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PROTECTION OF THE ENVIRONMENT UNDER OCCUPATION: SCOPE AND CONTENT OF LEGAL OBLIGATIONS OF THE OCCUPIER

The article is dedicated to the problem of the protection of the environment on occupied territories. Due to the fact that the law of occupation doesn't contain legal rules establishing environmental obligations of the occupying power, the environment on the territories under its authority often becomes a victim of the overexploitation and destruction. At the same time, it is suggested that the current international law, in particular, international human rights law and international environmental law, can be used to fill gaps in the rules of international humanitarian law. Certainly, the scope and the content of occupier's obligations will be different depending on the instruments applied for the protection of the environment. The author concludes that the occupying state may be bound by its own multilateral environmental agreements, multilateral environmental agreements of the state which territory is occupied or both groups of treaties. A case-by-case approach to environmental human rights protection can serve as a useful tool for the concretization of occupier's environmental obligations.

Keywords: occupation, protection of the environment, occupying power, international armed conflict, human rights, the Kakhovka dam, law of occupation, international humanitarian law, international environmental law, international human rights law.

Problem statement. For the moment a uniformed approach to the problem of the protection of environment under occupation doesn't exist. The main binding legal acts that frame the legal regime of occupation contain few provisions from which environmental obligation may directly stem. At the same time nowadays the need for an effective protection of the environment both in peacetime and wartime is steadily increasing. It has driven the international legal community to search viable means for the interpretation and application of the existing legal framework. Certainly, international humanitarian law and international criminal law are the main domains where the above solutions can be found. But their inherent limits are also well-known, which stimulate scholars and practitioners to raise the question about a possible application of international human rights law and international environmental law to the situations of armed conflicts in general and occupation in particular. The reference to the rules of the above branches of international law is not self-evident, because traditionally international human rights law is applied to the protection of human rights, including environmental rights, in peacetime, while the utilization of international environmen-

tal law in wartime has been questioned due to the fact that under the conditions of warfare many international treaties are suspended or terminated between their parties that are in conflict.

At the same time these legal approaches have been undergoing serious transformations, first of all, owing to the jurisprudence of international courts. Legal scholarship also contains many proposals that may lead to the changes in scope and content of environmental obligations of occupying powers.

This tendency is of great importance for the states which territories are under occupation, among which the case of Ukraine is one of the most urgent. As of 26 February 2024, Ukrainian territories have suffered environmental damage for almost 63 billion dollars [1]. Many of the territories in which harm caused by hostilities is especially serious are still under the Russian occupation. For example, as of 10 January 2024, 2 biosphere reserves, 8 nature reserves, 13 national natural parks were situated in the occupied territories of Ukraine [2]. The devastating destruction of the Kakhovka dam¹ is another case requiring legal solutions, which should be provided by international law.

Analysis of the latest researches and publications. Being a theatre of warfare, the environment suffers a lot of harm during armed conflicts. At the same time, the issues of environmental protection in this context are ones of the less explored, in particular, in relation to occupation. It can be easily explained by a relatively recent development of international environmental law and especially its provisions concerning the protection of the environment under the conditions of warfare. In this connection, the classic studies on the law of occupation often lack environmental aspects. In parallel, these issues are with greater frequency considered through the prism of natural resources conservation and human rights. N. Schrijver, D. Dam-De Jong, K. Hulme et al. are among the scholars whose studies are worth mentioning in this regard. At same time, recent scientific activities of the International Committee of the Red Cross (hereinafter – the ICRC) and the International Law Commission (hereinafter – the ILC)² dedicated to the enhancement of environmental protection during armed conflicts prove the topicality of this direction of legal studies. The provisions of Part IV “Principles applicable in situations of occupation” of the 2022 ILC Draft Principles on Protection of the Environment in Relation to Armed Conflicts are particularly relevant for the elaboration of the regime.

Speaking about multilateral environmental agreements application in times of war, there are only few studies that tackle this sphere of armed conflicts. In particular, M. Bothe, C. Bruch, J. Diamond, and D. Jensen in their 2010 study³ suggest that application of international environmental law during armed conflicts could be a so-

¹ About short-, medium- and long-term impacts of the Kakhovka dam destruction see, e.g., in Vyshnevskiy V., Shevchuk S., Komorin V., Oleynik Y., Gleick P. The Destruction of the Kakhovka Dam and Its Consequences (2023).

