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## The environment as an object of criminal law protection: Problems of definition in national and international legislation

**Liudmyla Mostepaniuk**

PhD in Law, Associate Professor  
National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine  
<https://orcid.org/0000-0003-2894-0654>

**Olena Matiushenko\***

PhD in Public Administration, Associate Professor  
National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine  
<https://orcid.org/0000-0003-1507-2085>

**Nataliia Symonenko**

PhD in Law, Associate Professor  
National Academy of Internal Affairs  
03035, 1 Solomianska Sq., Kyiv, Ukraine  
<https://orcid.org/0000-0003-1048-278X>

■ **Abstract.** The relevance of this work lies in the need for society and the state to recognise the reality of the threat to the environment, which is reflected in the areas of state environmental policy, the main principles of which are to ensure environmental safety in Ukraine, to improve its level in the exclusion zone, to ensure environmental balance and to ensure accountability for violations of environmental legislation. The aim of the article was to conduct a systematic analysis of environmental protection issues in light of the provisions of national and international criminal law doctrine, to identify its inconsistencies and contradictions, to provide scientifically sound recommendations, and to develop proposals for improving its application and eliminating the identified contradictions. The methodological basis of the study was a system of general and special methods, which includes systemic-structural, logical-dogmatic, formal-legal, and terminological methods. The shortcomings of criminal law protection of the environment have been identified and ways to overcome them have been proposed, namely: mechanisms for environmental protection at the national and international levels have been identified, problematic issues and inconsistencies that may arise at the legislative level during the formulation or improvement of the relevant criminal law prohibition have been outlined, norms that could lead to legal conflicts have been identified, and the need to strengthen the imperative nature of legislative norms in order to ensure guarantees of the right to a safe environment has been proven. The expediency of strengthening the link between the right to a safe environment and other human rights guaranteed by the Constitution of Ukraine was analysed. Conclusions were formulated in the field of improving legislation on liability for criminal offences against the environment, focusing on the need to take into account the implementation of guarantees of the right to a safe environment as an element not only of environmental but also of national security of the state, and specific directions for improving the current criminal legislation of Ukraine are proposed. Taking into account the provisions of international acts aimed at strengthening the effectiveness of criminal law protection of the environment, the expediency of

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■ \*Corresponding author

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using the principle of clarity in the formulation of legal terminology in legislative practice has been proven. The practical value of the work lies in the fact that the results of scientific research will contribute to the complete and correct qualification of the analysed acts by practitioners and compliance with the principle of justice in the implementation of criminal liability

■ **Keywords:** criminal offence; criminal liability; international legal act; martial law; natural environment; mineral resources; subsoil

## ■ Introduction

In the modern world, environmental problems such as climate change, the formation of ozone holes, deforestation, water pollution, and the damage or destruction of the natural environment are causing increasing concern, becoming especially acute during armed conflicts. As of 2025, the situation regarding environmental security in Ukraine remains difficult due to active military actions by the Russian Federation, which pose a direct threat to the natural environment. Despite the entry into force of the Law of Ukraine No. 2697-VIII “On the Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030”<sup>1</sup>, the state of legislative protection of the environment continues to be characterised by the absence of a coordinated state policy. A component element of the implementation of policy in the sphere of environmental protection, as defined in Law No. 2697-VIII, is the criminal law impact on environmental criminal offences, the essence of which includes activities aimed at intensifying criminal law means of countering crime and their practical application. Given the declared direction of state policy in the form of strengthening law enforcement activities in the field of environmental protection, the relevance of defining the environment as an object of criminal law protection in national and international legislation becomes evident. One of the central elements of criminal law protection defined in Part 1 of Article 1 of the current Criminal Code of Ukraine<sup>2</sup> (hereinafter – CC) is the environment. Accordingly, the provisions of the CC serve as an indisputable component of the mechanism for countering violations of environmental legislation (Berdnik, 2019).

Ukrainian academics have made a significant contribution to the development and improvement of criminal law protection of the environment. I.V. Berdnik (2019) investigated the theoretical and applied principles of criminal law protection of water resources. Author’s work resulted in a system for the integrated criminal law protection of Ukraine’s water resources, based on studying their properties as an integral element of the environment. O.O. Dudorov & R.O. Movchan (2020) have for many years researched the specifics of environmental criminal

offences, defining the main provisions of their criminal law characteristics. They have also carried out a comprehensive critical review of criminal law norms concerning liability for violations of rules for the protection or use of the subsoil and illegal mineral extraction, developing well-founded recommendations for improving the provisions of the CC of Ukraine. V.K. Matviychuk & V.P. Olynyk (2022), in a monograph, studied the features of criminal law protection of the sea from pollution and littering as a component of modern social and legal problems. T.S. Sadova (2023) was the first in Ukraine to provide and substantiate a number of original conceptual ideas in a scientific study of modern problems of criminal law qualification of international war crimes against the environment under international criminal law.

