

CHAPTER V

CONCLUSION

V.1 Conclusion

The sporadic events of armed conflict affecting the natural environment should be considered as war crimes. Specifically, the Kakhovka dam case had raised environmental issues due to its important role towards humans, industrial sites, energy providers, and also towards the environment. The destruction of the Kakhovka dam caused significant damage towards the environment with climate change, prolonged moisture to several species of pines that usually live in damp soils, ruining the spawning areas for fish, the spilling of oil that disturbs the ecological balance of the Black Sea, and more. Such widespread, long-term, and severe damage should be considered as war crimes and violates Article 8(2)(b)(iv) of the Rome Statute. Furthermore, these armed conflicts that impacted the environment happened after the enforcement of the Rome Statute where there is a Court with jurisdiction for such crimes. Therefore, the Kakhovka dam case should be brought to proceedings.

However, this did not happen due to the high threshold nature of Article 8(2)(b)(iv) specifically on its terms, “widespread, long-term, and severe.” Those terms used by the Rome Statute were inspired by the AP I, therefore we should look into the *travaux préparatoires* of AP I. Pursuant to the commentaries of AP I, the threshold for widespread and severe is non-existent. The commentaries of AP I only provide the threshold for long-term which counts for decades. This standard is considered as vague and too high, leaving no cases brought to the ICC regarding environmental damages. A continuous use of those interpretations would lead to legal nullity where the regulation serves no purpose because even the greatest environmental damage does not meet the threshold of Article 35(3) and 55(1) of the AP I and Article 8(2)(b)(iv) of the Rome Statute.

Article 1 of the ENMOD used a similar term which is “widespread, long-lasting, or severe.” Although Article 1 of the ENMOD has a non-cumulative nature compared to both the AP I and the Rome Statute which has a cumulative nature, the understanding of Article 1 of the ENMOD from A/31/27 UNGA Document provides a complete and clear threshold for those terms. Most importantly, the threshold for Article 1 of the ENMOD sets a lower standard than the one provided for the AP I. Therefore, the threshold for the term

“widespread, long-term, and severe” under Article 8(2)(b)(iv) of the Rome Statute should follow the threshold of Article 1 of the ENMOD.

BIBLIOGRAPHY

Books

- J.H. Huang trans. Sun Tzu: The New Translation. Quill. 1933.
- Dept. of the Army. FM 27-10: The Law of Land Warfare, w/change 1. DC: GPO. 1956.
- Georg Schwarzenberger. International Law: As Applied by International Courts and Tribunals. vol. II. Steven & Sons 1968.
- Jean Pictet. Development and Principles of International Humanitarian Law. Kluwer. 1985.
- Jean Pictet. Commentary on the Additional Protocols to the Geneva Conventions. International Committee of the Red Cross. 1987.
- Sandoz Y et al (eds). Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949. Martinus Nijhoff Publishers. 1987.
- Theodor Meron. Human Rights and Humanitarian Norms as Customary Law. Oxford: Clarendon Press .1989.
- Redclift & Woodgate. The International Handbook of Environmental Sociology. Edgar Elgar Publishing. 2000.
- Dabelko & Downie. Environmental Security: From Concept to Practice. The Henry L. Stimson Center. 2001.
- Dinstein Y. The Conduct of Hostilities under the Law of International Armed Conflict. Cambridge. 2004.
- Hyronimus Rhati. Kompleksitas Permasalahan Lingkungan Hidup. Universitas Atma Jaya. 2005.
- Malcolm N. Shaw. International Law. 6th edn. Cambridge. 2008.
- Jean-Marie Henckaerts and Louise Doswald-Beck. Customary International Humanitarian Law. Volume I: Rules. 4th edn. Cambridge. 2009.
- Gary D. Solis. The Law of Armed Conflict: International Humanitarian Law in War. 1st edn. Cambridge. 2010.
- Bothe et al (eds). New rules for victims of armed conflicts commentary on the two 1977 protocols additional to the Geneva conventions of 1949. Martinus Nijhoff Publishers. 2013.
- International Criminal Court. Elements of Crimes. 1st edn. International Criminal Court. 2013.