² Guidelines on the Protection of the Natural Environment in Armed Conflict of the ICRC of 1994, updated in 2020; Draft Principles on Protection of the Environment in Relation to Armed Conflicts, adopted by the ILC in 2022.

³ Bothe M., Bruch C., Diamond J., Jensen D. International Law Protecting the Environment during Armed Conflict: Gaps and Opportunities. *International Review of the Red Cross*, 2010, № 92 (879). P. 569-592.

lution for the above deficiencies of protection that the environment can find under international humanitarian law, even though it is well-known that the effects of armed conflicts on treaties is one of the spheres of international law where the rules are not completely crystallized.

Purpose statement. Taking into consideration the above-mentioned, the main aim of the article is to establish the existence of environmental obligations of the occupier according to the current international legal framework and also to define their possible scope and content, at least concerning the minimal core duties.

Main part of the research paper. Current legal framework. As it has been already mentioned, nowadays the international community cannot deny anymore the need for an effective protection of the environment. It gains a special relevance in the context of armed conflicts. Before we proceed with further consideration of the problem, it is worth to emphasize a distinction between the levels of protection that shall be guaranteed to the environment at the invasion stage and at the stage of occupation. This difference is explained by distinct conditions of warfare: while during the first stage the invader does not execute effective control over the territory and, thus, has less possibility of assessing and preventing environmental harm, during the occupation stage, which often is characterized by a calmer situation, the occupier controls the territory almost in full, which means that its environmental obligations are growing. At the same time the current law of occupation, which is considered to be one of the situations of international armed conflict, doesn't contain clear provisions that would establish environmental obligations of the occupying power. Yet, the question about it being bound by some norms of multilateral environmental agreements emerges. It is relevant for both their groups: treaties of the occupying power and treaties of the occupied state. Moreover, the issue of its customary international environmental obligations requires a further examination as well.

Concerning the current legal framework for the protection of the environment under international humanitarian law, there are no special rules for it in the law of occupation. Even though in international humanitarian law the environment is considered to be a specially protected object, this protection is limited to the provisions of Art. 35 and 55 of the 1977 Protocol I to Geneva Conventions⁴. The first one establishes its basic rules: "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", while the second one concretizes them giving the above provisions a more anthropocentric tint. It states that "care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisals are prohibited" [3].

Yet, attacks against the environment are not mentioned in Art. 85 of the protocol establishing the list of its grave breaches amounting to war crimes. Thus, the first endeavor to impose direct responsibility for war crimes against the environment was realized in Art. 8 (2)(b)(4) of the Rome statute of 1998, according to which "intention-

⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977 (hereinafter – Protocol I).

ally launching an attack in the knowledge that such attack will cause ... 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” [4] is defined as a war crime in the context of international armed conflict. In connection with it, S. Freeland emphasizes that, in addition to an impossibly high threshold of proof (which means the cumulative qualification of a possible damage as widespread, long-term and severe and other requirements), the responsibility is conditioned by the principle of military necessity [5]. In regard to the latter a broad range of publications⁵ can be found, which is explained by the need for establishing a balance between two fundamental principles of international humanitarian law, namely the principle of humanity and the principle of military necessity, which sometimes is understood too broadly leaving a room for abuse by belligerent parties. Being unable to go further with its scientific investigation in the framework of this publication, we consider important to quote the definition of military necessity provided by the 1987 Commentary of Protocol I. Accordingly, military necessity is interpreted “as an urgent need, admitting of no delay, for the taking by a commander, of measures which are indispensable for forcing as quickly as possible the complete surrender of the enemy by means of regulated violence, and which are not forbidden by the laws and customs of war” [6]. As a result, there are at least four essential characteristic that can justify an attack under international humanitarian law: its urgency, indispensability of measures, effective control over the force used (in space and time) [6], and means in compliance with an unconditional prohibition.

Coming back to the qualification of war crimes against the environment, it should be stressed that damage caused by an attack should be not just excessive compared with anticipated military advantage, but clearly excessive, which means that a commander should have no doubts about the consequences of a military operation launched by him/her. What’s more, neither Protocol I, nor the Rome statute contain a definitive interpretation of a required damage features, such as its widespread, long-term and severe character, which makes their establishment for the purpose of war crimes prosecution almost impossible⁶.

