViewDetails.aspx?chapter=26&clang=_en&mtdsg_no=XXVI-2-b&src=TREATY.

[11] The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

3. INTERNATIONAL LEGAL REGULATION OF NUCLEAR SECURITY DURING ARMED CONFLICT

During military operations, there is a great danger of damage to nuclear power plants, which can lead to catastrophic consequences, including radiation leakage and environmental pollution.

According to article 56 of the Protocol I to the Geneva Conventions Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. The special protection against attack shall cease for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support. [12] According to article 56(6) the parties to the conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces (article 56(6)) – for example agreements on demilitarized zone or non-attack agreements. Thus, even from the text of the Protocol I itself, it can be concluded that the existing legal regulation aimed at the protection of nuclear power plants is not sufficient. The above-mentioned agreements are difficult for the warring parties to achieve. Therefore, international legal regulation of the IAEA's involvement in negotiations and the conclusion of contracts is considered necessary.

At the same time, it should be noted that during the design of the vast majority of nuclear power plants, possible military operations were not taken into account. [13] For example, as for the practical problems of insuring security of nuclear reactors in the conditions of war, as experts of the Kyiv National University of Civil Engineering and Architecture inform, two types of reactors are in operation in Ukraine — VVER 1000 and VVER 440. Their projects did not take into account military threats, in particular the impact of a bomb or a projectile. [14] Therefore, the idea of creating a 30-km zone around all nuclear power plants, free of military personnel and any military equipment, appears to be an effective solution for protection of nuclear power plants from accidental damage, which can have global negative consequences. During military operations, norms of humanitarian law are often not applied. That is why we agree with the scientists who see the only way to implement the aforementioned proposals into life through the immediate preparation and deployment

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[12] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1). Article 56 (2)(b).

[13] Vashchenko, Y. Access to Modern Energy Services Through the Prism of Children's Rights: An Overview from the Perspectives of the Convention on the Rights of the Child and the Policy and Law Approaches of Certain EU Member States and Ukraine. *International Comparative Jurisprudence*, 2021, Volume 7, Issue 1., 75-87. DOI: http://dx.doi.org/10.13165/j.icj.2021.06.006.

[14] Piadyshev V. (2023). Prospects for ensuring the security of nuclear power plants in Ukraine against external invasion during the state of martial. Legal scientific electronic journal № 4 DOI https://doi.org/10.32782/2524-0374/2023-4/188 P. 776-780. P. 777.

of UN missions, such as UN peacekeeping operations, on the territory of the nuclear power plants, which are located on the territory of armed conflict. [15]

4. INTERNATIONAL LEGAL REGULATION OF ASSESSMENT OF ENVIRONMENTAL DAMAGE CAUSED DURING MILITARY CONFLICT

The principle of full reparation for damage caused by military activities, including deterioration of environment is enshrined in provisions of different international legal documents (Draft Articles on Responsibility of States for Internationally Wrongful Acts of 2001, Hague Convention (IV), Protocol Additional I to the Geneva Conventions, Draft Principles on the Protection of the Environment in Relation to Armed Conflict). At the same time, unfortunately, the international documents regulating this issue do not contain a definition of what should be understood by environmental damage. The issue of assessing the extent of environmental damage is particularly difficult because the consequences of this damage can last for a long time, or even appear in the future. In addition, it is often impossible to return the environment to its previous state. Therefore, a difficult question arises as to how to correctly assess the amount of environmental damage, on which the amount of reparations depends.

The shortcoming of international legal regulation in this sphere is also pointed out by the international case law. [16] That is why we are sure that the adoption of an international document that would establish the methodology which should be used during environmental damage assessment is necessary. This document should determine components of the environment deterioration of which should be compensated and indicators that should be considered.

5. CONCLUSIONS

International humanitarian law has a number of shortcomings with regard to environmental protection during armed conflicts. Additional Protocol I to the Geneva Conventions does not specify what should be understood by "widespread, long-term and severe damage to the natural environment". The defined scope of environmental damage worded in the way that it must be simultaneously widespread, long-term, and severe, is also

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[15] Ibid p. 779; Krasnova Y.A., Makarenko N.A., Makarenko O.Y., Nazymko O.V., Ivanenko D.D. Problems of prosecution for crimes against environmental security in the conditions of martial state. Scientific Bulletin of the National Mining University. 2023. No. 5 (197). P. 122-127.

[16] ICJ, Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018, par. 9.; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment, I.C.J. Reports 2022, p. 13; Security Council Resolution 687(1991) of 3 April 1991: Iraq-Kuwait Resolution. Available at: https://peacemaker.un.org/iraqkoweit-resolution687.

a disadvantage, because it is difficult to meet these conditions. Articles 35 and 55 do not appear among the provisions, the violation of which is qualified as a serious violation triggering individual criminal responsibility under Additional Protocol I. Additional Protocol I applies only to international armed conflicts and does not provide a mechanism for monitoring of its compliance. All of the above-mentioned shortcomings of the norms of international legal regulation of environmental protection during armed conflict have as a consequence limitations of their implementation.

International legal regulation of nuclear security during armed conflict must be improved. It is also necessary to adopt international standards that would establish the methodology for assessing the amount of damage caused to the environment during armed conflict.

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CURRENT STATUS OF INTERNATIONAL ENVIRONMENTAL CRIMINAL LAW[1]

SÚČASNÝ STAV MEDZINÁRODNÉHO ENVIRONMENTÁLNEHO TRESTNÉHO PRÁVA

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Abstract: The crime of destroying the environment is currently enshrined as a war crime committed during an international armed conflict. In other cases, the environment is protected as a secondary object of crime – a secondary interest protected by law. Whether in addition to the protection of property or life and health, etc. In the article, we also point out the impossibility of criminal liability against legal entities for international law, even though the environment is often destroyed precisely by non-governmental organisations - business corporations. Also problematic is the decision of the states to leave the punishment only at the national level embedded "only" in the implementation obligations of the states in the case of conventional treaty-based crimes, which can lead to the risk of impunity. The arguments also lead to various calls *de lege ferenda* to establish the crime of ecocide.

Key words: *environment, crimes under international law, ecocide*

1. INTRODUCTION

Environmental protection has long been not only an internal matter of states. States are under obligation not to cause significant damages to the environment in any of their activities.[2] Nevertheless, international environmental law is matched by a lack of effective means to address environmental challenges.[3]

This paper aims to examine the possibility of inferring the international criminal responsibility of an individual for large-scale environmental destruction as an effective measure to protect the environment and environmental rights.

To achieve the set aim, we will use standard methods of theoretical legal research using logical and hermeneutic methods. The basis for the research will be the formal and subsidiary

[1] This paper was prepared within the framework of project VEGA no. 1/0713/23.

[2] GOLOVKO, Liudmyla: International Legal Mechanisms for holding the Russian Federation accountable for causing Environmental Damage as a result of Armed Aggression against Ukraine In *Bratislava Law Review.* Vol. 7, No. 1 (2023), p. 33.

[3] Porovnaj DAMOHORSKÝ, Milan et al.: *Právo životního prostředí.* Praha: C. H. Beck, 2003, s. 85-86.

sources of international law. The doctrinal approach to the examination of international law will also be used, as the of nature of law is argumentative, and not axiomatic.[4]

2. WIDESPREAD DESTRUCTION OF THE ENVIRONMENT AS A WAR CRIME

International customary law, as reflected in the Rome Statute of the International Criminal Court (ICC), prohibits "intentionally launching an attack in the knowledge that such attack will cause incidental... 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."[5] Such conduct qualifies as a war crime of other serious violations of laws and customs applicable in international armed conflicts. Specifically, it reflects the regulation of art. 35 par. 2 and art. 55 of Additional Protocol I (1977) to the Geneva Conventions of 1949.

However, the Rome Statute does not contain a similar provision in relation to non-international armed conflicts. However, other provisions of the Rome Statute, which are primarily intended for the protection of the civilian population and objects, can protect by effect also the environment. Destruction of the environment may fulfil the factual basis of the war crime of pillaging,[6] or destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.[7]

Even though the existing case law did not confirm explicitly that environment can be understood as a part of the property, the existing case law confirms, that the term property can be interpreted extensively.[8] In recent jurisprudence (Bemba, Ntaganda), the environment was not the central point of the indictment.[9]

Some components of the environment are eligible objects of property rights. On the other hand, the destruction of "own property", for example, in the defensive application of scorched earth tactics on one's territory, is not covered by war crimes.

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[4] KNAPP, Viktor: *Teorie práva*. Praha : C.H. Beck, 1995, s. 167.

[5] Art. 8 (2) (b) (iv), Rome Statute of the ICC (1998).

[6] Art. 8 (2) (e) (v), Rome Statute of the ICC (1998). „... pillage only applies to natural resources that can be subject to ownership and constitute "property"... The prohibition covers pillage of natural resources, whether owned by the State, communities or private persons... The applicability of the prohibition of pillage to natural resources has been confirmed by the International Court of Justice, which found in the Armed Activities judgment, that Uganda was internationally responsible "for acts of looting, plundering and exploitation of the [Democratic Republic of the Congo]'s natural resources"" Draft principles on protection of the environment in relation to armed conflicts, with commentaries In *Yearbook of the International Law Commission*, 2022, vol. II, Part Two. p. 150.

[7] Art. 8 (2) (e) (xii), Rome Statute of the ICC (1998).

[8] „... the property in question – whether moveable or immoveable, private or public – must belong to individuals or entities aligned with or with allegiance to a party to the conflict adverse or hostile to the perpetrator..." *Katanga*, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 892.

[9] In the case of Ntaganda, the court ultimately found the defendant not guilty of looting natural resources, despite the fact that it was proven. Closer see PEREIRA, Ricardo: After the ICC Office of the Prosecutor's 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide? In *Criminal Law Forum*. Vol. 31 (2020), pp. 208-209.

The interpretation of the term "widespread, long-term and severe damage" remains an open question. International jurisprudence has not interpreted these terms. However, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977, ENMOD) can serve as a guide, where the term "widespread" must be interpreted as affecting a territory of several hundred square kilometres, the term "long-term" as exceeding several months or season and the term "severe" as causing significant disruption or harm to human life, nature or economic resources."[10]

Jurisprudence in the field of environmental war crimes is not developed. The International Military Tribunal for Nuremberg condemned Jodl for using scorched earth tactics, which do not aims primarily the environment, but primarily involve the destruction of food, transport infrastructure and other potentially useful for the enemy's armed forces, and the perpetrator for these reasons may destroy the environment.

The International Criminal Tribunal for the former Yugoslavia almost got into the issue, when the prosecutor established a committee of inquiry to clarify the facts of the raids by NATO air forces on the Pančevo area. According to findings, these raids caused the spread of toxic clouds in an area of 15 km^2 for more than 10 days. Acid rains were recorded in the area during this period. The committee secured evidence of a negative impact on biodiversity in the vicinity of the bombed area; on crops, soil, groundwater and human health. Nevertheless, the damage to the environment was not evaluated as severe and long-term, although the element of widespread was considered fulfilled. The target of the attack was assessed as a legitimate military objective and the accompanying damage to the environment (and civilians) was assessed as proportionate while maintaining the precaution principle.[11] Therefore, the committee advised the prosecutor not to start a formal investigation.[12] The case confirmed the conclusion found by the grammatical interpretation that the elements of widespread, long-term and severe damage to the environment must be fulfilled

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[10] „...The term 'severe' in ENMOD has been interpreted by the Committee on Disarmament to mean 'serious or significant disruption or harm to human life, natural and economic resources or other assets'... the Committee on Disarmament has interpreted 'widespread' to mean harm encompassing an area on the scale of several hundred square kilometres. Background material to API similarly focuses only on geographic scale, defining 'widespread' as thousands of square kilometres.... The requirement of 'widespread' may also be satisfied if damage crosses state boundaries, reflecting the principle of prevention of significant transboundary harm, recognised in international and environmental law... The Committee on Disarmament has interpreted the closely related term 'long-lasting', the term used in ENMOD, to mean a period of several months or a season, while the background materials to API interpret 'long-term' as a period of decades." Stop Ecocide Foundation: *Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core Text*, June 2021. Online: https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf. Tiež aj JANKUV, Juraj: *Environmentalizácia medzinárodného práva verejného a jej vplyv na právo Európskej únie a právny poriadok Slovenskej republiky*. Praha: Leges, 2021, s. 290.