Otto Triffterer and Kai Ambos. *The Rome Statute of the International Criminal Court: A Commentary*. 3rd edn. Beck. 2015.

Solis GD. *The law of armed conflict: international humanitarian law in war*. Cambridge. 2016.

Nils Melzer. *International Humanitarian Law: A Comprehensive Introduction*. 1st edn. ICRC. 2019.

The International Criminal Court. *Rules of Procedure and Evidence of the Rome Statute*. the International Criminal Court, 2019.

Fleck D. *Handbook of international humanitarian law*. Oxford. 2021.

Anne Dienelt. *Armed Conflicts and the Environment: Complementing the Laws of Armed Conflict with Human Rights Law and International Environmental Law*. 1st edn. Springer. 2022.

Journal

Jody L. Davis. Interdependence with the environment: Commitment, interconnectedness, and environmental behavior. 2009. 29(2). *Journal of Environmental Psychological*. 173.

Darryl K. Brown. Adjudicating the Guilty Mind. 2012. 75(2). *Law Contemp Probl*. 109.

Official Publications

UNHCR. Ukraine Emergency. accessed on 4 January 2024. <https://www.unrefugees.org/emergencies/ukraine/>.

UNHCR. Refugees from Ukraine across Europe. 19 May 2022. Accessed on 4 January 2024. <https://data2.unhcr.org/en/documents/details/92974>.

ICRC. Guidelines on the Protection of the Natural Environment in Armed Conflict. 2020. Accessed on 4 January 2024. <https://www.icrc.org/en/document/guidelines-protection-natural-environment-armed-conflict-rules-and-recommendations-relating>.

ICRC. What is International Humanitarian Law?. 2004. Advisory Service on International Humanitarian Law. Accessed on 25 June 2023. https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

ICRC. International criminal justice: The institutions' [2013] Advisory Service on International Humanitarian Law. Accessed on 14 September 2023.

<https://www.icrc.org/en/doc/assets/files/2014/international-criminal-justice-institutions-icrc-eng.pdf>.

United Nations Ukraine. Potential Long-Term Impact of the Destruction of the Kakhovka Dam. 9 June 2023. UNCT Joint Analytical Note.

United Nations Ukraine. Post Disaster Needs Assessment: 2023 Kakhovka Dam Disaster, Ukraine. October 2023.

Legal Instruments

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Adopted 12 August 1949. Entry into force 21 October 1950. 75 UNTS 31.

Understanding Relating to Article I, Report of the Conference of the Committee on Disarmament. U.N.GAOR. 31st Sess. Supp. No. 27, at 91-92, U.N. DOC. A/31/27. 1976.

Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. Adopted 10 December 1976. Entry into force 5 October 1978. 1108 UNTS 151

Vienna Convention on the Law of Treaties. Adopted 22 May 1969. Entry into force 27 January 1980. 1155 UNTS 331.

Protocol Additional to the Geneva Conventions of 2 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. Adopted 30 November 1993. Entry into force 1 March 1994. 1125 UNTS 3

Prosecutor v. Dusko Tadic. Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction. IT-94-1-A. International Criminal Tribunal for the former Yugoslavia (ICTY). 2 October 1995.

The Prosecutor v Duško Tadic. Appeals Chamber. Judgment. IT-94-1-A. (ICTY). 25 July 1999.

Rome Statute of the International Criminal Court. 2187 UNTS 3. Adopted 17 July 1998. Entered into force 1 July 2002.

Prosecutor v. Stanislav Galić. Case No. IT-98-29-A. Appeals Judgment. Decision on Disqualification. International Criminal Tribunal for the former Yugoslavia (ICTY). 30 November 2006.