Other legal acts preceding the conclusion of the Rome statute, namely Protocol I and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (hereinafter – the ENMOD), which also mention these characteristics, don’t provide their clear-cut definitions as well or it might be better to say the Understanding to Art. 1 of the ENMOD defines “widespread” as covering “an area on the scale of several hundred square kilometers”, “long-lasting” as “a period of months, or approximately a season” and “severe” as “serious or significant disruption or harm to human life, natural and economic resources or other assets”

⁵ See, e.g., Dinstein Y. *Military Necessity. Max Planck encyclopedia of International Law* (2015); Melzer N. *Keeping the Balance between Military Necessity and Humanity: A Response to Four Critiques of the ICRC’s Interpretive Guidance on the Notion of Direct Participation in Hostilities* (2010); Schmitt M.N. *Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance* (2010), etc.

⁶ Some proposals for the amendments of the Rome statute concerning the issue can be found in Freeland S. *Addressing the Intentional Destruction of the Environment During Warfare under the Rome Statute of the International Criminal Court* (2015); Sadova T. *War Crimes against the Environment under International Criminal Law: PhD thesis* (2024) (in Ukrainian).

[7]. Protocol 1 doesn't define them at all, but according to some scholars' suggestions its drafters had an intention to define "widespread" as embracing "less than several hundred square kilometers", "long-term" as "a matter of decades" with no consensus about the term "severe" [8, p. 542].

Under these conditions even the most serious harm to the environment caused, e.g., by the destruction of the Kakhovka dam, becomes very difficult to prove in terms of international criminal responsibility. Even though in this situation it seems that the minimal requirements⁷ could be met and the attack launched by the Russian armed forces⁸ can amount to war crime against the environment according to the Rome statute [9, p. 2; 10, p. 25]⁹.

Concerning the responsibility of Russia as an occupying power for the above act, it is worth noting that in this connection the criterion of effective control is very important for the establishment of the beginning and the ending of the occupation. It is broadly recognized that effective control can be both actual and potential. So, for the existence of occupation and, consequently, the obligations of occupying power it is not mandatory that the armed forces of the latter were physically present on the territory under consideration. It is enough that the occupier could potentially control it or reestablish its control over it.

Recent Developments. Environmental protection in armed conflict under soft law. Among the acts of soft law which have been adopted or updated recently and are specially relevant for the elaboration and crystallization of the international legal regime guarantying protection of the environment in relation to armed conflicts two acts are absolutely to mention: the Guidelines on the Protection of the Natural Environment in Armed Conflict of the ICRC of 1994 (updated in 2020) and the Draft Principles on Protection of the Environment in Relation to Armed Conflicts presented by the ILC in 2022. Being concentrated on the protection of the environment in the active phase of hostilities (or, as it is sometimes called, in the invasion phase), the first document unfortunately doesn't contain special rules for the occupation phase [11]. Despite this some rules of the guidelines are of general application and can be applied during the whole period of armed conflict.

The draft articles are also mostly aimed at the invasion phase, but there are three principles that relate directly to the occupation phase. They are mentioned in Part 4 "Principles applicable in situations of occupation". Their careful consideration is worth the effort.

So, under Principle 19 establishing general environmental obligations of the occupying power, the latter "shall respect and protect the environment of the occupied

⁷ About short-, medium- and long-term impacts of the Kakhovka dam destruction see, e.g., in Vyshnevskiy V., Shevchuk S., Komorin V., Olynyk Y., Gleick P. The Destruction of the Kakhovka Dam and Its Consequences (2023).

⁸ For a preliminary analysis of possible breaches of relevant international humanitarian law in the case of the destruction of the Kakhovka dam see in Milanovic M. The Destruction of the Nova Kakhovka Dam and International Humanitarian Law: Some Preliminary Thoughts (2023).

⁹ For more information about the protection of dams under international humanitarian law see in Schmitt M. N. Attacking dams – Part I: Customary international law (2022); Schmitt M. N. Attacking dams – Part II: The 1977 Additional Protocols (2022).

territory in accordance with applicable international law and take environmental considerations into account in the administration of such territory” [12]. In addition, it must “take appropriate measures to prevent significant harm to the environment of the occupied territory, including harm that is likely to prejudice the health and well-being of protected persons of the occupied territory or otherwise violate their rights” [12]. Finally, the occupier “shall respect the law and institutions of the occupied territory concerning the protection of the environment and may only introduce changes within the limits provided by the law of armed conflict” [12].

Thus, this principle establishes a general obligation of protection of the environment, along with the obligation of harm prevention and a “conservationist” obligation regarding the institutions of the occupied territory involved in environmental protection. What’s more, being an administrator of the occupied territory, as it is provided in Art. 55 of the Convention concerning the Laws and Customs of War on Land (hereinafter - the Hague regulations) [13]¹⁰, the occupying power should take decisions paying attention to the need for environmental protection. The provision “in accordance with applicable international law” suggests that the law that should be respected by the occupier could include not only the rules of international humanitarian law, but of other international law branches as well.

