

# II ASSESSMENTS ON THE UKRAINE-RUSSIA WAR IN THE AXIS OF INTERNATIONAL LAW AND ECOCIDE CRIMES

Doç. Dr. Kutluhan BOZKURT

Çev. Doç. Dr. Kutluhan BOZKURT\* \*\*

Çev. Ahmet ÇİTKÖYLÜ\* \*\*

## *Translators' note*

*The article titled "Uluslararası Hukuk ve Ekokırım Suçlar Ekseninde Ukrayna-Rusya Savaşına İlişkin Değerlendirmeler (Assessments on the Ukraine-Russia War in the Axis of International Law and Ecocides Crimes)" was published in Yeditepe University's Journal of Law Faculty, 2023 – Volume: 20, Issue: 2. The author analyzes ecocide crimes in the context of the Ukraine-Russia War within international law. The author asserts that armed conflicts and weapons not only lead individuals, societies, and states to disaster but also expose the planet and its ecosystem to irreparable damage and destruction. Furthermore, the author explains that the inadequacies of international law in protecting nature, or in other words, the planet and its ecosystem, are evident. Therefore, the author argues that it is necessary to define "Ecocide Crimes" and establish new and effective regulations accordingly. In conclusion, the author emphasizes the importance of giving the planet legal personality, recognizing the planet's right to self-determination, and advocating for the creation of a "Universal Declaration of the Rights of the Planet." These issues, according to the author, should now be discussed by the international community in light of the Ukraine-Russia War, underscoring the urgent need for such considerations.*

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\* Doç. Dr., İstanbul Gedik Üniversitesi Hukuk Fakültesi Uluslararası Hukuk Anabilim Dalı.

\*\* Yazarın ORCID belirleyicisi: 0000-0001-7489-9029.

\* Öğrenci, Yeditepe Üniversitesi Hukuk Fakültesi.

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## INTRODUCTION

Towards the end of 2021, Western media and intelligence sources showed satellite and intelligence photographs of Russian military activity on the border with Ukraine, which were published in the press. Russia was increasing and massing its military forces along the border.<sup>1</sup>

The seriousness and magnitude of the event could be seen in the photographs of this Russian activity on the border with Ukraine<sup>2</sup>. On February 24, Russia recognized the sovereignty of two regions in Ukraine, Donetsk and Lugansk (Dombast & Lohans), which declared their independence by asserting the right to self-determination as part of the separatist movement in Ukraine. At the invitation of these new republics, Russia also launched military action against Ukraine in order to demilitarize Ukraine and protect the rights of Russian citizens in Ukraine.<sup>3</sup>

It is estimated that the main aim of the military intervention was to seize strategic urban areas, especially Kiev, in a short period of time - no more than a few weeks - and also to expand the occupation by controlling the Black Sea coast of Ukraine and to control it from the sea<sup>4</sup>. However, Russia's projections

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\* This title was written by the author

<https://asia.nikkei.com/Politics/Ukraine-war/Satellite-images-reveal-how-Russia-s-Ukraine-invasion-unfolded>

<https://www.timesofisrael.com/satellite-photos-provide-birds-eye-view-of-unfolding-ukraine-crisis/>

<https://t24.com.tr/haber/rusya-nin-ukrayna-yi-iscgali-neden-simdi,1017501>

<https://www.bbc.com/turkce/haberler-dunya-56746772>

<https://asia.nikkei.com/Politics/Ukraine-war/Satellite-images-reveal-how-Russia-s-Ukraine-invasion-unfolded> <https://www.timesofisrael.com/satellite-photos-provide-birds-eye-view-of-unfolding-ukraine-crisis/> 2.

<sup>2</sup> ibid.

<sup>3</sup> Kutluhan Bozkurt, Güncel Gelişmelerle Göç Hukuku, Avrupa Birliği Politikaları ve Düzenlemeleri Kapsamında Mülteci Statüsü ve Sığınma, Legal Yayınevi 2022, pp. 214-215.

<sup>4</sup> ibid.

did not work out and faced unexpected resistance. Although nearly 17 months have passed since Russia began its military campaign, Ukraine's resistance is still ongoing.

When Russia's military intervention is analyzed from the perspective of international law as well as political science, sociology and history, we see that Ukraine responded to Russia for exercising its "right of self-defence" in accordance with Article 51 of the United Nations (UN) Charter, and the armed conflict grew into a war<sup>5</sup>. The fact that this war has caused harm to people and humanity, humanitarian law, as well as harm to nature and the planet, i.e. biological, chemical and cultural destruction shows that the issue is of international law concern.