[11] CHABERT, Valentina: Environmental protection in times of war: NATO's 1991 Operation Allied Force bombing campaign in the Federal Republic of Yugoslavia.
In: *Opinio Juris* (20.03.2022). Online: https://www.opiniojuris.it/environmental-protection-in-times-of-war-natos-1991-operation-allied-force-bombing-campaign-in-the-federal-republic-of-yugoslavia/.

[12] Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia. Online: https://www.icty.org/x/file/Press/nato061300.pdf.

cumulatively. On the other hand, it is not a conclusion confirmed by the judicial panel, but these are only the prosecutor's reasons for not starting a criminal prosecution.

3. WIDESPREAD DESTRUCTION OF THE ENVIRONMENT AS OTHER CRIME UNDER INTERNATIONAL LAW

International criminal law is not an end in itself, but aims to protect the interests of the international community expressed in the legal norms of other branches of international law. In other words, the international community considers some norms to be so fundamental that leaving their enforceability to the general sanctions and responsibility regime of international law was not considered sufficient. Therefore, in relation to them, a simultaneous international criminal responsibility of an individual for their violation occurs. In relation to war crimes, such norms are the norms of international humanitarian law (their serious violations). Concerning crimes against humanity and the crime of genocide, these are the core norms of international human rights law.[13]

When analysing the definitions of crimes against humanity and the crime of genocide as defined in the Rome Statute, we find that the environment is not explicitly protected by these norms and thus confirms the previous conclusion of the doctrine that the protected interest is human rights (of the first generation, i.e. .the right to life, personal freedom, respect for family ties, etc.) of a group of individuals (in contrast to war crimes, where even one victim is sufficient, genocide and crimes against humanity require multiplicity of victims).

However, it is possible to consider the protection of the environment as a secondary object of the actual nature of the crime, i.e. protection provided alongside and thanks to the protection provided to individuals.

Specifically, the destruction of the environment can fulfil the objective side of the following crimes:

1. Crime of genocide:

"Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."[14]

2. Crime against humanity:

"Extermination" where "extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population."[15]

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[13] Compare SVAČEK, Ondřej: *International Criminal Law*, Univerzita Palackého v Olomouci, 2012, p. 12.
[14] Art. 6 (c), Rome Statute of the ICC (1998).
[15] Art. 7 (1) (b), (2))b) Rome Statute of the ICC (1998).

In both cases, the destruction of living conditions can consist of destruction of the environment - in the burning of forests, poisoning of water sources, air or water pollution, desertification, and so on. The prohibition of large-scale and systematic attacks on the indigenous population of the forests thus secondarily protects the forest in which they live.

Proving the commission of the crime of genocide is more difficult than in the case of crimes against humanity, as actions that destroy (also) the environment must be accompanied by a specific intent to destroy a protected group. However, it is possible, as the Al-Bashir case shows.[16]

Outside of the framework of the core crimes under international law, as defined in the Rome Statute, the environment is also protected secondarily by suppressing the crime of terrorism. Whether terrorism is currently a crime under international law is the subject of living academic debate.[17]

Anyway, some terrorist acts can be targeted against the environment. Such an attack against the environment can be defined as a crime of terrorism, namely if the dolus specialis element is fulfilled.

The Special Tribunal for Lebanon defined the crime under customary international law as follows:

""1. The perpetration of a criminal act (such as murder, kidnapping, hostage-taking, arson, and so on), or threatening such an act. 2. The intent to spread fear among the population (which would generally entail the cre ation of public danger) or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it. 3. The act must involve transnational element."[18]

Without fulfilling the element of dolus specialis, i.e. the intention with the motive of spreading fear or coercing a national or international authority to take (or not take) a certain action, we cannot speak of environmental terrorism[19] in the legal sense of the word.

Thus, it is possible to argue that the destruction of the environment outside of international armed conflict still can be punished as a crime under international law. But the current legal status of criminal protection of environment *de lege lata* is insufficient, as it is protected mainly only indirectly. As some argue, inferring criminal responsibility for the

[16] „... the Chamber considers that one of the reasonable conclusions that can be drawn is that the acts of contamination of water pumps... were committed in furtherance of the genocidal policy, and that the conditions of life inflicted on the Fur, Masalit and Zaghawa groups were calculated to bring about the physical destruction of a part of those ethnic groups." Para. 38 *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Second Decision on the Prosecution's Application for a Warrant of Arrest, 12 July 2010, ICC-02/05-01/09-94.

[17] E.g. MAREČEK, Lukáš: Terrorism as a crime under international customary law introduced by special tribunal for Lebanon In *The Lawyer Quarterly*. Vol. 7, No. 2 (2017), s. 73-86. Online: https://tlq.ilaw.cas.cz/index.php/tlq/article/view/231.

[18] Case No. STL-11-01/1, 16. February 2011, para. 85.

[19] Has to be carefully distinguished from ecoterrorism.

destruction of the environment, apart from a war crime committed during an international armed conflict, is on lines of the principle of legality.[20]

4. ECOCIDE – CRIME *DE LEGE FERENDA*.

In the previous text, we came to the conclusion that damage to the environment, without a negative impact on people (and outside the context of an international armed conflict), in the current state of *de lege lata* it is not covered by the protection provided by international criminal law. Whether it is, for example, pollution of the open sea, Antarctica, or any environment that does not have a criminally relevant causal nexus to causing death, bodily harm or other harm to the rights and interests of the civilian population, or protected groups. And so, given that the environment during peacetime is not protected as the primary object of any crime under international law, the crime of ecocide (less often "geocide") has to be understood as a concept *de lege ferenda*.

States, as well as experts and the wider public, are aware of this gap, and therefore there are several initiatives to establish the definition of environmental crimes under international law, called the crime of ecocide - from the Greek prefix oîkos (household), and the Latin caedo, meaning to kill. Thus, the name in a figurative sense means the destruction of the environment - the common home of people and other organisms. A formal proposal to supplement the Rome Statute was submitted in December 2019 by the island states of Vanuatu and the Maldives. A comprehensive proposal was presented, for example, by the non-governmental organization Stop Ecocide International, whose proposal was also noticed by the International Law Commission.

This NGO proposes following definition: "For the purpose of this Statute, "ecocide" means 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."[21]

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[20] PEREIRA, Ricardo: After the ICC Office of the Prosecutor's 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide? In *Criminal Law Forum*. Vol. 31 (2020), s. 217.

[21] Article 8 ter Ecocide

1. For the purpose of this Statute, "ecocide" means 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.
2. For the purpose of paragraph 1:
    1. "Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
    2. "Severe" means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
    3. "Widespread" means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
    4. "Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;

In comparison to the Rome Statute's definition of environmental war crimes mentioned in the first chapter of this paper,[22] this definition is much more extensive.

It requires "knowledge, that there is a substantial likelihood" which is a negligence standard of *mens rea* compared with the intentional standard set by the Rome Statute, where even *dolus eventualis* is not regarded as sufficient. Rome Statute requires that the perpetrator had at least knowledge, that the consequence "will occur in the ordinary course of events."[23] Inclusion of the proposed provision on ecocide would therefore mean a special provision regarding the subjective element of a crime (*mens rea*). It is debatable why this particular crime should have a lower level, and if this would not lead to the debate, why not lower it also regarding others?

Regarding the objective element of the crime (*actus reus*) the environmental war crime requires, that the consequence – environmental damage – is widespread, long-term and severe cumulatively. The proposal provides the existence of two cumulative conditions – a) severe and b) alternatively widespread or long-term.

Naturally, the difference is also the absence of a link with an armed conflict (war nexus), so the crime of ecocide can be committed both during an armed conflict and during peace, although during an armed conflict, in the opinion of the author, the principle of specialty should be applied - that is, the act should should have qualified through the prism of a war crime.

Finally, proportionality (expressed in the element of wanton) will not be measured in relation to the military necessity (military advantage anticipated) but in relation to the social and economic benefits anticipated.

5. CRIMINAL RESPONSIBILITY OF LEGAL PERSONS: ANOTHER CHALLENGE

If ecocide were to be defined as another crime under the Rome Statute, we face another challenge. This is the absence of criminal liability of legal entities under international law. International criminal justice has not yet taken the path of inferring criminal responsibility against legal entities, except for the Special Tribunal for Lebanon.[24]

"Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space." Stop Ecocide International: Legal Definition of Ecocide. Online: https://www.stopecocide.earth/legal-definition.

[22] Art. 8 (2) (b) (iv), Rome Statute of the ICC (1998).

[23] Art. 30 (2) (b) , Rome Statute of the ICC (1998). „The Chamber agrees with previous rulings that the phrase will occur in the ordinary course of events' as laid down in Article 30(2)(b) and (3) of the Statute which requires virtual certainty' Accordingly, any lower threshold, such as dolus eventualis, recklessness and negligence, is insufficient to establish intent' and knowledge' in relation to a consequence under Article 30(2)(b)." Ftn 2348, The Prosecutor v. Bosco Ntaganda, Judgment, 08 July 2019. No.: ICC-01/04-02/06.

[24] See MAREČEK, Lukáš: Criminal responsibility of legal persons introduced by the special tribunal for Lebanon In *Pécs journal of international and European law*, 2 (2020), pp. 62-70.

This is all the more prominent in the case of causing environmental damage, as multinational business companies from first-world countries, operating in developing countries, are often significant environmental harmers.[25]

This fact is also reflected in principle number 10 of the Draft Principles of Environmental Protection during Armed Conflict from 2022,[26] in which the International Law Commission states that states should take appropriate measures to ensure that business companies under their jurisdiction respect the protection of the environment.

Inferring criminal liability against a legal entity, not only against a natural person, is especially appropriate in cases where the destruction of the environment is not only a consequence of the individual decision of the responsible person, but is related to the generally set policy of directing the activities of the legal entity - that is, where the destruction of the environment is a manifestation system setting of the company, and where the individual's decision is only an inevitable product of this general system strategy of the legal entity.

6. DUTY OF THE STATES TO COOPERATE AND SUPPRESS ENVIRONMENTAL CRIMINALITY

Part of international criminal law in the broader sense are also so-called treaty-based crimes, i.e. crimes whose criminality results from national law and to whose criminalization states have committed in an international treaty. Among such in this context is mainly the (European) Convention on the Protection of the Environment through Criminal Law (1998), and the subsequent regional regulation.[27]

Another example is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973, CITES)[28] or the Basel Convention on the Transboundary Movement of Hazardous Waste (1989).[29]

In case of treaty-based crimes, an indirect coercive regime is applied through the fulfilment of the reception obligation by the state, which has undertaken to do so based on an international agreement. If the state fails to fulfil its reception obligation, only the state's responsibility comes into consideration. The criminal liability of individuals is indirect and its necessary prerequisite is the fulfillment of the state's obligation to establish a certain factual basis of the crime. An individual is not responsible for an action that was not criminal at the time it was committed because the state did not fulfil its reception obligation. This results in the risk of impunity for perpetrators of environmental crime in the event of the state failing to fulfil its implementation obligation.