In the same vein, Y. Benvenisti concludes that this approach is supported by the practice of international courts and tribunals, e.g., the ICJ, which “prefer a systematic and evolutionary interpretation of international instruments, when interpreting the relevant texts applying to occupations”. It means that additional sources “may be of relevance to the exercise of authority by the occupant”, e.g., in the process of interpretation of the obligations of the occupant concerning the management of natural resources on territories under occupation, relevant obligations stemming from international environmental law or the law on international watercourses probably shall be taken into consideration [14, par.19].

Principle 20 of the Draft Articles is dedicated exactly to the management of natural resources, setting out a rule aimed at their protection in the occupied territory. In compliance with it, “to the extent that an occupying power is permitted to administer and use the natural resources in an occupied territory, for the benefit of the protected population of the occupied territory and for other lawful purposes under the law of armed conflict, it shall do so in a way that ensures their sustainable use and minimizes harm to the environment” [12]. To better comprehend these provisions, they should be considered in conjunction with Art. 55 of the Hague regulations, which prescribes that “the occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct” [12].

Despite this, the rule cannot be fully interpreted without reference to the concept of sustainable development that has been an important element of international environmental law. Even though due to its complexity this concept as a whole hasn’t become binding yet, according to some scholars its elements, such as “sustainable use”

¹⁰ Convention concerning the Laws and Customs of War on Land and its Annex: Regulations Respecting the Laws and Customs of War on Land (signed 18 October 1907, entered into force 26 January 1910) (Hague Convention IV).

in the context of the management of natural resources, have transformed into international customary law [15, par. 28].

Finally, Principle 21 embodies the rule over the duty to prevent transboundary harm, which has already acquired customary nature as well [15, par. 23]. The draft article stresses that the occupier “shall take appropriate measures to ensure that activities in the occupied territory do not cause significant harm to the environment of other States or areas beyond national jurisdiction, or any area of the occupied State beyond the occupied territory” [12]. It is to be emphasized that the principle goes beyond the traditional wording of the rule as it is stated, e.g., in Principle 21 of the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment, in conformity with which “states have ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction” [16], adding to the sphere of the occupying power responsibility the territory of the ousted government that is not subject to the occupation. Yet, it limits its responsibility only by including “significant harm” and not any “damage” mentioned in the Stockholm declaration.

Thus, it can be assumed that the draft articles despite being soft law act help in crystalizing and structuring emerging and already existing rules of international humanitarian law on environmental protection on occupied territories.

Application of multilateral environmental agreements in times of war. The above-mentioned legal framework can be broadened significantly by including the rules from other international law branches. In this context the question above the possibility of applying of these rules in armed conflicts arises, since traditionally it has been accepted that the beginning of an armed conflict may lead to suspension or termination of a peacetime legal regime between belligerent parties. It is well-known that the effects of armed conflicts on treaties is one of the spheres of international law where the rules are not completely crystallized and are undergoing serious changes. So, in the Draft Articles on the Effects of Armed Conflicts on Treaties, adopted by the ILC in 2011, it is established that treaties relating to the international protection of the environment pertain to the category of treaties that under Art. 7 continue in operation, in whole or in part, during armed conflict [17]. Consequently, it implies that the occupying party may be obliged to fulfill its legal obligations stemming from the multilateral environmental agreements to which it is a party relating to the protection of the natural environment during the whole period of the occupation. In this regard it should be mentioned that presently occupying states, like Israel, Russia, Morocco or Turkey, are not parties to many multilateral environmental agreements, e.g., the Aarhus or the Espoo conventions. Despite this, the question about their responsibility to guarantee the realization of obligations taken by the state, whose territory is under occupation, arises. For example, Ukraine is a party to both conventions. Actually, according to Art. 43 of the Hague regulations, the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country [13].

In the regard to the latter provision, Y. Benvenisti concludes that “to the extent that international treaties... formed part of the local law, the occupant would be bound to respect them as well” [14, par. 14]. At the same time, there are proposals to consider

treaties to which the occupier is a party to be applicable in occupied territory on an extra-territorial basis [18, par. 106-112]. It means that on the one hand, the occupier can be bound by the treaties of the state whose territory is occupied, but on the other hand, it can be bound by its own international treaties, which is especially relevant for international human rights treaties.

