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FINANCIAL COMPENSATION FOR ENVIRONMENTAL DAMAGE CAUSED BY MILITARY ACTIVITIES. EXAMPLES OF THE PAST AND THE PRESENT

Whereas the armed conflicts have historically inclined to cause acute and localized environmental damage, the modern weapons and their potential industrial targets such as nuclear power plants or petrochemical facilities have the potential to cause a destruction on much massive scale. Thus far, no systematic studies have been undertaken to assess the overall scale of environmental damage resulting from warfare and its compensation. Thus, it is difficult to compare such damage with that caused by routine, peacetime activities. The existing international laws provide somewhat limited protection against the contemporary threats posed by war to the environment, and even less on the mechanisms of financial compensation.

During the human history, the environment has been one of war's many victims. Thucydides records the scorched earth tactics used by the Greeks during the Peloponnesian Wars. The Romans salted the soils of Carthage after winning the Punic Wars. The Dutch breached their dykes in 1792 to prevent a French invasion. More recently, during the Vietnam War, the United States destroyed 14% of Vietnam's forests, including 54% of its mangrove forests, through chemical defoliants, bulldozers and bombings. Close the end of the First Gulf War, Iraq burned hundreds of oil wells and dumped massive amounts of oil into the Persian Gulf [1, p. 4].

Some of the earliest norms to regulate the warfare had an environmental component and, nowadays, the military practices common in the past, such as the destruction of agricultural lands, are outlawed by the laws of war. However, even contemporary international law contains few norms that specifically address the environmental consequences of war. Nevertheless, the environment continues to rely for protection primarily on the basic principles of necessity, proportionality and distinction, which indirectly protect the environment by helping to limit war's destructiveness.

Despite laws designed to prohibit or deter the environmental damages that result from belligerent conduct, in reality, they are an inevitable consequence of war. Such damages have occasionally been the result of

deliberate military strategy. But more often, the environmental damages wrought by war are unintentional. Where prevention has failed, ex-post remedies have been developed to deal with economic compensation for and remediation of the environmental effects of combat.

Beforehand looking at how combat-related environmental damages are compensated; it is imperative to see what types of conduct are prohibited under the current rules of law. The existing limitations on belligerent conduct do not enjoin all actions that may negatively impact the environment. For many environmental damages, there will be no remedies available at all. As mentioned above, early efforts to codify the laws of war were made at the Hague Peace Conferences in 1899 and 1907. Since the Hague Conventions are considered to be customary law today, they are binding on states that were not originally formal parties to both agreements.

Furthermore, a penalty for parties violating the regulations, absent from the 1899 Convention, was added to the 1907 Hague Convention Number IV in Article 3: "A belligerent party which violates the provisions of the mentioned Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." However, the convention does not provide a mechanism for enforcing these civil penalties and it does not provide the criminal sanctions, the civil liability measure is limited in terms of its effectiveness. Additionally, the military necessity provides a defense for destructive conduct. Situations are rare, if ever, where necessity does not excuse this conduct. Here, the main question about the protection from wartime environmental damages provided by the 1907 Hague Convention IV and Geneva Convention IV pertains to "the extent to which the term 'property' can be interpreted to encompass public goods (not necessarily under specific ownership) such as common land, forests, the atmosphere, water resources, and the open seas" [2, p. 7].

In terms of environmental reparations, the United Nations Compensation Commission (UNCC) established in 1991 is a unique model for liability and compensation of environmental damage in an international context, influencing both *jus in bello* and *jus post bellum*. The UNCC environmental programme advanced international law most significantly by serving notice that environmental damage caused in relation to an armed conflict can be a culpable offence. As mentioned in 1995 environment is a new concept and that 'new' environmental delicts will be subject to the Nuremberg defendants' claim that they are *ex post facto* and therefore illegitimate. Participants in conflicts today cannot make that claim. In fact, many other bodies now allow legal claims for environmental losses. The Eritrea-Ethiopia Claims Commission established in 2000 by a treaty between the belligerents to settle claims for loss, damage, or injury of either government and its nationals, accepted environmental claims. The UN Register of Damage,

established in 2009, could receive claims for environmental damage in its public claim's category. The UN General Assembly adopted resolutions calling for compensation of coastal cleaning and remediation costs for oil spill damage resulting from the Israeli Air Force strikes on oil storage tanks in the vicinity of the Lebanese Jiyeh electric power plant in 2006 that posed potential harm to human health, biodiversity, fisheries, and tourism in Lebanon. A UN Development Programme's study ordered in relation to the Lebanese oil spill referred to the UNCC as a 'precedent major oil spill compensation regime for spills arising from armed hostilities' and it was even suggested that the UNCC might be used to 'secure the relevant compensations'.