United Nations General Assembly. Problem of the militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as parts of the Black Sea and the Sea of Azov. 5 December 2018. UN Doc. A/73/L.47.

ITLOS. Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v Russian Federation). Request for the prescription of provisional measures. Order No. 26. 25 May 2019.

News Articles

Ronald H. Spector. Vietnam War – De-escalation, negotiation, Vietnamization. Britannica. Accessed on 19 December 2023. <https://www.britannica.com/event/Vietnam-War/De-escalation-negotiation-and-Vietnamization>.

Oksana Grytsenko. Armed pro-Russians insurgents in Luhansk say they are ready for police raid. KyivPost. 12 April 2014. Accessed on 4 January 2024. <https://web.archive.org/web/20140412131249/http://www.kyivpost.com/content/ukraine/armed-pro-russian-insurgents-in-luhansk-say-they-are-ready-for-police-raid-343167.html>.

Ukraine conflict: Russia accused of shooting down jet. BBC. 17 July 2014. Accessed on 4 January 2024. <http://www.bbc.com/news/world-europe-28345039>.

M. R. Gordon. Russia Continues to Train and Equip Ukraine Rebels, NATO Official Says. The New York Times. 4 November 2014. Accessed on 4 January 2024. <https://www.nytimes.com/2014/11/04/world/europe/donestk-luhansk-ukraine-vote-zakharchenko-plotnitsky.html>.

Putin admitted that the Russian army blocked the Ukrainian army in Crimea. Ukrayinska Pravda. 17 November 2014. Accessed on 4 January 2024. <https://www.pravda.com.ua/rus/news/2014/11/17/7044457/>.

S. Walker, A. Luhn. Tension High in Ukrainian Border Towns Menaced by Russian Forces. The Guardian. 30 August 2014. Accessed on 4 January 2024. <https://www.theguardian.com/world/2014/aug/30/tension-ukrainian-towns-menaced-russian-forces>.

The International Criminal Court. Bemba Case. The International Criminal Court. 8 June 2018. Accessed on 27 January 2024. <https://www.icc-cpi.int/car/bemba>.

The Kerch Strait Incident. International Institute for Strategic Studies, December 2018. Accessed on 4 January 2024. <https://www.iiss.org/publications/strategic-comments/2018/the-kerch-strait-incident>.

Carl Schreck. From 'Not Us' to 'Why Hide It?': How Russia Denied its Crimea Invasion, Then Admitted It. RadioFreeEurope RadioLiberty. 26 February 2019. Accessed on 4 January 2024. <https://www.rferl.org/a/from-not-us-to-why-hide-it-how-russia-denied-its-crimea-invasion-then-admitted-it/29791806.html>.

U.S. navy ship tracked by Russia on entry to Black Sea. Reuters. 4 November 2021. Accessed on 4 January 2024. <https://www.reuters.com/world/russian-navy-tracks-us-ship-mount-whitney-black-sea-2021-11-04/>.

L. Ragozin. Russia-US escalation: How did we get here?. Al Jazeera. 21 December 2021. Accessed on 4 January 2024. <https://www.aljazeera.com/opinions/2021/12/21/russia-us-escalation-how-did-we-get-here>.

I. Khursyudyan and D. L. Stern. Why Ukraine's Turkish-made drone became a flash point in tensions with Russia. The Washington Post. 15 January 2022. accessed on 4 January 2024. <https://www.washingtonpost.com/world/2022/01/15/ukraine-russia-drones-turkey/>.

International Crisis Group. Crisis Watch. February 2022. Accessed on 4 January 2024. <https://www.crisisgroup.org/crisiswatch>.

Timeline: How did the recent Ukraine-Russia crisis start?. Al Jazeera. 13 February 2022. Accessed on 4 January 2024. <https://www.aljazeera.com/news/2022/2/13/timeline-how-the-ukraine-russia-crisis-reached-the-brink-of-war>.