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[25] See e. g. RAUXLOH, R.:The Role of International Criminal Law in Environmental Protection" in BOTCHWAY, F. (ed.): *Natural Resource Investment and Africa's Development* (Edward Elgar, 2011), pp. 432-434.
[26] Draft principles on protection of the environment in relation to armed conflicts 2022.
[27] Directive 2008/99/EC.
[28] Art. 8 (1) (a), CITES (1973).
[29] Art 9, Basel Convention (1989).

The difference is also that the principle of universality (universal criminality) and non-statutory limitation is not applied to such treaty-based crimes. A state with jurisdiction may decide not to prosecute such a crime, the factual risk of which increases in direct proportion to the political and other position of the perpetrator in the hierarchy of the society of the given state. Another state may not have title to establish its own jurisdiction. This problem can also arise in relation to territories that do not belong to the sovereignty of any state, such as causing ecological damage on the high seas. Here, too, the approach where environmental crimes would be crimes under international law, not merely treaty-based crimes, would be beneficial.[30]

In addition to the obligation to implement the criminalization of conduct against the environment, there is also an obligation to cooperate in criminal matters related to environmental criminality. These obligations can be found in bilateral or multilateral treaties.[31]

7. CONCLUSION

In conclusion, we can identify with the opinion that the destruction of the environment generally becomes a crime because of its humanitarian consequences.[32] Damage to the environment is understood only as a form or method by which a certain inhumanity or cruelty is committed.

In other words, in the current state of de lege lata, it is possible to consider the destruction of the environment fundamentally only in connection with the consequences associated with a human - be it life, health or property.

The environment is protected primarily only in the form of a war crime committed during an armed conflict. In other cases, the environment is protected only as a secondary object of the crime - a secondary interest protected by law. Whether in addition to the protection of property (destroyed components of the environment are the subject of property rights) or life and health (destruction of human living conditions).

Other identified shortcomings include the impossibility of inferring criminal liability against legal entities at the level of international law, although the environment is often destroyed precisely by non-governmental organizations - business companies. Also, leaving punishment at the national level by enshrining "only" the implementation obligation of states in the case of treaty-based crimes, which can lead to the risk of impunity.

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[30] Also MENZEL, Jörg: Criminal Offences against the Environment: The Emergence of International Environmental Criminal Law In *Rule of Law for Good Environmental Governance*. Singapure: Konrad-Adenauer-Stiftung, 2015, pp. 175-176.

[31] Closer Bližšie MENZEL, Jörg: Criminal Offences against the Environment: The Emergence of International Environmental Criminal Law In *Rule of Law for Good Environmental Governance*. Singapure: Konrad-Adenauer-Stiftung, 2015, p. 174.

[32] WEINSTEIN, Tara: Prosecuting Attacks That Destroy the Environment: Environmental Crimes or Humanitarian Atrocities? In *Georgetown International Environmental Law Review*, 17/4 (2004-2005), p. 720. 697-722 at 720.

These arguments also highlight the reasons that lead to the various ambitions and proposals *de lege ferenda* to establish the the crime of ecocide.

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Rome Statute of the International Criminal Court from 1998.

Katanga, Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 892.

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INTERNATIONAL ADMINISTRATION OF THE TERRITORY AS A MEANS OF ENVIRONMENTAL PROTECTION[1]

MEDZINÁRODNÁ SPRÁVA ÚZEMIA AKO SPÔSOB OCHRANY ŽIVOTNÉHO PROSTREDIA

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Abstract: International territorial administration is an institution of international law whose origins can be traced back in modern times to the second half of the 19th century. The 20th century has already seen a considerable amount of experimentation with the concept. The question of environmental protection is an important item in the administration of territory, not excluding the international one. In this article we discuss two examples where the environmental aspect was present, namely the administration of the Saarland and Namibia. Using these examples, we will try to present different modes of international governance as alternatives that can contribute to solutions to environmental problems.

Abstrakt: Medzinárodná správa územia predstavuje inštitút medzinárodného práva ktorého počiatky môžeme dohľadať v modernej dobe do druhej polovice 19. storočia. 20. storočie sa už nesie v značnom objeme experimentácie s týmto konceptom. Otázka ochrany životného prostredia je dôležitou položkou správy územia tej medzinárodnej nevynímajúc. V tomto článku rozoberáme dva príklady kde bol aspekt životného prostredia prítomný, a to správa Sárska a Namíbie. Na týchto príkladoch sa pokúsime predostrieť rôzne módy medzinárodnej správy ako alternatívy ktoré môžu prispieť riešeniam environmentálnych problémov.

Key words: *Saar basin, Decree No. 1, international administration of the territory, environmental law*

Kľúčové slová: *Sárska panva, Nariadenie č. 1, medzinárodná správa územia, právo životného prostredia*

1. INTRODUCTION

From multiple instruments that have potential to provide protection for the environment besides human rights, one of these instruments is the institution of international administration. Such instruments are relatively new concept within the

[1] This article was financed by grant scheme 1/0713/23 Medzinárodná ochrana environmentálnych práv – quo vadis?.

international law. In this article we will try to give examples from past instances of international administration. Consequently, in our conclusions we will synthesise possible model administration in relation to the future use in situations that could be potentially seen as threat to environment. The dawn of international administration can be seen in an aftermath of the first world war. First of these was the well-known mandate system which we will further elaborate in second part of this article. First what is the international administration? Administration in this sense is tied to the concept of modern states, that is the international administration is conducted by the representatives of two or more states or community of states such as international organizations, that is for the first instance League of Nations and nowadays United Nations. These represent universal system of administration. The nature of administration could vary depending on the competence that was provided to entities designated as administrative. It could range from indirect or even more direct administration akin to that exercised by states domestic bodies. Therefore, we can categorise international administration as direct or informational character, that comprises of bodies that recommend and consult the states or other entities whereas by their own request or simply by providing the information ex offo.[2] Primary principle that governs international administration is the consent of involved parties, although examples of mandate system or the UN Security council resolutions present an exception to this rule. For the purposes of this article, we will delve into the idea of international administration in the form of international organisations. That involves exclusive or at least supervisory role of international organisations. The conclusion will also operate under these premises. That is to say that international administration by the means of state delegates without any supervisory entity possessing distinct international personality, is not necessarily out of question. But let's presume that administration by the means of international organisation presents certain benefits that can involve larger international community and therefore is able to provide more effective and politically safe option where different nations preferences can be balanced. Another important aspect of international administration lies in its duration. These could be divided in two groups: permanent or temporary. Permanent are defined by unspecified duration whereas temporary are defined by the time or specific goal after which they function ceases. Both have advantages and disadvantages.

2. SAAR BASIN ADMINISTRATION- BEGINNINGS

The Saar basin is the area that was important for its production of coal, and since 65 percent of France steel production as well as large portion of coal mine were flooded[3] and since the coal was the primary instrument of gaining energy and therefore could be considered as an engine of industry mainly in war effort. After the war it presented the risk

[2] Hill, N. L., International administration, McGraw-Hill Book Company, 1931,p.1-4.
[3] MacMillan, M., Paris 1919 Six month that changed the world, Random House,2003, Kindle e-book edition, (loc. 774).

for post war peace. The Treaty of Versailles in its articles created a special Commission for administration of Saarland, but the coal mines would be transferred under direct control of France. This created two ways of administration one wider truly international other national through other states. This created regime of *nuda proprietas* for Germany.[4] Also this type of administration began as horizontal creation of administration through the treaty mechanism, whereas many instrument after became vertical in nature such as resolutions of UN SC.[5] Despite its horizontal nature the created Saar basin Governing Commission had the widest powers out of all then known international commission of administrative character. It was to be established on temporal basis for 15 years as a means of compensation for damages suffered by France as well as a compromise for outright annexation of the territory.[6] The range of powers that Commission had was quite extensive such as changing of laws and rules in force on November 11, 1918, if necessitated by the Treaty of Versailles, levying taxes and dues, protection of persons and their property and it had sole power to interpret procedural rules.[7] The composition of the five-member Commission was in its initial period composed of French president, inhabitant of Saar basin and three members from countries other than France and Germany. The only exception to wide administrative powers were coal mines themselves that were given under direct control of France[8] that established Mines Domaniales Franfaises de la Sarre or the Mining Domain. This was the means of compensating damages suffered by French coal industry as well as to provide sufficient coal production for French domestic market. The problem for French was to balance the need for effective use of natural resource, dependence of the population on mining industry on one hand and temporal nature of the control lasting only 15 years culminating in plebiscite. This proved to be a detriment for development of coal industry as it was maintained only to exploit the resources[9], resulting in prewar output of 1913.[10] This proved to be of consequence since presumed in 1935 plesbicite turned vast majority of 90.36 percent voted for favour of incorporation to Germany.[11] Although controversial among domestic population and outside spectators the Saar basin administration proved to be a success despite problems stemming from dual nature of administration and lack of democratic mechanism. But it shown the new way of incorporating international entities besides purely national states, also issue of natural resources became a possibility in international administration.

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[4] Knoll, B., The legal status of territories subjects to administration by interantional organisations, Cambridge Univesity Press, 2008, p. 29.
[5] Knoll, B., The legal status of territories subjects to administration by interantional organisations, Cambridge Univesity Press, 2008, p. 36.
[6] Stahn, C., The Law and Practice of International Territorial administration Versailles to Iraq and Beyond, Cambridge University Press, 2008, p. 164.
[7] § 21 – 33 of Treaty of Versailles.
[8] Also customs union with France was established.
[9] Reischer, O. R., Saar Coal After Two World Wars, In: Political science Quaterly, Vol. 64, No. 1, 1949, p. 52.
[10] Ibid. Reischer, p. 53.
[11] Pollock, J. K., International Affairs: The Saar Plebiscite. In: *The American Political Science Review, 29(2)*, p.282.

3. DECREE NO. 1 – CLOSER TO PROTECTION OF ENVIRONMENT

Another example of international administration that we would like to describe for purposes of this article, is the direct involvement of the UN in South West Africa, former colony of German empire, later renamed Namibia. This territory was designated as C mandate under Treaty of Versailles, that conferred least amount of autonomy which meant that domestic legal order of mandate power would be applied without any restrictions. The mandate was conferred to Great Britain and was exercised by South Africa. The deterioration of South African politics towards apartheid meant increased attention from global community dealing with the idea of self-determination, de-colonisation and the issue of apartheid.[12] Mandates were meant to be surpassed by trusteeship system, but this was not the case of South West Africa, South Africa retained its mandate. This was problematic also from the fact that supervisory organisation League of Nations was dissolved. This proved to be key in dealing with status of South West Africa. Fist the ICJ in advisory opinion from 1950 **International status of South West Africa,** stated that the supervisory role had transferred to General Assembly of United Nations as the successor to Council of the League of Nations. Mandatory power on the other hand was not obliged legally to transform mandate to trusteeship system. Tension arose when situation in South Africa further deteriorated by the practice of apartheid. In 1966 UN General Assembly terminated South African mandate and established United Nations Council for Namibia. The council served as a body capable of directly administering the territory of Namibia without any other agreement since the mandate according to ICJ was in fact a treaty-based instrument between United Nations (successor to League of Nation) and mandate power the Republic of South Africa. What is interesting that Council for Namibia used its administrative power (akin to domestic bodies of sovereign states) in issuing only legislative act **Decree No. 1 on Natural resources of Namibia**: "*to protect the natural resources of the people Namibia and of ensuring that these natural resources are not exploited to the detriment of Namibia, its people or environmental assets*", that was it covered wide area of protection against corporate or private prospecting of resources in various forms, all licences issued by South African authorities were made null and void. The authority of Council for Namibia was to expropriate and detain any illegally exported or held resources.[13] The Council itself didn't have any presence in Namibia (that was still de facto held by south African authorities), which provided certain western importing countries arguments for not recognising Decree No. 1. What is the most interesting thing is that despite ICJ advisory opinion **Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),** the resolutions of UN GA a UN SC were still at that time not

[12] This culminated in International Convention on the Suppression and Punishment of the Crime of Apartheid from 1973.