Yu.A. Turlova (2023) examined theoretical and practical issues of environmental crime. Author investigated the phenomenon of environmental crime, its trends, and development prospects, outlining the components of a conceptual model for a system to combat environmental crime and identifying the most important elements of a strategy for its prevention. Based on official statistics from the Prosecutor General’s Office and the State Judicial Administration of Ukraine, the researcher analysed the group aspect of environmental crime. This allowed for the establishment of specific characteristics of this category of criminals and the determination of indicators of group criminal activity within organised groups. O.V. Bazov (2023) studied the genesis of environmental protection in the process of law enforcement by international criminal justice bodies, defining the role and significance of international legal acts in developing the legal framework for the activities of international criminal courts in combating environmental criminal offences. S.I. Marco (2024) focused on the appropriateness of improving the system for combating environmental crime, adapting the CC of Ukraine to the requirements of the European Union, and achieving compliance with its requirements and goals.

J. Schillinger *et al.* (2020) are among the international researchers who have studied the scientific discourse on the impact of armed conflicts on the

<sup>1</sup> Law of Ukraine No. 2697-VIII “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030”. (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2697-19#Text>.

<sup>2</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

natural environment. The researchers highlight two main problems in the field of scientific knowledge about water resources and their management in conflict situations. Firstly, the available information on the impact of conflicts remains limited. However, the increase in the number of scientific publications over the past decade indicates that this gap is gradually narrowing due to the efforts of the scientific community. Secondly, there is insufficient integration of knowledge across different thematic studies, regional contexts, and types of conflict.

Despite the significant scientific and practical value of the work of these researchers, many questions regarding the understanding of the environment in national and international legislation, especially under martial law, have remained debatable, insufficiently explored, or completely unresearched. In light of this, the aim of this Article was to outline the problems in defining the term “environment” by conducting a study of national and international criminal law doctrine on the protection of the natural environment, ensuring environmental safety, and implementing the principle of inevitability of punishment for committing criminal offences against the environment.

## ■ Materials and Methods

To conduct the scientific study “the environment” as an object of criminal law protection from the perspective of national and international legal regulation, a methodology was chosen that includes the necessary tools for a critical analysis of the provisions of the Criminal Code of Ukraine<sup>1</sup> with an emphasis on internationally recognised standards for ensuring environmental safety. The following methods were used in the research: terminological, systemic-structural, dogmatic, comparative legal, and formal-logical. The concept of “the environment” was investigated using the terminological and formal-logical methods. The systemic-structural method facilitated a comprehensive theoretical analysis of international legal acts and Ukrainian legislative norms for their consistent systematisation and the identification of legislative innovations. It also helped in determining the connections between the analysed norms and the provisions of current criminal legislation and in studying the internal structure of the system of CC norms related to criminal liability for environmental criminal offences. The dogmatic method was used to analyse the objective and subjective characteristics of

environmental criminal offences and to clarify specific criminal law terms. Through the application of this method, it was found that when formulating and justifying proposals, it is necessary to consider not only the modern realities of law enforcement but also the latest trends in positive law-making activities. The comparative legal method was used to compare Ukraine’s criminal legislation regarding liability for environmental criminal offences with international legislation in this area.

The theoretical basis of the research was the conclusions of researchers and lawyers from Ukraine and other countries. During the preparation of this study, provisions of a number of national legislative acts were examined, including criminal law norms that provide for liability for environmental criminal offences in the provisions of the CC of Ukraine, the Laws of Ukraine “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030”<sup>2</sup>, and “On Amendments to the Criminal, Criminal Procedure Codes of Ukraine and Other Legislative Acts of Ukraine Regarding the Improvement of Types of Criminal Punishments”<sup>3</sup>.

## ■ Results and Discussion

The legally defined duty of the state to ensure environmental safety and maintain ecological balance in Ukraine, as well as to preserve and reproduce the gene pool of the people (Article 16 of the Constitution of Ukraine), underscores the relevance of studying countermeasures against these offences, including environmentally punishable criminal acts<sup>4</sup>. When identifying the system of global challenges, it is clear that the issues of environmental offences and liability for their commission are highly complex (Vorobei *et al.*, 2022).