Putin recognises independence of Ukraine breakaway regions. Al Jazeera. 22 February 2022. Accessed on 4 January 2024. <https://www.aljazeera.com/news/2022/2/21/russia-to-recognise-ukraine-breakaway-region-kremlin-confirms>.

Ukraine crisis: Russia orders troops into eastern Ukraine. BBC. 22 February 2022. Accessed on 4 January 2024. <https://www.bbc.com/news/world-europe-60468237>.

Ukraine conflict : Simple visual guide to the Russian Invasion. BBC. 25 February 2022. Accessed on 4 January 2024. <https://www.bbc.com/news/world-europe-60506298>.

Ukraine slams 'horrific' strikes on Kyiv and Russian advance. Al Jazeera. 25 February 2022. Accessed on 4 January 2024. <https://www.aljazeera.com/news/2022/2/25/ukraine-slams-horrific-strikes-on-kyiv-amid-russian-advance>.

International Crisis Group. Crisis Watch. March 2022. Accessed on 4 January 2024. <https://www.crisisgroup.org/crisiswatch>.

Nearly all of Russia's initial invasion forces now in Ukraine, Pentagon says. CNBC. 7 March 2022. Accessed on 4 January 2024. <http://Since%20entering%20Ukrainian%20territory,%20Russian%20troops%20have%20remained%20militarily%20active%20on%20a%20large%20scale.%20By%20the%20beginning%20of%20March%202022,%20almost%20all%20of%20the%20190,000%20Russian%20troops%20deployed%20on%20the%20border%20were%20operative%20on%20Ukrainian%20territory,%20in%20the%20north,%20south%20and%20east.%20Christina%20Wilkie,%20'Nearly%20all%20of%20Russia's%20initial%20invasion%20forces%20now%20in%20Ukraine,%20Pentagon%20says',%20CNBC,%207%20March%202022;%20Mark%20OF.%20Cancian,%20'Russian%20Casualties%20in%20Ukraine:%20Reaching%20the%20Tipping%20Point',%20Center%20for%20Strategic%20and%20International%20Studies,%2031%20March%202022>.

Alex Gatopoulos. Total war: How Ukraine mobilized a country as Russia overreached. Al Jazeera. 9 March 2022. Accessed on 4 January 2024. <https://www.aljazeera.com/features/2022/3/9/total-war-how-ukraine-mobilised-a-country-as-russia-overreached-2>.

Frank Gardner. Mariupol; Why Mariupol is so important to Russia's plan. BBC News. 21 March 2022. Accessed on 4 January 2024. <https://www.bbc.com/news/world-europe-60825226>.

Max Hunder. Timeline: Russia's siege of the Ukrainian city of Mariupol. Reuters. 30 March 2022. Accessed on 4 January 2024. <https://www.reuters.com/world/europe/russias-siege-ukrainian-city-mariupol-2022-03-30/>.

Mark F. Cancian. Russian Casualties in Ukraine: Reaching the Tipping Point. Center for Strategic and International Studies. 31 March 2022. Accessed on 4 January 2024. <https://www.csis.org/analysis/russian-casualties-ukraine-reaching-tipping-point>.

Russia agrees 'in principle' to UN and Red Cross involvement in evacuations from Mariupol. UN News. 26 April 2022. Accessed on 4 January 2024. <https://news.un.org/en/story/2022/04/1116932>.

Azovstal defenders vow to fight until the end, saying, 'we don't have much time'. RFE/RL's Ukrainian Service. 8 May 2022. Accessed on 4 January 2024. <https://www.rferl.org/a/ukraine-russia-war-mariupol-azovstal-31839614.html>.

Ukrainian fighters at besieged Azovstal plant vow to fight till the end. Reuters. 8 May 2022. Accessed on 4 January 2024. <https://www.reuters.com/world/europe/ukrainian-fighters-besieged-azovstal-plant-vow-fight-till-end-2022-05-08/>.