[13] Points 1-7 of Decree on the natural resources of Namibia adopted by the United Nations Council for Namibia at its 209th meeting on 27 September 1974.

universally recognised as binding.[14] The Council choose to investigate the options for enforcing the Decree regarding private companies trading with resources from Namibia, mainly in seven countries. The mechanism that was identified was direct judicial action through domestic courts where USA, Netherlands and Belgium allowed the Council for Namibia direct approach. Since art. 104 of the UN Charter and art. 22 along with art. 1 of Convention on the Privileges and Immunities of the United Nations, conferred to Council legal personality as a subsidiary organ of the UN.[15] Other countries such as France, Great Britain and Federal republic of Germany lacked necessary domestic mechanism either by lack of jurisdiction[16] or in case of Germany the uranium from Namibia was at disposal of EURATOM structures as well as being part European Economic Community. In case of France the legal experts advised individual action through the European Convention of Human Rights by means of infringement of principles of self-determination of peoples, defence of human rights and liberty.[17] The UN GA resolution 3295 (XXIX). Question of Namibia Chapter IV point 7: *"Requests all Member States to take all appropriate measures to ensure the full application of, and compliance with, the provisions of the Decree on the Natural Resources of Namibia enacted by the United Nations Council for Namibia on 27th September 1974 and such other measures· as may be necessary to assist in the protection of the national resources of Namibia."* Despite this the Council had only success in Netherlands and with diplomatic sessions with private companies importing the Namibian resources.[18] This partial success of administration was primary in external relation, lacking in any territorial presence in Namibia. This administration shows the importance of securing natural resources as well as natural environment and played crucial part of self-determination process of peoples. The main problem was the lack of physical presence in the area, which after 1989 was solved by **United Nations Transition Assistance Group** in preparation of Namibian election leading to its independence.[19]

4. POSSIBLE IMPLICATIONS TOWARDS FUTURE?

The idea of international administration is not concept that is blind to environmental issues, as we see furthering of global scale issues such as climate change or armed conflicts. Although primarily the international administration is tied to solving political issues of

[14] Despite this the Security Council usually prefers to refer to the Chapter VII of the Charter explicitly.
[15] IMPLEMENTATION OF DECREE NO. 1 FOR THE PROTECTION OF THE NATURAL RESOURCES OF NAMIBIA, Study on the possibility of instituting legal proceedings in the domestic courts of States, Report of the United Nations Commissioner for Namibia p. 16.
[16] Since Decree No. 1 was defined as sui generis domestic legal instrument of Namibia.
[17] IMPLEMENTATION OF DECREE NO. 1 FOR THE PROTECTION OF THE NATURAL RESOURCES OF NAMIBIA, Study on the possibility of instituting legal proceedings in the domestic courts of States, Report of the United Nations Commissioner for Namibia, p. 21 available at: https://digitallibrary.un.org/record/111393?v=pdf.
[18] Stahn, C., The Law and Practice of International Territorial administration Versailles to Iraq and Beyond, Cambridge University Press, 2008, p. 257-259.
[19] See about UNTAG at: https://peacekeeping.un.org/en/mission/past/untagFT.htm.

constitutional nature, the environmental issues are still present as an addition tied with other issues. The major drawback could be the legal uncertainty or legal division caused by different regimes coinciding in particular area mainly when we operate within the temporal international administration such as was present in Saarland. This could be offset by recognising local (domestic) laws already existing with only necessary legal incursion of the outside (that is international administration legislature, rules set by treaties or resolutions). Also, what was present in Saarland administration, the relative cumbersome implementation related to the treaty-based nature of administration could be seen as a drawback to international administration as well. The protection of human rights should be innate part of international administration especially the possibility to seek redress against the decision of administrating bodies. Practical application could be seen in for example with environmental issues in mind in West Sahara that contains more than 72 percent of total global reservoirs of phosphates[20], a crucial component for modern synthetic fertilizers, that cannot be manufactured and therefore it is finite resource. This could be further encouraged by continuous struggle of indigenous tribes trying to establish independent state without Moroccan influence. By establishing certain form of international administration, the problem of self-determination and crucial resource management could be at least pushed towards sustainability and creation of independent West Sahara. Another practical use could be a post war conflict resolution with environmental impact of war is becoming more and more crucial issue, as Golovko states: "*Military actions always cause significant damage to the environment especially when norms of humanitarian law are violated. Damage is caused to various components of the environment*".[21] In conclusion international administration could provide an interesting instrument in relation to specific environmental issues currently (or in the future) faced by national states and the international community. The history of international administration is quite extensive so elimination of errors, inefficiencies, lack of legitimacy could be minimised if not eliminated. Therefore, it could provide an interesting alternative in protection of environment or administration compared to individual protection of human rights which in certain parts of the world is lacking or absent. Contemporary examples of international administration operate with the concept protection of environment such as Danube Commission[22] or United Nation Mission in Kosovo.[23] Both temporal and permanent administration have potential risks and benefits, so far the post conflict administration is best suited for temporal administration, whereas resource

[20] Kasparak, A., The desert rock that feeds the world, The Atlantic, November 29, 2016, available at: https://www.theatlantic.com/science/archive/2016/11/the-desert-rock-that-feeds-the-world/508853/.

[21] Golovko. L., International Legal Aspects of the Assessment of Environmental Damage Caused by Military Actions. Bratislava Law Review, 8(1), p. 99.

[22] For example, Joint Statement on Guiding Principles for the Development of Inland Navigation and Environmental Protection in the Danube River Basin available at: https://www.danubecommission.org/uploads/doc/72/Joint%20Statement/EN/Joint_Statement_FINAL.pdf.

[23]REGULATION NO. 1999/22 of UNMIK available at: https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_22.htm, on involvement of non-governmental organisation in environmental protection.

management of global importance could have permanent character.Therefore, international administration as an instrument with experience how to add another layer of protection of environment and could bring legal stability to otherwise uncertain/disputed areas of the world. This of course as most of international mechanism require horizontal action such as international treaty or vertical action in a form of UN SC resolution.

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PROTECTION OF ANIMALS DURING ARMED CONFLICT[1]

OCHRANA ZVIERAT POČAS OZBROJENÝCH KONFLIKTOV

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Abstract: The paper provides an analysis of current options for animal protection during armed conflict. Although current international humanitarian law contains a variety of rules to prevent excessive human suffering, the negative consequences of armed conflict are also visible in the environment and animals often fall victim to war indeed. The aim of this paper is therefore to shed light on how international humanitarian law can protect animals during armed conflicts and to point out possible overlaps with the protection of other existing interests, such as the protection of the environment. In addition, the paper also outlines suggestions for where international humanitarian law might go in the future to provide more coherent protection of animals affected by armed conflict as a reflection of current initiatives seeking to improve the status of animals in society and law.

Abstrakt: Príspevok poskytuje analýzu súčasných možností ochrany zvierat počas ozbrojených konfliktov. Hoci súčasné medzinárodné humanitárne právo obsahuje škálu pravidiel na predchádzanie nadmernému utrpeniu ľudí, negatívne dôsledky ozbrojených konfliktov sa prejavujú aj na životnom prostredí a v neposlednom rade padnú mnohokrát za obete vojne aj zvieratá. Cieľom príspevku je preto objasniť, akým spôsobom dokáže medzinárodné humanitárne právo chrániť zvieratá počas ozbrojených konfliktov a poukázať na možné presahy s ochranou iných existujúcich záujmov, ako je napríklad ochrana životného prostredia. Okrem toho príspevok načrtáva aj návrhy, kam by sa mohlo medzinárodné humanitárne právo v budúcnosti uberať tak, aby vo väčšej miere chránilo zvieratá postihnuté ozbrojenými konfliktmi a odrážalo tak súčasné iniciatívy snažiace sa o zlepšenia postavenia zvierat v spoločnosti a práve.

Key words: *animal, armed conflict, environmental protection, international humanitarian law*

Kľúčové slová: *zviera, ozbrojený konflikt, ochrana životného prostredia, medzinárodné humanitárne právo*

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1. INTRODUCTION

Although it can be said that war is a human affair, people are not the only ones who often risk their lives and health in conflicts. Throughout history, animals have steadfastly accompanied humans on the battlefield. Dogs, for example, were so valued for their unwavering loyalty that, in addition to serving as guard or patrol dogs, they were also used in conflicts to carry messages, lay telegraph wires, detect mines, and dig out bomb victims.[2] In addition, like cats, they were trained to hunt rats in the trenches. Pigeons were used to carry messages, while canaries were employed to detect poisonous gas. Horses, donkeys, mules, and camels carried food, water, ammunition, and medical supplies to the front lines.[3]

However, war does not solely concern animals that are directly involved in assisting combat units. Equally critical are the repercussions that armed conflicts have on other animals, whether they are domestic animals, those in shelters, on farms, in rescue centers, or in zoos. The lives of wildlife are inevitably and drastically disrupted by the ravages of armed conflicts, as well.

For the sake of completeness, it is also worth mentioning that the already critical situation and ensuing chaos brought about by warfare are often exploited for illegal trade of valuable animal products, leading to animals becoming victims of poachers in addition to suffering from the direct consequences of the conflict.[4]

In this regard, the ongoing conflict in Ukraine is essential to be mentioned, indeed, as it has, in addition to the horrific suffering endured by people, also led to the death or the imminent threat of extinction for many animal species, according to experts.[5]

2. THE STATUS OF ANIMALS IN THE CONTEXT OF INTERNATIONAL HUMANITARIAN LAW

Despite the evident impact on the lives and well-being of animals, current international humanitarian law largely overlooks them and does not consider them as entities deserving of independent protection. This is the case despite the fact that the status of animals in society has undergone significant changes in recent years, with increasing recognition of the specific value of animals as living beings, undeniably distinct from other natural elements.

International humanitarian law, as a distinct branch of international law, remains markedly anthropocentric to this day. The primary objective of the norms established by both

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[2] Animals in War Memorial Fund: History. [online] Accessed from: https://animalsinwar.org.uk/history/.

[3] Imperial War Museums: 15 Animals That Went To War. [online] Accessed from: https://www.iwm.org.uk/history/15-animals-that-went-to-war.

[4] MACDONALD, J.: How War Affects Wildlife. [online] Accessed from: https://daily.jstor.org/how-war-affects-wildlife/

[5] For example, according to the scientists' study, the eagles had to change the routes through which they otherwise regularly migrate in order to avoid areas in Ukraine where there is fighting. See: RUSSELL, C. J.G. et al.: Active European warzone impacts raptor migration. In: Current Biology, Vol. 34, issue 10 (2024), pp. 2272–2277.

the Hague and Geneva Conventions is the *humanization* of armed conflict,[6] thus centering their focus on the protection of human interests.

Through these conventions, animals do receive a certain degree of indirect and somewhat ambiguous protection. In the context of the introductory text of this article, which briefly outlines the irreplaceable role of animals assisting humans in war or those whose lives are drastically endangered by conflict, it should be noted that animals in armed conflict can be viewed from various legal perspectives. Those animals that directly assist humans on the battlefield, such as detecting landmines or helping with the transport of the sick or medical supplies, may theoretically, according to some authors,[7] be considered as part of medical transports. These are protected under the provisions of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) or the Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949).[8] That is consistent with the broad definition provided in Art. 8 (g) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977 (hereinafter referred to as "*Additional Protocol I*"), which does not exclude "live" means of transportation from those receiving protection.

Wildlife, including endangered species, is similarly affected by war. According to some authors, these animals may hold cultural significance for people, as they are perceived as traditional food sources, play roles in traditional sports or religious activities (rituals), or have sacred status (e.g., national symbols). Endangered species or those on the brink of extinction hold considerable value for humanity as a whole.[9]

The most general (and arguably "the most natural") conception of animals in the context of war under humanitarian law is their perception as (civilian) objects and as part of the natural environment shared with humans. Therefore, this article will focus on these two perspectives through which potential methods of protecting animals under international law during armed conflicts can be examined, the different approaches involved, and the possible pitfalls of such existing legal frameworks.