## ***II-Jus ad Bellum – Jus in Bello***

The debate on whether wars that occur as a result of political and historical conflicts on the world stage can be analyzed within the scope of international law and discipline it seeks to establish has been going on for the last few centuries. It is important to recall that the concept of "just war" has been used for a long time and even dates back to the Roman Empire. If we examine the concept of war from the perspective of international law and the discipline created by it, it is necessary to recognize that war also has a law, that is, its conduct and its consequences should also be examined from a legal perspective, and that it is the subject and subject matter of law, taking into account its historical process.<sup>6</sup>

In international law, two different concepts have been used since Roman law for the law of war, i.e. the law of armed conflict: pre-war law, "jus ad

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<sup>5</sup> Kutluhan Bozkurt, Rusya-Ukrayna Savaşında Diplomatik Çözüm Seçeneği ve Ukraynalı Sığınmacıların Durumunun AB Düzenlemeleri Kapsamında Değerlendirilmesi, Rusya-Ukrayna Savaşının Siyasi ve Hukuki Yansımaları, Konferans, Yakın Doğu Üniversitesi, <https://neu.edu.tr/yakin-dogu-universitesinde-duzenlenen-konferansta-rusya-ukrayna-savasinin-siyasi-ve-hukuki-yansimalari-ele-alindi/> 2022, see also; Kutluhan Bozkurt, Uluslararası Hukuk Açısından Ukrayna-Rusya Savaşına İlişkin Notlar, Hukuk Bülteni, Okan Üniversitesi Hukuk Fakültesi, 2022 <https://okan.edu.tr/index.php/hukuk/sayfa/8120/uluslararasi-hukuk-acisindan-ukrayna-rusya-savasina-iliskin-notlar/>

<sup>6</sup> Yücel Acer & İbrahim Kaya, Uluslararası Hukuk Temel Ders Kitabı, Seçkin Yayınevi, 2015, p. 323. See, Bozkurt, 2018/1, Martin Dixon, A Textbook on International Law, 2007, pp. 309-340. See also; Alina Kaczorowska, Public International Law, Fourth Edition, pp.688-740, Melda Sur, Uluslararası Hukukun Esasları, 11. Edition, p. 286-314, Hüseyin Pazarcı, Uluslararası Hukuk, 14. Edition, pp. 515-647.

bellum", and the law applicable in the event of war, "jus in bello"<sup>7</sup>. In pre-war law, the issue to be considered is whether the state resorting to armed force would be in conformity with international law<sup>8</sup>. It is important to note that the UN Charter explicitly and separately regulates the "(non-)resort to force"<sup>9</sup> and this treaty must be taken into account by the member states of the UN. As for the law applicable in the event of war, the legal definition and nature of the rules to be applied are crucial.<sup>10</sup>

The main difference between the two concepts can be briefly stated as follows: In "jus in bello", there are regulations and rules regarding the types of chemical and/or biological "weapons" prohibited for use and the "warfare techniques" in which they are used<sup>11</sup>. In addition, the "International Humanitarian Law" regulations, which are becoming increasingly widespread and applied at the international level, should not be ignored in relation to the concept in question.<sup>12</sup>

The most devastating effects of armed conflicts (and wars) are seen on people, especially civilians. The Geneva Conventions of 1949 and the 1977 Protocols, which are international regulations in the context of the international law of armed conflict, contain protective provisions for civilians.

Both legal instruments contain provisions that prohibit civilians from being subjected to arbitrary and unlawful acts. In fact, it is recognized as a norm of international law that civilians cannot be subjected to displacement, especially arbitrary displacement, except in military or exigent

<sup>7</sup> Dixon, 2007, s 310, Sean D. Murphy, Principles of International Law, 2012, s. 491-527. See also; Ayşe Nur Tütüncü, İnsancıl Hukuka Giriş, 2019.

<sup>8</sup> Uluslararası hukukta kuvvet kullanımı için bkz. Ayşe Nur Tütüncü, Uluslararası Hukukta Kuvvet Kullanımı, in: Uluslararası Hukuk I, Eskişehir: Anadolu Üniversitesi, 2013, pp.122-136.

<sup>9</sup> In particular, Article 51 of the UN Charter, self-defence, should be taken into account. It should be noted that the UN Charter, Article 2(4), also prohibits "acts of resort to force or the threat of force" with two explicit exceptions. Chapter VII of the UN Statute is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression". Especially Articles 39 and 40 clearly regulate these issues. In the meantime, it should be emphasized that the Briand-Kellog Pact, 26.08.1926, gains importance as a document declaring war illegal. See, Dixon, 2007, p. 311.