The above assumption leads us to a significant conclusion about the possibility of protecting the environment through human rights protection, in particular, in various UN and regional human rights institutions. It could be of outstanding importance taking into consideration an increasing “greening” of human rights. One of the latest examples of this tendency is the 2024 ECtHR Judgement on violations of the European Convention for failing to implement sufficient measures to combat climate change in *Verein Klima Seniorinnen Schweiz and Others v. Switzerland* [19].

Human rights perspective. The possibility of protecting the environment under occupation in the context of human rights protection is strengthened by the fact that the environment and its elements are considered to be civilian objects and the population of the territory under occupations consists of civilians. Hence, due to the fact that both branches have the same objective, namely the protection of civilians and civilian objects, their instruments can be coapplied in “a mutually reinforcing way” [20, p. 210].

Such conclusions let some scholars make suggestions about the existence of a minimum core set of environmental human rights and, correspondingly, the occupier’s duties to protect them [20, p. 207]. Thus, professor K. Hulme argues for the establishment of three main obligations of the occupying power, among which she mentions the obligation of “ensuring a baseline level of environmental health, so as to meet the needs of the population, such as adequate food and water sources, and a healthy life itself; managing environmental risk, to ensure the collection and provision of environmental risk information; and conserving a healthy environment in the broader, ecological sense” [20, p. 229-230]. She also proposes to apply “a tripartite approach” used in the domain of the protection of economic, social, and cultural rights that allows to establish a gradation of efforts required from an obliged subject. Consequently, its obligations may increasingly differ in order to “respect”, “protect” and “fulfil” obligations. Thus, respect for environmental human rights supposes that the occupier refrains from any action that could jeopardize the enjoyment of human rights on the occupied territory. Environmental rights protection entails the occupier’s actions for the prevention of rights abuses by third parties, while fulfilment requires measures facilitating the enjoyment of the above rights [20, p. 212]. Supposedly, any environmental right and the occupier’s duties required for its protection can be correspondingly analyzed through this prism. In addition, it provides an opportunity to refer to existing international bodies, such as international courts and human rights committees, whose decisions open the way to holding the occupying powers accountable for the harm caused to the population of the occupied territories in connection with environmental damage.

The 2023 destruction of the Kakhovka dam is an example in which grave violations at every level of three above-mentioned obligations of the occupying power can be found. Before we dwell upon them it is worth mentioning that at the moment of the catastrophe Russia still was supposed to be an occupier, even though physically its armed forces were not already there.

Indeed, the moments of the beginning and ending of the occupation are not precisely defined by the rules of international law. Article 42 of the Hague regulations is almost the only relevant normative source that are broadly analyzed in this regard. In accordance with it, “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised” [13]. Extensive scholarship and jurisprudence have addressed the above provisions in connection with the interpretation of the passage “placed under the authority” coming to two distinct conclusions. In line with the first one, in order to be considered as such the occupier shall exercise actual control over the territory [21, par. 173]. The second one suggests that a potential ability to control the territory is enough to qualify a state as an occupying power [22, p. 151]. A long debate about Israel being an occupier in the Gaza Strip after its disengagement in 2005 shows the complexity of this issue. Notwithstanding the existence of different viewpoints, it is almost commonly accepted, included by the Supreme Court of Israel, that the latter remains an occupying power in Gaza by controlling its territorial sea and airspace¹¹. The same line of reasoning allows us to suggest that the Russian Federation remained the occupying power in the territory where the Kakhovka dam is situated at the time of explosion because it allegedly maintained a distant control over it through a remote-detonated explosive device that was allegedly deployed there by its armed force.

Consequently, it is worth to proceed with a brief illustration of the Russian Federation environmental obligations that supposedly were breached by the destruction of the Kakhovka dam based on the above approach proposed by professor Hulme. Talking about the first obligation, which consists in “ensuring a baseline level of environmental health, so as to meet the needs of the population, such as adequate food and water sources, and a healthy life itself”, it is obvious that the destruction of the dam by Russia put the population of the whole region affected by flooding at risk of shortage of clean drinking water and epidemics. What’s more, it created a serious and direct danger for people’s life. In fact, more than 100 persons died in the affected areas [23]. In regard to the management of environmental risk, Russia hadn’t provided any previous information or send any emergency alert to local population to ensure their evacuation. Finally, taken into consideration an exorbitant extent of environmental harm caused by the destruction of the dam to the region of at least 600 square km, conservation of “a healthy environment in the broader, ecological sense” is out of the question in the situation under consideration.