Henry Sandercock. Russia-Ukraine war: how big is Ukraine's army - size of armed forces compared to Russia, UK, US, NATO. National World, 20 May 2022. Accessed on 4 January 2024. <https://www.nationalworld.com/news/world/russia-ukraine-crisis-how-big-is-the-ukraine-army-size-of-armed-forces-compared-to-russia-uk-us-and-nato-3581362>.

Timeline: Six months of Russia's war in Ukraine. Al Jazeera. 24 August 2022. Accessed on 4 January 2024. <https://www.aljazeera.com/news/2022/8/24/timeline-six-months-of-russias-war-in-ukraine>.

M. M. Bigg. Russia invaded Ukraine more than 200 days ago. Here is one key development from every month of the war. The New York Times. 13 September 2022. Accessed on 4 January 2024. <https://www.nytimes.com/article/ukraine-russia-war-timeline.html>.

Kateryna Tyshchenko. Russians mine dam of Kakhovka Hydroelectric Power Plant and plan historic catastrophe – Zelenskyy. Ukrainska Pravda. 20 October 2022. Accessed on 4 January 2024. <https://www.pravda.com.ua/eng/news/2022/10/20/7372801/>.

Dnieper River – Students. Britannica Kids. Accessed on 4 January 2024. <https://kids.britannica.com/students/article/Dnieper-River/274025>.

Anatoly Petrovich Domanitsky and Philip P. Micklin. Hydrology of the Dnieper River. Britannica. 17 February 2014. Accessed on 18 December 2023. <https://www.britannica.com/place/Dnieper-River/Hydrology>.

Matthew Mpoke Bigg. How Russia's war in Ukraine has unfolded, month by month. The New York Times. 24 February 2023. Accessed 28 June 2023. <https://www.nytimes.com/article/ukraine-russia-war-timeline.html>.

National Geographic. Human Impacts on the Environment. Accessed on 25 February 2023. <https://education.nationalgeographic.org/resource/resource-library-human-impacts-environment/>.

B. Vitkine. Russia reports fighting on its territory for the first time. Le Monde. 3 March 2023. Accessed on 4 January 2024. https://www.lemonde.fr/en/international/article/2023/03/03/russia-reports-fighting-on-its-territory-for-the-first-time_6018036_4.html.

Belgorod: Russian paramilitary group vows more incursions. BBC News. 22 May 2023. Accessed on 4 January 2024. <https://www.bbc.com/news/world-europe-65703548>.

Jonathan Yerushalmy. Nova Kakhovka dam: everything you need to know about Ukraine's strategically important reservoir. The Guardian. 6 June 2023. Accessed on 6 December 2023. <https://www.theguardian.com/world/2023/jun/06/nova-kakhovka-dam-everything-you-need-to-know-about-ukraines-strategically-important-reservoir>.

United Nations. Ukraine: Dam destruction 'monumental humanitarian, economic and ecological catastrophe': Guterres. UN News. 6 June 2023. Accessed on 13 June 2023. <https://news.un.org/en/story/2023/06/1137372>.

AJLabs. Satellite images show Kakhovka dam before and after destruction. Aljazeera. 7 June 2023. Accessed on 4 January 2024. <https://www.aljazeera.com/news/longform/2023/6/7/before-and-after-satellite-images-show-kakhovka-dam-destruction>.

Alexsey Filippov. Ukraine dam disaster: Lack of clean water, spread of disease, major risks. UN News. 7 June 2023. Accessed on 4 January 2024. <https://news.un.org/en/story/2023/06/1137422>.

Geneva Academy. International Armed Conflict in Ukraine. RULAC. 7 June 2023. Accessed on 6 December 2023. <https://www.rulac.org/browse/conflicts/international-armed-conflict-in-ukraine#collapse1accord>.