<sup>10</sup> The main international regulations to be taken into account are the La Haye Conventions of 1899 and 1907, the Geneva Conventions of 1949 (which consist of 4 conventions) and the two Additional Protocols of 1977.

<sup>11</sup> For the distinction between Jus Ad Bellum and Jus in Bello, see also; Tütüncü, 2019.

<sup>12</sup> Bozkurt, 2018/1.

circumstances<sup>13</sup>. Notwithstanding the aforementioned, such acts have also been observed during the armed conflict between Russia and Ukraine, which has turned into a war; therefore, the international community has witnessed the relevance of this situation to international law, in particular international criminal law<sup>14</sup>. As it can be understood, due to such situations, the importance and development of international criminal law in international relations and society is gradually approaching a new level.<sup>15</sup>

As a result of the armed conflict (war) between Ukraine and Russia, millions of Ukrainian refugees have been forced to seek asylum in Ukraine's neighbours, mainly in European Union (EU) member states such as Romania, Poland, Slovakia, Hungary and even Turkey. On the other side of the coin, Russian citizens living in Ukraine have sought refuge in Russia. As a result of the migration of millions of people, the EU, faced with a massive wave of asylum seekers, granted temporary protection status to a large number of Ukrainian asylum seekers.<sup>16</sup>

It should be noted that with the decision of the EU Parliament, followed by the Commission's positive opinion and the Council's acceptance of the next steps between the EU and Ukraine, Ukraine gained the "candidate country status" for EU membership on June 22, 2022, which paved the way for full membership negotiations, in an unusual speed in the formation, development and enlargement processes of the EU.<sup>17</sup>

### **III-Destruction of the Environment (Nature) by Armed Conflicts and Wars and International Law**

The destruction caused by wars and armed conflicts to human beings and humanity is mostly considered under humanitarian law in international law. In addition, the effects of wars not only on human beings, but more broadly on the environment - here it would be more appropriate to use the

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<sup>13</sup> Sur, 2017, p. 304.

<sup>14</sup> Kutluhan Bozkurt, *Güncel Gelişmelerle Göç Hukuku, Avrupa Birliği Politikaları ve Düzenlemeleri Kapsamında Mülteci Statüsü ve Sığınma*, Legal Yayınevi, 2022, p. 217.

<sup>15</sup> Gönenç Hacıoğlu, *Küresel Adalet, Emperyalizm ve Uluslararası Yargılamalar*, Terskule, 2022, p. 9.

<sup>16</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine/information-people-fleeing-war-ukraine_en)

<sup>17</sup> <https://www.europarl.europa.eu/news/en/press-room/20220227IPR24205/invasion-of-ukraine-meps-call-for-tougher-response-to-russia>

<https://www.consilium.europa.eu/en/policies/enlargement/ukraine/>

term "nature" - and even on other non-human living beings, are far greater than estimated or known. Unfortunately, these destructions and damages are not brought to the forefront.

In addition to the loss of life as a result of the war between Ukraine and Russia, the *Kahovka Dam* in Ukraine was attacked and damaged, which caused serious environmental damage to the ecosystem in the region<sup>18</sup>. Due to the extent of the destruction, this attack can be considered as an ecocide crime<sup>19</sup>. It would be useful to examine international law studies in this field in order to make better evaluations of the destruction caused by wars and armed conflicts in the ecosystem and ecocide crimes.

### 3.1. Main International Regulations in the Framework of the Law of Armed Conflicts

In the context of armed conflicts and humanitarian law, we should first consider the Geneva Convention of 1864<sup>20</sup> and the subsequent convention adopted in 1899 at the La Haye Conference<sup>21</sup>. Subsequently, 12 Protocols<sup>22</sup> on the laws of war were established at the La Haye Conference in 1907. In 1925, the "Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare"<sup>23</sup> was adopted, which includes protective regulations for the environment as well as

<sup>18</sup> <https://www.bbc.com/turkce/articles/c97959vqv21o>

<sup>19</sup> Erwan Rivault, Mark Poynting & Rob England, Ukraine dam: Satellite images reveal Kakhovka canals drying up, BBC News, June 22, 2023. <https://www.bbc.com/news/world-europe-65963403>

<sup>20</sup> It should be mentioned that this convention of 1864 is known as the 1st Geneva Convention, "Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field". This convention was later modified by the Geneva Conventions of 1906, 1929 and 1949 respectively, or rather, the later conventions replaced this convention respectively. <https://ihl-databases.icrc.org/en/ihl-treaties/gc-1864>

<sup>21</sup> At this conference, La Haye Convention No. II on land wars and La Haye Convention No. III on the application of the 1894 Geneva Convention to naval wars were adopted. See, Acer & Kaya, 2015, p. 352.