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[6] VRŠANSKÝ, P., VALUCH, J. a kol.: Medzinárodné právo verejné. Osobitná časť, 2013. p. 389.

[7] DE HEMPTINNE J. Animals as Means of Medical Transportation, Search and Rescue. In: Peters A., de Hemptinne J., Kolb R., eds. Animals in the International Law of Armed Conflict, 2022. p. 184-199.

[8] Art. 35, 36 and 37 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949; Art. 21, 22 and 23 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

[9] As part of human culture, animals are thus protected through e.g. Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954. See: PETERS, A., DE HEMPTINNE, J. Animals in war: At the vanishing point of international humanitarian law. In: *International Review of the Red Cross*, Vol. 104, No. 919 (2022), p. 1298-1301.

3. ANIMALS AS OBJECTS INDISPENSABLE TO THE SURVIVAL OF THE CIVILIAN POPULATION

It is true that the rules of humanitarian law generally apply to the victims of armed conflicts, including wounded and sick in the armed forces, prisoners of war, and civilians. This is because these groups are unable to engage directly in the conflict and thus are afforded a specific legal regime during such times.[10]

At this point, in the context of the possibilities for the protection of animals during conflict, it is necessary to draw attention to the third group of persons, namely the civilian population, the protection afforded by the Geneva Conventions has been further developed and supplemented by Additional Protocol I, which, in addition to defining who may be considered civilians or individual civilian person, also provides a negative definition for civilian objects,[11] in the sense that, in accordance with the second sentence of the Art. 52 par. 1 of the mentioned protocol: *„Civilian objects are all objects which are not military objectives as defined in paragraph 2*." The second paragraph of the provision further states that: *„…military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage*."[12] Attacks can naturally be conducted exclusively on military targets. In case of doubt, the civilian qualification of the objects shall be presumed in accordance with paragraph 3.

According to some authors, however (using a historical method of interpretation), the original intent was to protect inanimate objects,[13] which would automatically exclude animals from this category of objects. Nevertheless, other provisions of the Additional Protocol do not exclude the classification of animals as civilian objects. Art. 54 par. 2 explicitly prohibits attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population, including livestock and, therefore, farm animals. Furthermore, paragraph 1 of this article also prohibits the use of starvation of civilians as a method of warfare. A similar provision is found in Art. 14 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 1977,[14] thus extending protection to (farm) animals in non-international armed conflicts as well. This is particularly important considering, as Valuch argues, that most contemporary conflicts are non-international in nature.[15] Consequently, it could be claimed, considering the points discussed above and the

[10] KLUČKA, J.: Medzinárodné právo verejné (všeobecná a osobitná časť), 2008. p. 476.
[11] *Ibid*. p. 488.
[12] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Art. 52 par 2.
[13] PETERS, A., DE HEMPTINNE, J. Animals in war: At the vanishing point of international humanitarian law. In: International Review of the Red Cross, Vol. 104, No. 919 (2022), p. 1290.
[14] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.
[15] VRŠANSKÝ, P., VALUCH, J. a kol.: Medzinárodné právo verejné. Osobitná časť, 2013. p. 418.

progressively expanding legal recognition of animal protection within society, that animals, despite being living beings, could be classified as civilian objects under the relevant provisions of Chapter III of Additional Protocol I. Such a moderately progressive interpretation is also consistent, according to some, with the legal classification of animals as movable property in many domestic legal systems worldwide.[16]

A contrario, according to some authors,[17] animals cannot be regarded as civilian objects in the following cases: *a)* if they are used as weapons (e.g., by attaching explosives to the animal's body), *b)* if they are classified as military objectives in accordance with Art. 52 par. 2 of Additional Protocol I, or *c)* if they suffer harm during indiscriminate attacks,[18] where the damage cannot be considered proportionate to the incidental loss, taking into account the wording of Art. 51 par. 5(b) in conjunction with Art. 57 of Additional Protocol I.

In this context, the question of assessing the value of the damage caused is particularly intriguing, as it largely depends on the value attributed to animals, which can vary significantly from culture to culture and change over time. Based on the social value of animals in most states, the assessment of their value will depend primarily on their utility to humans, such as whether they assist with physical labour or serve as food, etc. Additionally, higher value should be attributed to animals that belong to endangered species.[19]

Despite the potential inclusion of animals under the category of civilian objects, it remains true that this does not protect the animals *per se*, but rather safeguards the value they hold for humans, or their importance to survival of the civilian population. This observation further reinforces the previously mentioned idea of the still-strong anthropocentric focus of this branch of law. According to some authors, however, animals themselves should be afforded protection under international humanitarian law, not merely for their utility to humans, but for their intrinsic value as living beings, distinct from humans yet capable of feeling and perceiving through their senses.[20] This perspective can be supported, especially when considering that while animals might receive protection in situations where they contribute to human survival, such protection is far from sufficient.

The insufficiency becomes evident when examining Art. 54 par. 3 of the Additional Protocol I, which states that animals do not receive protection when they serve exclusively as

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[16] However, the classification of animals as living organisms varies considerably across the world. In many jurisdictions, since the end of the last century, the traditional understanding of animals as objects of private law (so-called *dereification*), which had remained unaltered for a long time, has changed, with animals being perceived as living things, but still constituting the object of private law relations. This further confirms the increased interest in improving the status of the animal as a sentient being also in law. Further see: PETERS, A., DE HEMPTINNE, J. Animals in war: At the vanishing point of international humanitarian law. In: International Review of the Red Cross, Vol. 104, No. 919 (2022), p. 1290.

[17] *Ibid*.

[18] According to Art. 51 par. 4 a ods. 5 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

[19] DE HEMPTINNE, Jérôme. Challenges Regarding the Protection of Animals During Warfare. In: Peters A., ed. *Studies in Global Animal Law*. Berlin, Heidelberg: Springer, 2020. p. 179.

[20] PIPIA, S. Forgotten Victims of War: Animals and the International Law of Armed Conflict. In: Animal Law Review, Vol. 28, No. 175 (2022), p. 197.

sustenance solely for the members of its armed forces[21] or directly support military operations. Even in these cases, the protection is conditional, only guaranteed as long as the civilian population is not left without adequate food and water, thus causing starvation or forced displacement.[22]

However, such wording also implies that the killing of animals for legitimate purposes (other than merely eliminating a population of animals valuable for sustaining humans) does not pose a problem under the rules of international humanitarian law and is, therefore, permitted.[23] Similarly, according to Art. 54 par. 5 of Additional Protocol I, animals do not enjoy protection in cases where harm to their lives or health occurs due to the vital military necessity of a state defending its national territory against invasion. According to some authors, in such cases of destroying one's own "property," the use of a scorched earth tactic on one's own territory to delay the enemy's advance is not prohibited.[24] Such actions, however, would inflict damage not only on the well-being of animals but also on the broader environment, of which animals, together with humans, constitute an integral part. Therefore, the following text, will centre on the protection of animals within the context of environmental preservation, on which armed conflicts often have adverse effects.

4. ANIMALS AS PART OF THE NATURAL ENVIRONMENT DAMAGED BY ARMED CONFLICT

It seems even more natural to include the protection of animals under the broader protection of the natural environment, of which they are an inherent part. Armed conflict has a significant impact on the environment as a whole, often threatening the well-being of future generations. The challenge in the relationship between the environment and armed conflict lies in the fact that there is the scarcity of provisions that directly address environmental concerns. Consequently, its protection must be inferred from conventions that regulate the means, methods, and consequences of armed conflicts.

A key source in this context is Additional Protocol I,[25] which, under Art. 35 par. 3, prohibits the use of methods or means of warfare that are intended to, or may be expected

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[21] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Art. 54 par. 3 a).

[22] *Ibid*. Art. 54 par. 3 b).

[23] PETERS, A., DE HEMPTINNE, J. Animals in war: At the vanishing point of international humanitarian law. In: International Review of the Red Cross, Vol. 104, No. 919 (2022), p. 1298.

[24] *Ibid*. Mareček comes to the same conclusion in relation to the destruction of the state's own property. See also: Mareček, L. Ochrana environmentálnych noriem prostriedkami medzinárodného trestného práva. In: *Bratislavské právnické fórum 2023: právny štát v medzinárodnom práve a medzinárodné právo v právnom štáte / Ondrej Ružička, Veronika Ťažká (zost.)*. Bratislava : Právnická fakulta Univerzity Komenského v Bratislave, 2023, p. 27.

[25] GOLOVKO, L., GULAC, O., OLEKSENKO, R.: International Legal Regulation of Environmental Protection during Armed Conflict and the Possibility of its Application in Ukraine. In: *Conference Proceedings of Selected*

to, cause widespread, long-term, and severe damage to the environment. This prohibition is further extended by Art. 55 par. 1, which also forbids the use of methods or means of warfare that are intended to, or may be expected to, cause such environmental damage that it endangers the health or survival of the population.

The interpretation of the term "*widespread, long-term, and severe damage*" has yet to be clearly defined, even in judicial decisions, as case law in the area of environmental war crimes remains underdeveloped.[26] Another relevant source in the field of environmental protection during armed conflicts is the Convention on the prohibition of military or any other hostile use of environmental modification techniques (known as the ENMOD Convention), adopted by the United Nations General Assembly in 1976. This convention aims to prevent the development of weapons that could cause widespread destructive changes to the environment. It provides guidance on interpreting the aforementioned terms as follows: "*widespread*" should be understood as affecting an area of several hundred square kilometres, "*long-term*" as extending beyond several months or a season, and "*severe*" as causing significant disruption or harm to human life, nature, or economic resources.[27]

Nevertheless, in order to establish accountability for environmental damage, the damage must cumulatively be widespread, long-term, and severe. Since these terms are not sufficiently defined, this creates significant challenges in their practical application.[28] However, experts increasingly recognize that the destruction of areas with high biodiversity or regions known to be inhabited by endangered species or diverse fauna can have serious consequences for the environment as a whole, even if the affected area is relatively small rather than extensive.[29]

As outlined above, Art. 55 par. 1 of Additional Protocol I can be seen as a supplement to its Art. 35 par. 3, along with a reference to the health and survival of the population. At first glance, this seems similar to the protection of civilian objects, which is discussed earlier in the text, and which are protected due to their importance for human survival. However, this is not the case with environmental protection, as confirmed by the *travaux préparatoires*, which

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Papers from 23rd International multidisciplinary scientific geoconference SGEM 2023, Vol. 23, Issue: 5.1, (2023). p. 2.

[26] Mareček, L. Ochrana environmentálnych noriem prostriedkami medzinárodného trestného práva. In: *Bratislavské právnické fórum 2023: právny štát v medzinárodnom práve a medzinárodné právo v právnom štáte / Ondrej Ružička, Veronika Ťažká (zost.)*. Bratislava : Právnická fakulta Univerzity Komenského v Bratislave, 2023, p. 27, 28.

[27] Closer see: Mareček, L. Ochrana environmentálnych noriem prostriedkami medzinárodného trestného práva. In: *Bratislavské právnické fórum 2023: právny štát v medzinárodnom práve a medzinárodné právo v právnom štáte / Ondrej Ružička, Veronika Ťažká (zost.)*. Bratislava : Právnická fakulta Univerzity Komenského v Bratislave, 2023, p. 27. See also: JANKUV, J.: Environmentalizácia medzinárodného práva verejného a jej vplyv na právo Európskej únie a právny poriadok Slovenskej republiky, 2021, p. 290.