Susie Blann dan Vasilisa Stepanenko. Major dam collapses in Southern Ukraine flooding villages as Moscow and Kyiv trade blame. AP News. 7 June 2023. Accessed on 13 June 2023. <https://apnews.com/article/russia-ukraine-war-kakhovka-dam-flood-evacuation-eecc9952c2d9f500c38b0a873f69438c>.

Ukraine war: 'Mass plague of fish' washes up after reach of Nova Kakhovka dam. Sky News. 7 June 2023. Accessed on 4 January 2024. <https://news.sky.com/video/ukraine-war-mass-plague-of-fish-washes-up-after-breach-of-nova-kakhovka-dam-12898396>.

Ukraine dam: What we know about Nova Kakhovka incident. BBC News. 8 June 2023. Accessed on 9 December 2023. <https://www.bbc.com/news/world-europe-65818705>.

Kakhovka flooding: Soil and water bodies may not be used for food production or as drinking water reservoirs for many years – expert. Greenpeace. 14 June 2023. Accessed on 4 January 2024. <https://greenpeace.at/cee-press-hub/significant-drop-in-water-levels-in-kakhovka-reservoir-risks-nuclear-safety/>.

The International Committee of the Red Cross. Russia – Ukraine international armed conflict : ICRC continues to help people in need. ICRC. 14 June 2023. Accessed on 10 December 2023. <https://www.icrc.org/en/document/russia-ukraine-international-armed-conflict-icrc-continues-to-help-people-in-need>.

Torsten Landsberg. Ukraine: Cultural heritage sites damaged after dam burst. DW News. 14 June 2023. Accessed on 4 January 2024. <https://www.dw.com/en/ukraine-cultural-heritage-sites-damaged-after-dam-burst/a-65904943>.

Daniel Boffey. Kakhovka collapse: image emerges of apparently explosive-laden car at dam. The Guardian. 19 June 2023. Accessed on 10 December 2023. <https://www.theguardian.com/world/2023/jun/19/kakhovka-dam-collapse-image-apparently-explosive-laden-car-ukraine-russia>.

Burç Eruygur. Ukraine says more than 123,552 acres of forest flooded following Kakhovka dam blast. Anadolu Agency. 21 June 2023. Accessed on 4 January 2024. <https://www.aa.com.tr/en/environment/ukraine-says-more-than-123-552-acres-of-forest-flooded-following-kakhovka-dam-blast/2927104#>.

Hanna-Kaisa Lepik. A disaster in photos: Nova Kakhovka Dam breach in Ukraine. European Commission. 27 June 2023. Accessed on 7 December 2023. https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/stories/disaster-photos-nova-kakhovka-dam-breach-ukraine_en.

United Nations Ukraine. Kakhovka Dam destruction inflicted US\$14 billion damage and loss on Ukraine: Government of Ukraine – UN Report. United Nations Ukraine. 17 October 2023. Accessed on 10 December 2023. <https://ukraine.un.org/en/249742-kakhovka-dam-destruction-inflicted-us14-billion-damage-and-loss-ukraine-government-ukraine>.

Russia – Ukraine war: List of key events, day 664. Al Jazeera. 19 December 2023. Accessed on 19 December 2023. <https://www.aljazeera.com/news/2023/12/19/russia-ukraine-war-list-of-key-events-day-664>.

Others

Restividia Putri. Permasalahan Lingkungan Hidup Adalah Hubungan Mahluk Hidup. Scribd. 16 January 2010. Accessed on 25 February 2023. <https://www.scribd.com/document/25296683/Permasalahan-Lingkungan-Hidup-Adalah-Hubungan-Makhluk-Hidup>.

United Nations. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques. United Nations Office for Disarmament Affairs. Accessed 23 June 2023. <https://disarmament.unoda.org/enmod/>.

United Nations. Convention on the prohibition of military or any other hostile use of environmental modification technique. United Nations Treaty Collection. Accessed on 28 November 2023. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-1&chapter=26&clang=_en.