<sup>22</sup> <https://ihl-databases.icrc.org/fr/ihl-treaties/hague-conv-iv-1907>

The main areas of regulation in these protocols are the rules on land warfare, the status of neutrality, the status of merchant ships, the rules of naval warfare, submarine mines, etc.

<sup>23</sup> <https://ihl-databases.icrc.org/en/ihl-treaties/geneva-gas-prot-1925>

human beings. This regulation was followed by another Geneva Convention dated 1929.<sup>24</sup>

The Protocol adopted in 1925 banned the use of poisonous gases and bacteriological weapons, which indirectly took an important step towards the protection of the environment and ecological balance in addition to humanitarian protection. It should be noted that, although the protection of the environment and nature did not emerge as a concept at the time the Protocol was adopted, it can be seen as the pioneer of legal regulations on the prohibition of weapons that can cause severe damage to the environment.

The new foundations of armed conflicts within the perspective of international law were established after the World War II; in this regard, the "Convention on the Prevention and Punishment of the Crime of Genocide" adopted in 1948 and the Geneva Conventions<sup>25</sup> signed in 1949 and entered into force in 1950 were adopted. Nevertheless, no regulations were issued for the protection of the environment and nature/ecosystems during this period.

However, Articles 35 and 36<sup>26</sup> of Protocol I to the Geneva Conventions of 1949 should be evaluated within the scope of our study. In particular, when we examine paragraph 3 of Article 35<sup>27</sup>, it is seen that "*It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment*". This regulation clearly shows that the natural environment is included within the scope of protection, as it is "intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment". It should be noted that the protection of the environment and the ecosystem were not considered separately in the 1950s, i.e. the damage

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<sup>24</sup> This convention is known as the Geneva Convention relative to the Treatment of Prisoners of War. <https://ihl-databases.icrc.org/en/ihl-treaties/gc-pow-1929>

<sup>25</sup> These Conventions are related to 4 separate conventions: Convention I on the "Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", Convention II on the "Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea", Convention III on the "Treatment of Prisoners of War" and finally Convention IV on the "Protection of Civilian Persons in Time of War". See, [https://www.redcross.org/content/dam/redcross/atg/PDF\\_s/International\\_Services/International\\_Humanitarian\\_Law/IHL\\_SummaryGenevaConv.pdf](https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf)

<sup>26</sup> For the relevant articles see, Melike Batur Yamaner ve diğerleri, 12 Ağustos 1949 Tarihli Cenevre Sözleşmeleri ve Ek Protokolleri, Galatasaray Üniversitesi Hukuk Fakültesi Yayınları: 42.

<sup>27</sup> This article regulates the "Basic Rules" section of the Methods and Means of Warfare Chapter.

caused by armed conflicts to the environment in addition to humanitarian destruction. Nevertheless, this Article is quite progressive and significant.

Article 36, under the heading "New Weapons", states that<sup>28</sup> "*A High Contracting Party shall be under the obligation to determine whether the use of a new weapon, means or method of warfare is prohibited in all or some circumstances by this Protocol or by any rule of international law binding on the High Contracting Party concerned*". Although there is no direct reference to the protection of the environment and the ecosystem, since this article imposes an "obligation" to determine the prohibitions on new weapons, it can be considered with a broad interpretation that the new weapons used or to be used in armed conflicts may constitute an area of obligation regarding whether they are prohibited or not in the context of the previous article, Article 35, paragraph 3.

Whether Articles 35 and 36 are the legal basis for the crime of ecocide is open to discussion, and also the controversy on ecocide and crimes related to it did not yet exist at the time of their drafting. Nevertheless, there is a need for qualified studies and judicial decisions on the applicability of Articles 35 and 36 of Additional Protocol I to the Geneva Conventions to crimes of ecocide.

Developing technology has changed armed conflicts, wars and even warfare techniques, and as a result of their new qualities, the necessity to make new regulations in international law has emerged. Although not directly aimed at the protection of the environment, the 1954 convention and protocols regulating the "Convention for the Protection of Cultural Property in the Event of Armed Conflict"<sup>29</sup> are worth examining.<sup>30</sup>

The regulation in question is narrow and limited in terms of provisions directly related to the protection of the environment and the ecosystem; moreover, this regulation aims to protect cultural heritage and assets. Nevertheless, this regulation draws attention to the protection of the environment and habitat in which cultural assets are located. In other words, it can be assumed that the regulation in question is an international regulation that can be considered very narrow in the context of ecocide crimes.