Environmental liability resulted from Iraq's violation of *jus ad belum*. After Iraq invaded the neighboring Kuwait in 1990, the UN Security Council condemned its actions as a breach of international peace and security under the UN Charter 7 and took note that Iraq was liable for any loss, damage, or injury.

The UNCC completed its review of claims in 2005, and began winding down its operations in 2015. Hence, Iraq paid almost US\$ 48 billion in compensation as of October 2015, for all claims' categories [3, p. 21]

The Russian armed aggression against Ukraine, which began on February 24, 2022, causes significant damage not only to the economy and cultural heritage, but also to the country's environment, and numerous cases of deliberate destruction of natural resources and infrastructure facilities have features of ecocide against the Ukrainian people [4, p. 1].

Forests devastated by fires caused by continuous shelling or cut down to build trenches; groundwater and soils contaminated with heavy metals and toxic chemicals from detonated munitions; wild animals killed or expelled from their habitats – this is not a complete list of the environmental consequences of the war in Ukraine.

With about 18% of the country's territory remaining occupied by Russian forces, it may not be possible to measure the impact of the invasion as long as the fighting continues. But even the available fragmentary data reveal a picture of an environmental disaster.

Since the beginning of the war, the Ministry of Environmental Protection and Natural Resources of Ukraine has recorded almost 2300 cases of environmental damage as a result of hostilities. According to the agency, about 2.9 million hectares of protected areas of the country, home to thousands of species of plants and animals, are under threat of destruction. Another 3 million hectares of forests, about a third of the total area, have already been affected by hostilities. Huge damage to the environment and the national economy of Ukraine was caused by the destruction of the dam on the Kakhovka reservoir by the occupiers, which can be estimated at billions of dollars. Other dangers lie ahead, including the risk of damage to the

Zaporizhzhia nuclear power plant, which has been occupied by the Russians since the beginning of March 2022. According to the Minister of Environmental Protection and Natural Resources of Ukraine, Ruslan Strilets, the total amount of damage already amounts to more than \$46 billion, which Ukraine will eventually demand from Russia as war reparations. Most of this amount is accounted for by air pollution – \$27 billion.

According to the ministry, in just ten months, more than 42 million tons of carbon dioxide were released into the atmosphere as a result of the war, Forest fires caused by shelling, as well as Russian attacks on Ukrainian oil depots, which caused 680,000 tons of oil and fuel to catch fire, are largely to blame.

The war has poisoned large areas of Ukrainian agricultural land. Dangerous chemicals and fuel released from exploded rockets and tens of thousands of artillery shells fired daily by both sides have seeped into the ground along the entire length of the front line. The damage caused to agricultural land has already cost Ukraine \$18 billion [5, p. 1].

It is clear that for the economic provision of environmental protection, a well-coordinated operating system is needed, which includes measures and means, accumulation and use of the necessary resources. The most important element of this comprehensive system is the financing of nature conservation. A special role in stimulating measures to protect the environment is played by the deliberate use of funds of trust funds, in particular the State Fund for Environmental Protection.

In the future, an important source of replenishment of the protection of the State Fund for Environmental Protection should be reparations received from the Russian Federation, which is guilty of destroying the Ukrainian economy. The Minister of Justice, Denys Maliuska, named the amount of reparations from the Russian Federation for damages during the full-scale invasion of Ukraine. The aggressor country is obliged to pay at least \$300 billion. Ukraine's losses from the Russian invasion are estimated to be much higher (\$500–600 billion), but this amount corresponds to the size of the frozen assets of the Bank of the Russian Federation in the G7 countries, foreign assets of Russian state-owned enterprises and confiscated property of Russian oligarchs. It is important to use these funds rationally, not forgetting about the need to solve environmental problems. Taking into account the future accession to the EU, based on the available human and natural resources, it is obvious that Ukraine in the international division of labor will specialize in material production, primarily in the metallurgical industry, heavy and transport engineering, etc. This also meets the requirements of building up Ukraine's own military-economic potential in the conditions of war and constant military threat from the Russian Federation. We understand that in the process of revival of the Ukrainian economy, the increase and commissioning of new production capacities, the negative pressure on the

environment will also increase. This imposes its own limitations on the process of rebuilding the Ukrainian economy, taking into account the strict environmental standards adopted in the European Union. Therefore, significant funds must be invested in new environmentally friendly technologies and production systems.

Thus, the policy of ecologization of social production should generally correspond to the new trends in the development of the national economy of Ukraine. An effective system of financing environmental protection is an integral part of the existing economic mechanism and develops along with it, in accordance with the general directions of the economic policy of the state. It should take into account the new conditions that have developed as a result of the aggression of the Russian Federation and the prospects for reconstruction of the National Economy of Ukraine.

In the post-war period, during the recovery of Ukraine's economy, the greening process will take place under different technological conditions and taking into account EU standards and requirements.

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