[28] GOLOVKO, L. International Legal Mechanisms for holding the Russian Federation accountable for causing Environmental Damage as a result of Armed Aggression against Ukraine. In: *Bratislava Law Review.* Vol. 7, No. 1 (2023), p. 31.

[29] International Committee of the Red Cross. Guidelines On The Protection Of The Natural Environment In Armed Conflict: Rules And Recommendations Relating To The Protection Of The Natural Environment Under International Humanitarian Law, With Commentary. Par. 58, p. 33, 34.

indicate that the delegates initially leaned towards including the term "*natural human environment*" in the final version of the protocol in question, yet such proposal was rejected.[30] The commentary on Art. 35 of Additional Protocol I explicitly states that the provision in question enshrines the protection of the environment as such, as it is considered a common heritage that must be preserved for the needs of all, stating that: *"...war is a destructive activity which is directed against men, i.e. combatants, as much as against the environment surrounding them*."[31] Direct endangerment of the population is therefore not required, as armed conflicts disrupt the lives not only of people but of all other living organisms as well.[32]

The term "*natural environment*" should therefore be interpreted broadly, meaning that it is not limited to objects essential for human survival, but also includes forests and other vegetation, as well as fauna, flora, and other biological or climatic elements.[33]

When considering the inclusion of animals under the concept of the environment from the perspective of international humanitarian law, the guidelines of the International Committee of the Red Cross on the protection of the natural environment in armed conflict serve as an important reference. These guidelines state that the natural environment includes not only natural elements *stricto sensu* but also elements that are or can be the result of human intervention, such as food, agricultural areas, drinking water, and livestock.[34]

By their very nature, it is clear that no component of the environment is a military objective as defined in Art. 52 par. 2 of Additional Protocol I, especially with respect to wild animals (e.g., for comparison with trained domestic animals, which, as outlined above, can contribute to the persistence of fighting). However, the aforementioned use of military conflict to illegally trade wildlife, especially endangered species, may, as some authors claim, contribute to the perpetuation and bolstering of military activities.[35]

Even an indirect attack on animals, targeting the environment in which they live, can inflict harm on their health or life. International humanitarian law, as enshrined in Additional Protocol I, includes several provisions that indirectly relate to environmental protection and aim to prevent damage to it. For instance, Art. 54 prohibits attacks on certain protected objects, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, while Art. 56 protects

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[30] Commentary of 1987 on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Art. 35, par. 1444. See also: International Committee of the Red Cross. Guidelines On The Protection Of The Natural Environment In Armed Conflict: Rules And Recommendations Relating To The Protection Of The Natural Environment Under International Humanitarian Law, With Commentary. Par. 69, p. 36, 37.

[31] *Ibid*. Art. 35, par. 1444.

[32] *Ibid*. Art. 35, par. 1441, 1462.

[33] *Ibid*. Art. 55, par. 2126.

[34] International Committee of the Red Cross. Guidelines On The Protection Of The Natural Environment In Armed Conflict: Rules And Recommendations Relating To The Protection Of The Natural Environment Under International Humanitarian Law, With Commentary. Par. 16, p. 15, 16.

[35] DROEGE, C., TOUGAS, M.-L.: The Protection of the Natural Environment in Armed Conflict – Existing Rules and Need for Further Legal Protection. In: Nordic Journal of International Law, Vol. 82, Issue 1 (2013), p. 29.

works or installations containing dangerous forces. However, these provisions protect animals only indirectly, through their significance for the survival of the civilian population.

5. CONCLUSION

Armed conflicts have far-reaching negative impacts not only on human lives but also on the natural environment, of which humans and animals form an integral part. As indicated in the introduction of this article, animals have been used for various tasks throughout military history. However, war affects not only the lives of those at the centre of the conflict but also devastates the lives of domestic and farm animals, animals living in shelters, zoos, and wildlife, which suffer not only from the consequences of combat but, in some cases, also fall victim to the increased incidence of poaching. Despite significant changes in the status of animals in society, international humanitarian law largely ignores them and does not recognize them as entities worthy of independent protection. This branch of law remains markedly anthropocentric, focusing on the protection of human interests and the humanization of armed conflicts in accordance with the relevant Geneva Conventions and their respective additional protocols analysed above. Animals themselves are afforded a certain degree of protection indirectly, for example, as medical transports or objects of cultural value. However, their protection is most evident when they are perceived as civilian objects or as part of the natural environment, with the latter two categories offering the clearest protection.

While some contend that animals are difficult to categorize as civilian objects, the provisions of Additional Protocol I to the Geneva Conventions do not exclude the protection of animals essential for the survival of the civilian population. In light of the increasing legal recognition of animal protection within society and their classification as property in various legal systems, it is conceivable to regard animals as civilian objects under the relevant provisions of Chapter III of Additional Protocol I. Nonetheless, even with the potential inclusion of animals as civilian objects, their protection within the framework of international humanitarian law remains fundamentally anthropocentric, focusing on the value of animals to humans and their survival. Some scholars advocate for the recognition of animals' intrinsic value as sentient beings, arguing that they should be afforded protection on these grounds—a concept that the current legal framework does not adequately allow for.

The natural environment, as a whole, holds intrinsic value, and its protection is essential for the well-being of future generations. Animals, alongside humans, form its integral part. Within the framework of international humanitarian law, the protection of fauna, as well as flora, is ensured independently of its immediate impact on humans. As previously noted, initial proposals that sought to restrict protection solely to the "*human natural environment*" were rejected, thereby affirming a broader responsibility to preserve the environment for all living organisms.

The current *de lege lata* state of international humanitarian law therefore remains distinctly anthropocentric. This is not surprising in itself, given that its primary objective is to

ensure the least possible human suffering and endangerment. However, the preservation of the environment and the protection of all living organisms, including animals, during armed conflicts are gaining increasing significance in the context of contemporary societal developments that emphasize animal rights and environmental protection. This growing importance, however, is not aligned with the interpretation of existing international humanitarian law norms.

Recent initiatives advocating for greater protection of animals through law reflect a growing belief that animals deserve protection not only for their utility to humans but also as sentient beings with intrinsic value. This trend towards enhancing animal protection should also be reflected in international humanitarian law, thereby aligning it with contemporary societal demands.

These ideas could thus lead to various *de lege ferenda* ambitions or even to the expansion of existing international rules through relevant international treaties or customary law.

The idea of concluding a specific international treaty that would enshrine the rules for the protection of animals in armed conflicts seems rather problematic, although many authors argue that such a treaty should be adopted. The issue may lie in the very willingness to adopt it, since the adoption of a binding regulation of this nature has not even taken place on a more general scale, e.g. on the protection of animal welfare as a topic that has long been debated. In the context of the protection of animals during armed conflicts, the adoption of universal binding legislation would thus perhaps be even more problematic in terms of identifying the types of animals and the protection that should be afforded to them. The interest of individual members of the international community in adopting such a convention is therefore questionable, all the more so because, as noted above, the value of an animal varies considerably across states, owing to cultural, political or economic differences between them. For the same reasons, it would also be difficult to speak of an international customary law on this issue at present.

However, given the relatively rapid development of society, the possibility of such a legal framework emerging in the future cannot be entirely dismissed, particularly when taking into account the identified shortcomings in the current legislation, highlighting of which has been the primary objective of this article.

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THE LEGAL REGULATION OF OBLIGATIONS ARISING OUT OF ENVIRONMENTAL DAMAGE WITH LINK TO SEVERAL LEGAL ORDERS

PRÁVNA ÚPRAVA ZÁVÄZKOV VYPLÝVAJÚCICH Z POŠKODENIA ŽIVOTNÉHO PROSTREDIA S VÄZBOU K VIACERÝM PRÁVNYM PORIADKOM

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Abstract: The paper analyses the legal regulation of non-contractual obligations arising out of environmental damage with a link to several legal orders. Attention is paid to the determination of the applicable law as well as the international jurisdiction of courts, considering the relevant case law of the Court of Justice of the EU.

Abstrakt: Príspevok analyzuje právnu úpravu mimozmluvných záväzkov vyplývajúcich z poškodenia životného prostredia s väzbou k viacerým právnym poriadkom. Pozornosť je venovaná určovaniu rozhodného práva, ako aj medzinárodnej právomoci súdov, s prihliadnutím na judikatúru Súdneho dvora EÚ.

Key words: *environmental damage, applicable law, jurisdiction, non-contractual obligations, climate lawsuits*

Kľúčové slová: *poškodenie životného prostredia, mimozmluvné záväzky, rozhodné právo, právomoc, klimatické žaloby*

1. ÚVOD

Ochrana životného prostredia sa s prihliadnutím na prebiehajúce klimatické zmeny zaradila medzi prioritné témy na národnej, európskej, ako aj na medzinárodnej úrovni. EÚ prispela k vypracovaniu viacerých významných medzinárodných dohôd, ktoré boli prijaté v roku 2015 na úrovni OSN, ako je Agenda 2030 pre udržateľný rozvoj, Parížska dohoda o zmene klímy a sendaiský rámec pre znižovanie rizika katastrof. EÚ má právomoc konať vo všetkých oblastiach politiky životného prostredia. Medzinárodné právo súkromné čelí v tejto súvislosti novým výzvam, s ktorými sa musí vysporiadať. Nariadenia medzinárodného práva súkromného EÚ sa v tejto súvislosti opierajú o primárne právo EÚ, konkrétne o články 11 a 191 až 193 Zmluvy o fungovaní Európskej únie. V zmysle čl. 191 Zmluvy o fungovaní Európskej únie, sa politika životného prostredia zameriava na vysokú úroveň jeho ochrany, pričom prihliada na rozmanité situácie v jednotlivých regiónoch Únie. Vychádza zo zásad predchádzania škodám a prevencie, zo zásady nápravy škôd na životnom prostredí prioritne

pri zdroji a zo zásady, že náhradu škody hradí znečisťovateľ. Uvedené zásady sú premietnuté aj v nariadení Rím II[1], podľa ktorého sa v plnom rozsahu uplatní zásada zvýhodnenia poškodenej osoby.[2] Nariadenie Rím II spolu s nariadením Rím I a Brusel Ia vytvárajú ucelený súbor nástrojov pokrývajúcich všeobecnú oblasť medzinárodného práva súkromného vo veciach občianskych a obchodných záväzkov.

Otázka právomoci súdu v súkromnoprávnych záväzkoch vyplývajúcich z poškodenia životného prostredia je v rámci zákona č. 97/1963 Zb. o medzinárodnom práve súkromnom a procesnom v znení neskorších predpisov (ďalej ako „ZMPSP") riešená v § 37b písm. a), v zmysle ktorého je právomoc slovenského súdu daná aj vo veciach nárokov na náhradu škody z iného ako zmluvného vzťahu, ak ku skutočnosti, ktorá zakladá nárok na náhradu škody, došlo alebo by mohlo dôjsť na území Slovenskej republiky. ZMPSP v § 37e ods. 1 umožňuje, aby si účastníci mohli na riešenie sporov zo svojho zmluvného vzťahu alebo z nároku na náhradu škody založiť právomoc súdu dohodou. Relevantným prameňom práva na úrovni EÚ, je v otázke právomoci nariadenie Brusel Ia[3].

Kolízna úprava súkromnoprávnych záväzkov vyplývajúcich z poškodenia životného prostredia je v rámci ZMPSP upravená všeobecnou kolíznou normou, konkrétne v § 15, v zmysle ktorého sa nároky na náhradu škody, ak nejde o porušenie povinnosti vyplývajúcej zo zmlúv a iných právnych úkonov, spravujú právom miesta, kde škoda vznikla, alebo miesta, kde došlo ku skutočnosti, ktorá zakladá nárok na náhradu škody. Z hľadiska práva EÚ je kľúčovým prameňom zakotvujúcim kolízne pravidlá pre uvedené záväzky nariadenie Rím II.