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<sup>28</sup> See also; Yamaner, p. 205

<sup>29</sup> <https://www.ihd.org.tr/wp-content/uploads/2021/09/K-Silahli-Catisma-KV-Kor.-1954-Lahey-2.-Protokol-1999.pdf>

<sup>30</sup> This regulation is known as the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict  
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Two additional protocols<sup>31</sup> were signed in addition to the 1949 Geneva Conventions in 1977. These regulations, which were made in the context of new conditions and developments, are aimed at protecting victims, whereas the protection of the environment and the ecosystem is not considered within the scope of the protocols.

### **3.2. Council of Europe Regulation, Convention on the Protection of the Environment through Criminal Law**

Apart from the regulations on armed conflicts and the law of war examined under the previous heading, many conferences on the protection of the environment have been held directly or indirectly and many regulations/texts have been prepared as a result of these conferences<sup>32</sup>. The focus of this study is the ecocide crimes in armed conflict and war. Since these international regulations will be the subject of another study, they will not be included in this article. In addition to all these, the regulation adopted by the Council of Europe in Strasbourg in 1998 is extremely important and should not be ignored: Convention on the Protection of the Environment through Criminal Law.<sup>33</sup>

In this regulation prepared by the Council of Europe, criminal law and its principles are emphasized to protect the environment. Although it has been signed and ratified by a limited and small number of countries, it should be noted that the Convention for the Protection of the Environment through

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<sup>31</sup> Additional Protocol No. I is entitled "Protection of Victims of International Armed Conflicts" and Additional Protocol No. II is entitled "Protection of Victims of Non-International Armed Conflicts".

<sup>32</sup> The emergence of environmental awareness at the international stage can be traced to the 70s. The 1972 United Nations Conference on the Human Environment was a turning point. Later in 1972, the United Nations Environment Programme was established. It should be underlined that the right of human beings to live in an environment consisting primarily of a healthy and balanced combination of air, water and soil has begun to be included in international regulations, in the basic texts of the Council of Europe, OSCE and the European Union, and in conventions aiming to protect nature. See, İbrahim Ö. Kaboğlu & Nihan Yancı Özalp, *Çevre Hakkı*, 4. Baskı, 2021, p. 30. See also; Metin Feyzioglu, Giriş, p. 8, Nükhet Yılmaz Turgut, *Çevreyi Koruyucu Uluslararası Sözleşmelerin Yadsınamaz Önemi*, TBB, *Uluslararası Çevre Koruma Sözleşmeleri* 2014, pp. 11-14.

<sup>33</sup> <https://rm.coe.int/168007f3f4#:~:text=the%20unlawful%20possession%2C%20taking%2C%20damaging,wild%20flora%20and%20fauna%20species.&text=by%20one%20of%20it%20nationals,fall%20under%20any%20territorial%20jurisdiction.>  
For an evaluation of this convention, see, Nazmiye Özenbaş, *Çevrenin Ceza Hukuku Yoluyla Korunması Kapsamında Çevrenin Kirletilmesi Suçları*, *International Conference on Eurasian Economies* 2013, pp. 924-931.

Criminal Law is one of the new generation of regulations. The military and armed interventions initiated by Russia turned into a war and the assessment of crimes against the environment and ecosystem in the region is carried out within the scope of this convention, as Ukraine has been a party to this convention since January 24, 2006. Russia left the Council of Europe in March 2022 after its military intervention<sup>34</sup>.

Nevertheless, it is important that Ukraine is still a member of the Council and that it takes initiatives in this regard and/or that the Council initiates inquiries, at the request of other members of the Council, into Russia's interventions in the region, including environmental crimes and even ecocide.

It should be expected that the European Court of Human Rights (ECtHR), as the Supreme Judicial Body of the Council of Europe, will be able to establish case law on applications that may be addressed to it, primarily in the context of transboundary conventions, in connection with Article 2 of the European Convention on Human Rights (ECHR) regulating the "Right to Life" and Article 8 regulating the "Protection of Private Life". In this context, whether or not Turkey is a party to the 1998 Convention is not important due to the transboundary nature of the provision in question. In fact, even though Turkey is not a party to the Convention on the Protection of the Environment through Criminal Law, in an application to the ECtHR, in the Öneriyıldız judgment<sup>35</sup>, the Convention was taken into account in the interpretation of Article 2 of the ECHR. In this context, it can be seen that the ECtHR, in terms of the protection of the environment and the ecosystem, uses transboundary regulations and the jurisprudence it has established as a basis for its judgments and even makes them the center of its legal debates<sup>36</sup>. In addition, we need to take into account the existence of transboundary judgments of the ECtHR due to this judgment and similar ones.