Thus, even such a simple and brief examination shows that being an occupying power the Russian Federation violated the minimum core of environmental rights of the population that was affected by the destruction of the Kakhovka dam. We cannot but agree that responsibility of the occupier should be higher when the territory under its control contains installations with dangerous forces that can fail easily, such as a dam or nuclear facility [20, p. 236]. Its obligations are more serious even in the case of regular maintenance of the facility. For the Kakhovka dam it would mean that Russia is responsible for its reparations from the very beginning of the occupation in 2022. In the case of its deliberate destruction breaches of the occupier’s duty of environmental

¹¹ See, e.g., Panepinto A. Jurisdiction as Sovereignty over Occupied Palestine: The Case of Khan-al-Ahmar (2016).

protection are almost unavoidable since the scale of caused harm is unproportionally massive in comparison with a possible military advantage obtained by it.

Conclusions. Hence, even though the law of occupation doesn't contain norms establishing environmental obligations of the occupier, the theory and practice of contemporary international law suggest that they are inevitably exist. Article 7 of the 2011 Draft Articles on the Effects of Armed Conflicts on Treaties sets out that treaties relating to the international protection of the environment pertain to the category of treaties may continue in operation, in whole or in part, during armed conflicts. It means that the occupier could be probably obliged to fulfil 1) its own environmental obligations stemming from its multilateral environmental agreements; 2) taking into consideration Art. 43 of the Hague regulations, the obligations of the ousted government stemming from the multilateral environmental agreements concluded by it before the occupation; 3) both sets of obligations. In addition, some of the conventional norms with a high level of probability have already achieved a customary status, which means that they are binding for the occupying state as well.

Another approach to the protection of the environment under occupation advocates for its realization through the protection of human rights. It is a logic corollary of the recent trend towards the co-application of international humanitarian law and international human rights law in the practice of international courts. Establishment of environmental rights of the local population living on territories under occupation on a case-by-case basis could help in developing an environmental part of the legal obligations of the occupying power. Once established, these obligations can be furtherly detailed through the prism of a tripartite approach that can help to reveal their content in progression starting from the duty to respect environmental rights, passing through the duty to protect them, up to the duty of a positive fulfilment by the occupier of its environmental obligations.

Finally, there is another trend that should be taken into consideration within the context of protection of the environment of territories under occupation. We talking about the emergence of new obligations *erga omnes*. Being, for sure, *lege ferenda*, these obligations according to some scholars could include the obligation of environmental protection and/or the obligation of natural resources conservation. It would mean that not only the occupied state, but the occupying state as well should fulfil them in the interests of the international community [24, par. 35]. In light of the above the issue of international environmental obligations of the occupying power gains more relevance, but still requires more studies. In particular, for the elaboration of mechanisms for its compensation damage caused to the environment under occupation should be more detailed and as it seems requires a better identification and structuring depending on the space where it has place, because, for example, harm to the land natural environment can be identified much easier than harm to the maritime environment.

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ОХОРОНА НАВКОЛИШНЬОГО СЕРЕДОВИЩА НА ТЕРИТОРІЯХ ПІД ОКУПАЦІЄЮ: ОБСЯГ І ЗМІСТ ЮРИДИЧНИХ ЗОБОВ'ЯЗАНЬ ДЕРЖАВИ-ОКУПАНТА

Резюме

Стаття присвячена проблемі охорони довкілля окупованих територій. Через те, що міжнародне право окупації не містить правових норм, які б встановлювали екологічні зобов'язання держави-окупанта, навколишнє середовище на територіях, що знаходяться під її владою, часто стає жертвою надмірної експлуатації та знищення. Проте у статті наголошується на тому, що чинне міжнародне право, зокрема міжнародне право прав людини та міжнародне право навколишнього середовища, може бути використане для усунення прогалин у нормах міжнародного гуманітарного права. Звичайно, обсяг і зміст зобов'язань держави-окупанта будуть різними залежно від інструментів, застосованих для захисту навколишнього середовища. Можливість звернення до міжнародних договорів про охорону довкілля в умовах збройного конфлікту, на якій наголошено, зокрема у дослідженні Комісії ООН з міжнародного права, суттєво розширює перелік таких інструментів. У цьому зв'язку авторка робить висновок, що держава-окупант може бути пов'язана своїми власними міжнародними природоохоронними угодами, міжнародними природоохоронними угодами держави, територія якої окупована, або обома групами договорів.