Nakoľko majú medzinárodné zmluvy a právne záväzné akty EÚ prednosť pred zákonmi Slovenskej republiky, budú sa nariadenia Brusel Ia a Rím II aplikovať prednostne pred ZMPSP.

2. NARIADENIE BRUSEL IA

Z hľadiska určenia medzinárodnej právomoci súdu aj v oblasti súkromnoprávnych záväzkov vyplývajúcich z poškodenia životného prostredia, je najvýznamnejším prameňom nariadenie Brusel Ia. Nariadenie Brusel Ia sleduje viacero cieľov, ktoré sú vymedzené v recitáloch samotného nariadenia a ďalej spresnené judikatúrou SDEÚ. Jedným z hlavných cieľov nariadenia je zabezpečenie právnej istoty v súvislosti s určovaním právomoci a uznávaním a výkonom rozhodnutí. Normy právomoci by mali byť ľahko predvídateľné a vychádzať zo zásady, že právomoc sa všeobecne zakladá podľa bydliska žalovaného. Právomoc založená na tomto kritériu by mala byť vždy k dispozícii, okrem určitých presne vymedzených situácií, keď predmet sporu alebo zmluvná voľnosť účastníkov odôvodňuje iný hraničný ukazovateľ. Okrem bydliska žalovaného musia byť k dispozícii aj alternatívne kritériá právomoci založené na úzkej väzbe medzi súdom a žalobou alebo na účely uľahčenia

[1]Nariadenie Európskeho parlamentu a Rady (ES) č. 864/2007 z 11. júla 2007 o rozhodnom práve pre mimozmluvné záväzky (RÍM II).

[2] Bod 25 preambuly nariadenia Rím II.

[3] Nariadenie Európskeho parlamentu a Rady (EÚ) č. 1215/2012 z 12. decembra 2012 o právomoci a o uznávaní a výkone rozsudkov v občianskych a obchodných veciach (prepracované znenie).

efektívneho riadneho výkonu súdnictva. Existencia takejto úzkej väzby by mala zaručiť právnu istotu a vylúčiť, že osoba by bola žalovaná na súde členského štátu, s čím nemohla rozumne predvídať. Je to dôležité predovšetkým v prípade sporov týkajúcich sa mimozmluvných záväzkov vyplývajúcich z porušenia práva na súkromie a práva na ochranu osobnosti vrátane poškodzovania dobrého mena.[4]

Nariadenie tiež zdôrazňuje potrebu zaručiť kontinuitu medzi ním a Bruselským dohovorom, ako aj nariadením Brusel I, pričom rovnaká potreba kontinuity sa týka aj výkladu Bruselského dohovoru SDEÚ, ako aj nariadení, ktoré ho nahradili.[5]

V súvislosti s aplikačnými predpokladmi nariadenia, sa v zmysle čl. 1 ods. 1, bude nariadenie uplatňovať v obchodných a občianskych veciach bez ohľadu na povahu súdu alebo tribunálu. Nariadenie sa však neuplatňuje na veci daňové, colné a správne, ani na zodpovednosť štátu za úkony a opomenutia pri výkone štátnej moci (acta iure imperii). Ohľadom pojmov obsiahnutých v nariadení je dôležité zdôrazniť ich autonómny výklad, ktorý vychádza z judikatúry SDEÚ. Pre vymedzenie pojmu obchodné a občianske veci SDEÚ[6] okrem iného skonštatoval, že výklad tohto pojmu musí byť nezávislý od právnych poriadkov zainteresovaných štátov, musí byť vykladaný s prihliadnutím na cieľ dohovoru a jeho štruktúru a v súlade so všeobecnými princípmi, na ktorých spočívajú národné právne poriadky všetkých členských krajín.[7]

Pravidlo pre založenie všeobecnej právomoci je vyjadrené v čl. 4 ods. 1 nariadenia, v zmysle ktorého, sa osoby s bydliskom na území členského štátu bez ohľadu na ich štátne občianstvo žalujú na súdoch tohto členského štátu, ak nie je v nariadení uvedené inak. Toto pravidlo vychádza zo zásady actor sequitur forum rei[8], teda že žalobca sleduje miesto súdu žalovaného a nie zo zásady forum actoris, ktorá by uprednostňovala miesto súdu žalobcu. Pravidlá pre založenie osobitnej právomoci sú obsiahnuté v čl. 7 až 9 nariadenia. Osobitná právomoc v zmysle nariadenia priznáva právomoc iným súdom, ako sú súdy členského štátu, v ktorom má žalovaný svoje bydlisko. Je na žalobcovi, aby si vybral. Táto sloboda výberu súdu súvisí s obzvlášť úzkou väzbou medzi sporom a súdom, ktorý má právomoc vo veci konať.[9] Táto úzka väzba medzi sporom a súdom s právomocou spor rozhodnúť, je vyjadrená hraničným určovateľom[10]. V prípade konania, v ktorom je daná právomoc súdu podľa pravidiel osobitnej právomoci, môže žalobca podľa vlastného uváženia začať konanie buď na tomto súde alebo na súde členského štátu, v ktorom má žalovaný svoje bydlisko.

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[4] Body 15 a 16 preambuly nariadenia.
[5] Bod 34 preambuly nariadenia.
[6] Rozsudok Súdneho dvora zo 14. októbra 1976, vo veci 29/76, LTU Lufttransportunternehmen GmbH & Co. KG proti Eurocontrol, ECLI:EU:C:1976:137.
[7] LYSINA, P., HAŤAPKA, M., BURDOVÁ, K. a kol. Medzinárodné právo súkromné. 3. vydanie. Bratislava: C. H. Beck, 2023,s. 220.
[8] Rozsudok Súdneho dvora z 13. júla 2000, C-412/98, Group Josi Reinsurance Company SA proti. Universal General Insurance Company (UGIC), ECLI:EU:C:2000:399.
[9] Rozsudok Súdneho dvora zo 17. januára 1980, C-56/79, Siegfried Zelger proti Sebastiano Salinitri, ECLI:EU:C:1980:15.
[10] Rozsudok Súdneho dvora zo 6. apríla 1995, C-439/93, Lloyd's Register of Shipping proti Société Campenon Bernard, ECLI:EU:C:1995:104.

V súvislosti so súkromnoprávnymi záväzkami vyplývajúcimi z poškodenia životného prostredia je podstatným ustanovením osobitnej právomoci čl. 7 ods. 2, v zmysle ktorého možno osobu s bydliskom na území členského štátu žalovať v inom členskom štáte vo veciach nárokov z mimozmluvnej zodpovednosti na súdoch podľa miesta, kde došlo alebo by mohlo dôjsť ku skutočnosti, ktorá zakladá takýto nárok.

Podľa ustálenej judikatúry pravidlo osobitnej právomoci stanovené v článku 7 ods. 2 nariadenia, ktoré umožňuje žalobcovi, odchylne od všeobecného pravidla právomoci súdov podľa bydliska žalovaného zakotveného, podať svoju žalobu vo veciach nárokov z mimozmluvnej zodpovednosti na súde podľa miesta, kde došlo alebo by mohlo dôjsť ku skutočnosti, ktorá zakladá nárok na náhradu škody, sa má vykladať autonómne a reštriktívne.[11] SDEÚ tiež konštatoval, že toto pravidlo osobitnej právomoci je založené na existencii osobitne úzkej väzby medzi sporom a súdom miesta, kde došlo ku skutočnosti, ktorá zakladá nárok na náhradu škody, čo odôvodňuje priznanie právomoci tomuto súdu z dôvodov riadneho výkonu spravodlivosti a hospodárnej organizácii konania. Vo veciach nárokov z mimozmluvnej zodpovednosti je totiž súd v mieste, kde došlo alebo by mohlo dôjsť ku skutočnosti, ktorá zakladá nárok z mimozmluvnej zodpovednosti, zvyčajne najspôsobilejší rozhodnúť najmä z dôvodov blízkosti sporu a jednoduchšieho vykonávania dôkazov. Zároveň súd pripomenul, že pojem „miesto, kde došlo ku skutočnosti, ktorá zakladá nárok na náhradu škody", sa týka tak miesta, kde vznikla škoda, ako aj miesta, kde došlo k príčinnej udalosti, ktorá viedla k tejto škode, a teda žalovaného možno žalovať podľa výberu žalobcu pred súdom jedného alebo druhého z týchto dvoch miest.

SDEÚ vo svojej judikatúre[12] tiež upresnil, že pojem „miesto, kde došlo... ku skutočnosti, ktorá zakladá... nárok" nemožno vykladať extenzívne v tom zmysle, že zahŕňa každé miesto, kde sa dajú pocítiť škodlivé následky skutočnosti, ktorá už spôsobila škodu vzniknutú v skutočnosti na inom mieste. V dôsledku toho spresnil, že tento pojem nemožno vykladať tak, že zahŕňa miesto, kde poškodený podľa svojho tvrdenia utrpel majetkovú ujmu následne po prvotnej škode, ktorá vznikla a ktorú utrpel v inom štáte.

3. NARIADENIE RÍM II

Oblasť kolíznoprávnej úpravy mimozmluvných záväzkov je regulovaná nariadením Rím II, ktoré bolo prijaté 11. júla 2007. Nariadenie sa uplatní na mimozmluvné záväzky v občianskych a obchodných veciach v situáciách, v ktorých dochádza k stretu rôznych právnych poriadkov. Neuplatní sa najmä na daňové, colné alebo správne veci ani na zodpovednosť štátu za konanie alebo nečinnosť pri výkone verejnej moci (*acta iure imperii*). Nariadenie sa uplatní tiež na mimozmluvné záväzky, u ktorých je predpoklad, že nastanú.

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[11] Rozsudok Súdneho dvora z 10. marca 2022, C-498/20, ZK ako nástupca JM, správca konkurznej podstaty spoločnosti BMA Nederland BV, proti BMA Braunschweigische Maschinenbauanstalt AG, ECLI:EU:C:2022:173.
[12] Rozsudok Súdneho dvora z 29. júla 2019, C-451/18, Tibor-Trans Fuvarozó és Kereskedelmi Kft. proti DAF TRUCKS N.V., ECLI:EU:C:2019:635.

V zmysle nariadenia Rím II by sa pojem „poškodenie životného prostredia" mal chápať ako nepriaznivá zmena prírodného zdroja, ako je voda, zem alebo vzduch, znehodnotenie zdroja slúžiaceho inému prírodnému zdroju alebo verejnosti, ako aj narušenie variability živých organizmov. Pokiaľ ide o poškodenie životného prostredia, mala by sa zabezpečiť vysoká úroveň ochrany založenej na zásade starostlivosti a prevencie, nápravy ohrozenia životného prostredia predovšetkým pri zdrojoch a na zásade náhrady škody znečisťovateľom, pričom sa v plnom rozsahu uplatní zásada zvýhodnenia poškodenej osoby.[13]

Keďže sa obsah pojmu mimozmluvný záväzok v jednotlivých členských štátoch líši, mal by sa v zmysle nariadenia chápať ako autonómny pojem. SDEÚ zdôraznil oddelenie mimozmluvných záväzkových vzťahov od zmluvných záväzkových vzťahov, pričom konštatoval, že koncept deliktuálnej zodpovednosti pokrýva všetky žaloby, ktoré smerujú k stanoveniu zodpovednosti žalovaného a ktoré nesúvisia so zmluvou.[14] Nariadenie dopadá len na také mimozmluvné záväzkové vzťahy, ktoré sú svojou povahou občianske a obchodné, pričom tieto pojmy je nutné interpretovať autonómne a s prihliadnutím na judikatúru SDEÚ k Bruselskému dohovoru, Nariadeniu Brusel I a nariadeniu Brusel Ia.

Nariadenie k pojmu škoda uvádza, že označuje každý následok civilného deliktu z bezdôvodného obohatenia, z konania bez príkazu (*negotiorum gestio*) alebo z predzmluvnej zodpovednosti (*culpa in contrahendo*).