It should be expected that the 1998 Convention will enter the legal debate in a possible application to the ECtHR in connection with the armed conflict between Ukraine and Russia. Notwithstanding all this, there is one overriding legal issue that remains to be resolved: Russia is not a member of the Council of Europe as of March 2022 and does not recognize the jurisdiction of the ECtHR, in other words, it has left the jurisdiction of the ECtHR. Therefore,

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<sup>34</sup> <https://www.coe.int/en/web/portal/-/the-russian-federation-is-excluded-from-the-council-of-europe>

<sup>35</sup> *Öneriyıldız v. Turkey*. Application No. 48939/99 (2004).

<sup>36</sup> In the Taşkın judgment, the ECtHR interpreted and evaluated the Aarhus Convention, to which Turkey is not a party, within the scope of Article 8 of the ECHR and established a case law. See, *Taşkın and Others v. Turkey*. Application No. 46117/99 (2004) par. 99.

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in the event of a possible application or applications, the ECtHR must first resolve this issue and then decide whether to focus on the merits of the application.

### 3.3 Rome Statute and Ecocide, Applicability of the Statute to Ecocide Crimes

It is clear that the existence of "environmental law" based regulations in the context of international law is of course important for the protection of the environment and the ecosystem, however, it is also obvious that international law regulations are extremely inadequate in the framework of armed conflicts and the existence of problems and dangers<sup>37</sup>. Nevertheless, current regulations cannot be ignored and the Rome Statute is also worth examining within the scope of this study.

The Rome Statute is known as the statute that constitutes the legal basis for the establishment of the International Criminal Court in 1998 in Rome at a United Nations-organized conference<sup>38</sup>. In other words, the Rome Statute is known as the Statute Establishing the International Criminal Court<sup>39</sup>. According to the Statute, the International Criminal Court is a supreme court<sup>40</sup>, complementary to national courts<sup>41</sup> (Art. 1 of the Statute<sup>42</sup>), because it has the task of prosecuting persons accused of the most serious crimes and offenses of an international character.

Article 8 of the Statute regulates the heading "War Crimes". Sub-heading iv of paragraph 2, sub-paragraph b of this Article states that "***Launching an attack with the knowledge that it will cause injury or death to civilians or damage to civilian objects, and will cause widespread, long-term and severe damage to the natural environment, which is excessive compared to the concrete and direct military advantages anticipated***"<sup>43</sup>. Looking at the situation in Ukraine within the framework of this regulation, it can be

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<sup>37</sup> Kutluhan Bozkurt, Uluslararası Hukuk ve AB Düzenlemeleri Kapsamında Çevre Kirliliği ve Çevrenin Korunması ve Türkiye'deki Durumun Değerlendirilmesi, in Nihan Yancı Özalp, 27. Dönem TBMM ve Çevre Çalıştay 1 Sonuç Raporu, 2021.

<sup>38</sup><https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

<https://diabgm.adalet.gov.tr/Home/SayfaDetay/uluslararasi-ceza-mahkemesi-ucm28022020101834>.

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *Complementarity principle*

<sup>42</sup><https://diabgm.adalet.gov.tr/Home/SayfaDetay/uluslararasi-ceza-mahkemesi-ucm28022020101834>.

<sup>43</sup> [http://www.ceidizleme.org/ekutuphaneresim/dosya/459\\_1.pdf](http://www.ceidizleme.org/ekutuphaneresim/dosya/459_1.pdf)

foreseen that the armed conflicts there will damage the environment both in the near and long term. Both the destruction and pollution caused by the weapons used, the attacks on the nuclear power plants<sup>44</sup> in the country, which put the nuclear power plants at risk and have the potential to initiate nuclear devastation, and the attacks on hydroelectric power plants<sup>45</sup> actually fit into the category of crimes defined in Article 8, paragraph 2, subparagraph b, heading iv of the Rome Statute.

Article 8 of the Statute does not define the crime of ecocide; sub-heading iv of paragraph 2, subparagraph b of paragraph 2 of the relevant article only states "Intentionally launching an attack in the knowledge". Therefore, it is insufficient to include and cover the environmental disasters that occur in armed conflicts, as well as the severe destruction of the ecosystem. Article 5 of the Statute<sup>46</sup>, under the heading "Crimes falling within the jurisdiction of the Court", includes the categories of "a) *The crime of genocide*; (b) *Crimes against humanity*; (c) *War crimes*; (d) *The crime of aggression*". Despite all these, there is no title or category of "ecocide crimes" within these crime types.<sup>47</sup>

Although there is no such heading, there is a possibility that the conflicts in Ukraine may be considered under the headings of "crimes against humanity" and "war crimes" for attacks and destruction that may cause ecocide. However, it is highly probable that an attempt to include attacks on the environment, nature and the ecosystem in these two crime types would lead to a differentiation of the purpose of the regulation of these crime types and the legal situation to be protected (the relevant clauses specifically include other types of crimes<sup>48</sup>), creating a difficult situation to be implemented with the adoption of such a regulation.

Another possibility that needs to be discussed at this point is whether a new *Jus Cogens*<sup>49</sup> rule should be created within the scope of *Jus Cogens* -

<sup>44</sup> Ukraine has 4 nuclear power plants and 15 reactors. The *Zaporizhzhia* nuclear power plant is known as the largest in Europe.

<sup>45</sup> The attack and destruction of the Kakhovka Dam has been a serious ecological disaster. For information and images of the scale of the disaster, see, Erwan Rivault, Mark Poynting & Rob England, Ukraine dam: Satellite images reveal Kakhovka canals drying up, BBC News, June 22, 2023. <https://www.bbc.com/news/world-europe-65963403> see also; <https://www.bbc.com/turkce/articles/c97959vqv21o>

<sup>46</sup> Article 5 of the Rome Statute

<sup>47</sup> <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

<sup>48</sup> The relevant paragraphs do not directly define "environmental and ecocide crimes".

<sup>49</sup> Article 53 of the 1969 Vienna Convention on the Law of Treaties refers to *Jus Cogens* regulations. Accordingly; "*A treaty is void if, at the time of its conclusion, it conflicts with a YÜHFD Cilt: XXI Sayı:1 (2024)*

mandatory rules - that includes a definition of ecocide crimes<sup>50</sup> against the environment and ecosystem<sup>51</sup>. In terms of international law, the most practical and effective solution would be to create a new peremptory norm that includes armed conflicts and environmental disasters caused by war, destruction of the ecosystem, global warming and climate change, and which is linked to ecocide crimes.

#### IV-The Ukraine-Russia War on the Axis of Crime

There is no doubt that armed conflicts and wars have severe impacts, damages and consequences on humans, especially civilians. The real face of these catastrophes is shown by the intense loss of life, injuries, forced migration-asylum situations, material losses, damages and other tragedies. Of course, the negative effects of armed conflicts and wars are not limited to these. The effects of environmental disasters caused by the weapons used and the physical, chemical, biological, radioactive and ecological destruction, devastation and damage caused by destroyed military and civilian sites can last for many years<sup>52</sup>. Ukraine has once again demonstrated that armed conflicts and wars cause permanent and even catastrophic damage to nature, more precisely to the planet and its ecosystem. These acts against the

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*peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."* UN Information Centre UNIC-Ankara UNIC Turkey, Vienna Convention on the Law of Treaties, 22 May 1969. See also: [https://insanhaklariizleme.org/vt/yayin\\_view.php?editid1=438](https://insanhaklariizleme.org/vt/yayin_view.php?editid1=438)

<sup>50</sup> It should be noted that in the context of international law and regulations, there is not yet a generally accepted definition of ecocide, its elements and a consensus on which acts are included in ecocide crimes. In fact, the concept of ecocide is still in its developmental stage and has been voiced by climate activists. It is possible that the definition and regulation of ecocide crimes will be accepted in the near or medium term. See, Kutluhan Bozkurt, Uluslararası Hukuk Bağlamında İklim Aktivizmi, İklim Krizi ve Hukuk, in: İklim Krizi ve Hukuk, Editörler: Sultan Tahmazoğlu Üzeltürk, Kutluhan Bozkurt, Duygu Kulaç, Legal Yayınevi, 2022, p. 179.

<sup>51</sup> Bozkurt, 2022, s. 179.

<sup>52</sup> At this point, it is useful to remember the ecological, chemical and biological disasters caused by the oil refineries and facilities destroyed and burned during the Gulf War in the 90s. On this issue, see, Abdullah Toukan, The Gulf War and The Environment: The need for a Treaty Prohibiting Ecological destruction as a Weapon of War, The Fletcher Forum of World Affairs, Vol. 15, No. 2 (Summer 1991), pp. 95-100. <https://www.jstor.org/stable/45289999>

ecosystem should not be seen as a simple environmental crime or pollution. Because the destruction and damage are directly directed against nature, in other words, the planet and its ecosystem, the determination of the type of crime becomes important, and even the definition, determination and acceptance of ecocide crime becomes of great importance. In addition, it becomes crucial to mobilize international public opinion to give the planet a personality, to give the planet the right to self-determination<sup>53</sup>, and ultimately to draft a "Universal Declaration of Planetary Rights" for the protection of the planet.<sup>54</sup>