Nariadenie zdôrazňuje, že požiadavka právnej istoty a potreba nastolenia spravodlivosti v jednotlivých prípadoch sú základnými prvkami priestoru spravodlivosti. Z tohto dôvodu nariadenie ustanovuje kolízne kritériá, ktoré sú pre dosahovanie týchto cieľov najvhodnejšie. Jednotné pravidlá by mali zvýšiť predvídateľnosť súdnych rozhodnutí a zabezpečiť primeranú rovnováhu medzi záujmami osoby, o ktorej sa tvrdí, že je zodpovedná, a záujmami poškodenej osoby. Väzba s krajinou, na území ktorej vznikla priama škoda, vytvára spravodlivú rovnováhu medzi záujmami osoby, o ktorej sa tvrdí, že je zodpovedná, a poškodenej osoby a tiež zohľadňuje moderný prístup k občianskoprávnej zodpovednosti a vývoj systémov objektívnej zodpovednosti.

Rozhodné právo by sa malo určiť na základe miesta, kde vznikla škoda, bez ohľadu na to, na území ktorej krajiny alebo krajín nastali nepriame následky. V dôsledku toho by teda krajinou, na území ktorej vznikla škoda, mala byť v prípade ujmy na zdraví krajina, kde došlo k tejto ujme, a v prípade škody na majetku krajina, kde sa poškodil majetok. Pre osobitné kategórie civilných deliktov, pre ktoré všeobecné pravidlo neumožňuje dosiahnuť rozumnú rovnováhu medzi záujmami zúčastnených subjektov, je potrebné stanoviť osobitné pravidlá.

Všeobecné pravidlo pre určenie rozhodného práva v prípade mimozmluvných záväzkov je zakotvené v čl. 4 ods. 1. V zmysle uvedeného ustanovenia, pokiaľ nie je v nariadení ustanovené inak, sa mimozmluvný záväzok vyplývajúci z civilného deliktu spravuje právnym poriadkom krajiny, na území ktorej vznikla škoda, bez ohľadu na to, na území ktorej krajiny

[13] Body 24 a 25 preambuly nariadenia Rím II.
[14] ROZEHNALOVÁ, N. a kol. Nařízení Řím I a Nařízení Řím II. Komentář. Praha: Wolters Kluwer ČR, 2021, s. 318

došlo ku skutočnosti, ktorá spôsobila škodu, a bez ohľadu na to, na území ktorej krajiny alebo krajín nastali nepriame následky takejto skutočnosti.

Nariadenie vyčleňuje problematiku poškodenia životného prostredia do osobitného ustanovenia, konkrétne do čl. 7, podľa ktorého sa mimozmluvný záväzok vyplývajúci z poškodenia životného prostredia, vrátane škody spôsobenej osobám alebo na majetku, spravuje právnym poriadkom určeným podľa článku 4 ods. 1, pokiaľ sa osoba žiadajúca náhradu škody nerozhodla svoj nárok oprieť o právny poriadok krajiny, na území ktorej došlo ku skutočnosti, ktorá spôsobila škodu. Článok 7 nariadenia odkazuje v prvom rade na použitie všeobecného kolízneho pravidla, avšak zavádza aj možnosť jednostrannej voľby práva, ktorú vyhradzuje osobe žiadajúcej náhradu škody, teda poškodenému. Predmetná kolízna norma je postavená na tzv. princípe ubiquity a teda osoba, ktorá žiada náhradu škody má zvýhodnené postavenie, keďže si môže vybrať právny poriadok z dvoch alternatív – právo miesta vzniku priamej škody alebo miesta škodovej udalosti. Ak si osoba žiadajúca náhradu škody vyberie právny poriadok krajiny, kde nastala škodná udalosť, tento právny poriadok plne nahradí inak aplikovateľné rozhodné právo určené podľa čl. 4 ods. 1 nariadenia. Štiepenie rozhodného práva sa pri jednostrannom výbere práva nepripúšťa.[15]

Uvedené riešenie má pôsobiť preventívne a odradiť potenciálnych znečisťovateľov, aby umiestňovali svoje prevádzky do blízkosti hraníc, prípadne priamo do krajín, ktorých právne poriadky zaisťujú nižšiu úroveň ochrany životného prostredia.[16]

4. KLIMATICKÉ ŽALOBY

Nedodržiavanie medzinárodných záväzkov, nedostatok vnútroštátnej úpravy, ako aj rastúca naliehavosť riešenia klimatickej krízy vyústila do potreby riešenia klimatických zmien aj pred súdnymi orgánmi formou klimatických žalôb. Klimatické žaloby predstavujú celosvetový fenomém, pričom môžu mať súkromnoprávny, ako aj verejnoprávny charakter.

Jedným z prelomových prípadov je prípad Milieudefensie et al. proti Royal Dutch Shell plc[17]. z Holandska, ktorý sa stal následnou inšpiráciou pre ďalšie klimatické žaloby napr. v Nemecku, Francúzsku, či Taliansku. Žalobu podalo niekoľko neziskových organizácii (napr. Greenpeace) vedených organizáciou Milieudefensie proti spoločnosti Royal Dutsch Shell Plc., ako akcionárovi v stovkách spoločností skupiny Shell obchodujúcich s ropou a zemným plynom a hlavnému subjektu, ktorý určuje politiku skupiny Shell. Žalobcovia od súdu žiadali, aby určil, že emisie CO2, ktoré Shell produkuje podľa svojich výročných správ, predstavujú protiprávne konanie a tiež požadovali, aby súd nariadil spoločnosti Shell znížiť emisie, aby zodpovedali cieľom Parížskej dohody.

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[15] ROZEHNALOVÁ, N., VALDHANS, J., DRLIČKOVÁ, K., KYSELOVSKÁ, T. Mezinárodní právo soukromé Evropské unie, 2. vydání, Praha: Wolters Kluwer ČR, 2018, s. 152.

[16] BULLA, M. Kolízna úprava záväzkov vyplývajúcich z poškodenia životného prostredia, Právny štát - medzi vedou a umením (elektronický dokument), s. 200.

[17] Dostupné online: https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/.

Do roku 2030 o primárne aspoň 45% v porovnaní s rokom 2019. Svoje požiadavky opreli o povinnosť spoločnosti Shell k predchádzaniu klimatickým zmenám, vyplývajúcich z nepísaného štandardu starostlivosti podľa holandského občianskeho zákonníka. Holandský súd dospel k záveru, že spoločnosť Shell má povinnosť znížiť svoje emisie v súlade s cieľmi Parížskej dohody a nariadil spoločnosti Shell znížiť emisie CO_2 o 45% do roku 2030 v porovnaní s rokom 2019. Spoločnosť Shell sa voči rozhodnutiu prvostupňového súdu odvolala, avšak odvolací súd zatiaľ nerozhodol. Prvostupňový súd vyhlásil rozsudok za predbežne vykonateľný. Predmetné rozhodnutie je dôležité s ohľadom na skutočnosť, že v ňom súd určil, že súkromnoprávna spoločnosť musí znížiť svoje globálne emisie.

V súvislosti s predmetným prípadom bolo z pohľadu medzinárodného práva súkromného kľúčové určenie rozhodného práva. Žalobcovia vykonali v zásade voľbu práva v zmysle čl. 7 nariadenia Rím II, ktorá podľa ich názoru vedie k uplatneniu holandského práva ako práva rozhodného. Žalobcovia zároveň uvádzajú, že aj v zmysle všeobecného pravidla stanoveného v čl. 4 ods. 1 Rím II je holandské právo právom rozhodným. Za skutočnosť, ktorá spôsobila škodu, v zmysle čl. 7 nariadenia Rím II, považujú žalobcovia nastavenie podnikovej politiky zo strany spoločnosti Shell v Holandsku. V otázke, čo je možné považovať za skutočnosť, ktorú spôsobila škodu v zmysle čl. 7 nariadenia Rím II sa však strany sporu rozchádzajú. Podľa spoločnosti Shell, je potrebné za skutočnosť, ktorú spôsobila škodu, považovať skutočné emisie CO_2, čo vedie k aplikácií mnohých právnych poriadkov. Holandský súd konštatoval, že zo strany SDEÚ nie je k dispozícii žiadne vyjadrenie k pojmu skutočnosť, ktorá spôsobila škodu v zmysle čl. 7 nariadenia Rím II. Zároveň sa nestotožnil s argumentáciou spoločnosti Shell, ale priklonil sa k argumentácii žalobcov a teda uznal, že za skutočnosť, ktorá spôsobila škodu je v tomto prípade možné považovať prijatie podnikovej politiky skupiny Shell, nakoľko predstavuje nezávislú príčinu škody, ktorá môže prispieť k environmentálnej škode a hroziacej environmentálnej škode vo vzťahu k holandským obyvateľom.

Napriek skutočnosti, že podľa holandského súdu obe možnosti – miesto vzniku škody, aj skutočnosť, ktorá spôsobila škodu, smerovali k aplikácii holandského práva, je z pohľadu medzinárodného práva súkromného zaujímavé uchopenie pojmu skutočnosť, ktorá spôsobila škodu. Táto úvaha súdu znamená posun v nazeraní na pojem skutočnosť, ktorá spôsobila škodu, v zmysle čl. 7 nariadenia Rím II. Môžeme povedať, že prístup holandského súdu sa prikláňa k extenzívnemu výkladu pojmu skutočnosť, ktorá spôsobila škodu a teda miesto, kde sa prijíma obchodné rozhodnutie o prijatí podnikovej politiky, môže byť kvalifikované ako relevantná udalosť, ktorá spôsobila škodu.

Na jednej strane to môže viesť k vysokému štandardu ochrany životného prostredia, avšak na druhej strane to môže byť v rozpore s praxou identifikácie konkrétnej aktivity, resp. činnosti priamo spôsobujúcej predmetnú škodu.

Príliš reštriktívny výklad pojmu skutočnosť, ktorá spôsobila škodu, prezentovaný spoločnosťou Shell by mohol sťažiť určenie zodpovednosti za klimatické opatrenia, nakoľko emisie ako celok spôsobujú znečistenie ovzdušia.

V súvislosti s určením skutočnosti, ktorá spôsobila škodu sa objavujú aj názory za tzv. princípe hlavného ohniska. V zmysle uvedeného princípu by skutočnosť, ktorá spôsobila škodu bola spojená s miestom, ktoré viedlo k poškodeniu životného prostredia v najväčšej miere, teda výberom jedného ohniska z viacerých udalostí, ktoré mohli spôsobiť škodu.[18]

5. ZÁVER

Ochrana životného prostredia patrí medzi prioritné témy na národnej, európskej, aj medzinárodnej úrovni. V súvislosti s klimatickými zmenami nastolila vlna klimatických žalôb otázky, ktorých zodpovedanie je rozhodujúce pre určenie medzinárodnej právomoci, ako aj rozhodného práva v oblasti mimozmluvných záväzkov vyplývajúcich z poškodenia životného prostredia. Pre objasnenie pojmov obsiahnutých v nariadeniach je nevyhnutný ich autonómny výklad. Nakoľko však absentuje relevantná judikatúra SDEÚ ku kľúčovému pojmu- skutočnosť, ktorá spôsobila škodu, je nevyhnutné hľadať správny prístup, ktorý bude smerovať k dosiahnutiu právnej istoty a predvídateľnosti. V tejto súvislosti sa prístup založený na hlavnom ohnisku javí ako najprijateľnejší. Keďže téma klimatických žalôb odkryla viaceré problematické aspekty súvisiace s právnou úpravou mimozmluvných záväzkov vyplývajúcich z poškodenia životného prostredia, ponecháva priestor pre odbornú diskusiu a hľadanie správneho prístupu.

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