The regulations and existing violations that should be taken into account in the context of ecocide crimes in Ukraine and in the axis of international law can be listed as follows: (i) - violations related to "environmental crimes" under Articles 35 and 36 of Additional Protocol I to the 1949 Geneva Convention, (ii) violations under the Convention on the Protection of the Environment through Criminal Law and/or possible applications to the ECtHR in connection with violations of "the right to life, the right to privacy and other potentially relevant rights" under the ECtHR, (iii) violations related to Article 8 and partially Article 5 of the Rome Statute, and finally (iv) possible violations under the Jus Cogens Rules. It should be noted that even though these violations constitute environmental crimes within the scope of the relevant regulations, these acts against the planet and its ecosystem can actually be included in ecocide crimes, but they cannot turn into "ecocide crimes" due to the lack of international regulations.

In order to protect the planet and its ecosystem, it is clear that there is a need for an internationally, universally and generally accepted definition of "ecocide crimes" that includes not only armed conflicts and wars but also acts that lead to global warming and climate change.<sup>55</sup>

## V-Conclusion and Evaluation

<sup>53</sup> The Planetary Right to Self-Determination.

<sup>54</sup> Kutluhan Bozkurt ve Yasemin Özbilgin, İklim Mültecileri: İklim Adaleti Perspektifinde İklimle Bağlı Göç Hareketleri ve Uluslararası Hukuk Bağlamında Yeni Düzenleme Gerekliği, in: İklim Adaleti, Editörler: Şükrü Karatepe ve diğerleri İdeal Kent Yayınları, 2023 pp. 397- 418. See also; Kutluhan Bozkurt, Uluslararası Hukuk Bağlamında Ekokırım (*Ecocide*) Suçlara İlişkin Değerlendirmeler, Bildiri Özeti, 12-13 Nisan 2023 İklim Sempozyumu, Özyeğin Üniversitesi 2023.

<sup>55</sup> In fact, there is a need for a reshaping of international law and international criminal law and a restructuring that will embrace all the rights and nations of the world equally. For an important study on this issue, see, Gönenç Hacaloğlu, Küresel Adalet, Emperyalizm ve Uluslararası Yargılamalar, 2022.

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The effects of armed conflicts and wars have different impacts in different areas and leave lasting consequences. To think that these events only cause loss of life and property, injuries and destruction of military zones and civilian settlements risks overlooking the different aspects of the problem. In a very different way, the damages caused by the weapons used, the heavy pollution, which is difficult to compensate, created by the destroyed areas are directed towards nature, more precisely the planet, affecting all living beings on the planet, including humans, animals and plants; moreover, this effect carries the risk of lasting for generations, which shows how wide the scope of destruction is.

The armed conflict launched by Russia's military intervention and attempted invasion of Ukraine has now turned into a war. This has resulted in the displacement of millions of people to third countries, the loss of many lives, the injury of thousands of people, the destruction of military sites and civilian settlements (houses, hospitals, schools) and hydroelectric power plants, which have been publicized internationally. It is clear that the parties should have responsibilities towards the environment, or more accurately nature/planet, as the destruction and damages resulting from conflicts are directed towards nature, the planet and its ecosystem. However, it is also seen that international law is extremely inadequate and ineffective in terms of regulations for the protection of nature and the planet in armed conflicts and states of war.

The destruction of nature and its ecosystem in the event of armed conflicts and war should either be regulated as a separate type of crime, "Crimes Against the Planet", or recognized as a special type of crime under the heading of ecocide crimes, as it is an important goal for the protection of the existence and balance of the planet. For this purpose, it seems to be a solution option to include the definition of "Crimes against the Planet" within the definition and scope of Jus Cogens, which regulates the mandatory rules of international law, and/or to add the definition of "Crimes against the Planet" as the last paragraph under Article 5 of the Rome Statute or to include it as a special paragraph under the title of "War Crimes" regulated in Article 8 of the same Statute.

The definition, determination and acceptance of the crime of ecocide is of great importance for the protection of the rights of the planet on which we all live and which gives us life. For this reason, it should be seen as an important recommendation and aim for the international community, states, international organizations and citizens of the planet to prepare a "Universal

Declaration of the Rights of the Planet" in order to give our planet a personality, to give the planet the right to self-determination and consequently to protect the planet.

To conclude, it should not be forgotten that our planet is much more in need of peace, solidarity, an international, new generation, equality-based and functional justice system and practice than it is in need of armed conflicts, wars, armaments, environmental and ecological disasters and forced migrations. The legal assurance of this justice for our planet should also be seen as a debt owed to the planet by the civilization that the planet created and gave life to.

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