The situation that has developed in Ukraine due to Russia’s full-scale military invasion in February 2022 has a direct impact on the norms of international law concerning the protection of the natural environment during armed conflicts. Even before the start of the Russian-Ukrainian war, the state of the environment in Ukraine was close to critical. According to data published in legal acts, in 2019, two-thirds of Ukraine’s population lived in areas where the air quality did not meet established hygiene standards; due to toxic, microbiological, and biogenic pollution, the ecological state of the country’s river basins, coastal, and territorial waters of the Black and Azov Seas was constantly deteriorating; a significant Part of Ukraine’s territory (about 57%) suffered from water

<sup>1</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>2</sup> Law of Ukraine No. 2697-VIII “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030”. (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2697-19#Text>.

<sup>3</sup> Law of Ukraine No. 3342-IX “On Amendments to the Criminal Code, Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Improvement of Types of Criminal Punishments”. (2023, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/3342-20#n160>.

<sup>4</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

and wind erosion; approximately 20% of Ukraine's land was polluted; more than 150,000 hectares of land were damaged by mining or other activities; due to the lack of effective state control, the mass formation of illegal dumps and landfills became possible, as well as the recording of numerous violations of laws during the handling of hazardous waste<sup>1</sup>. Since the publication of this data, the situation has only worsened due to active military operations. Every day of the full-scale war causes irreparable damage to the environment – water resources and air are polluted, ecosystems are declining, land degradation is observed, and a significant amount of spent ammunition and its fragments remain in the territories where combat operations are or were taking place (Vronska, 2023). Due to active combat, the Ukrainian environment is suffering immense damage, the consequences of which will be felt for decades. Burnt forests, plantations and shrubs, water bodies and soil contaminated or poisoned with heavy metals, and an countless number of destroyed animals and plants are only a Part of the Russian aggression from which the environment of Ukraine is suffering (Turyk, 2023).

According to S. Pakhomi (2024), armed conflicts lead to significant damage and degradation of the natural environment, and the negative environmental consequences, which are in some cases irreversible, continue even after the conflict ends. International researchers note that modern wars have an increasingly negative impact on ecosystems, which is associated with the increased destructive potential of modern weapons that cause more serious damage to the natural environment (Schillinger *et al.*, 2020). Through the media, an open letter from several dozen scientists from around the world was published, appealing to the UN International Law Commission with recommendations to recognise environmental damage in combat zones as a war crime (Daft, 2019). In addition, scientists proposed to prepare and adopt a fifth Geneva Convention, which would contain a list of measures, grounds, and conditions for holding governments accountable for environmental damage caused by their armed forces. Subsequently, in 1992, attempts were made to develop a fifth Geneva Convention on the Protection of the Natural Environment During Armed Conflict (Plant, 1992), however, this idea was not implemented. Scientists called on

the governments of states to define clear guarantees of biodiversity and use the commission's recommendations to protect the environment during military actions (Sadova, 2022).

Principle 21 of the Stockholm Declaration<sup>2</sup> on the human environment absolutely prohibits causing damage to the natural environment. The advisory opinion of the UN International Court of Justice regarding the legality of the threat or use of nuclear weapons<sup>3</sup> prohibits intentional infliction of severe damage to the natural environment on the territory of another state and indirectly attests to the customary nature of the application of environmental law during armed conflicts. Important principles aimed at the international legal protection of the environment were enshrined in the Rio Declaration on Environment and Development<sup>4</sup>, which focuses on an anthropocentric understanding of sustainable development. The activities of the International Committee of the Red Cross, which developed the Guiding Principles for the Protection of the Natural Environment in Armed Conflict (1994), play a significant role in protecting the natural environment. The Rome Statute of 1998<sup>5</sup> is a vital international agreement that reflected the importance of environmental protection during armed conflicts.

However, as Yu. Dmitriev (2024) points out, the key international legal obligations of states in the field of environmental protection during armed conflicts are provided for by only a few environmental treaties, which are discussed in more detail below. At the same time, they are not without flaws. S. Pakhomi (2024) notes the following as the main shortcomings of international law norms that regulate the protection of the environment during armed conflicts: 1) a lack of clarity in the criteria for establishing unacceptable environmental damage; 2) a lack of legal clarity regarding the protection of structural elements of the environment as civilian objects; 3) the hypothetical nature of implementing the principle of proportionality when environmental damage is established only as additional losses.

In general, the content of the norms of Additional Protocol I to the Geneva Conventions of 1949<sup>6</sup> implies a threshold of unacceptable environmental damage. However, despite the legal warning, these provisions require improvement, as the legal protection

<sup>1</sup> Law of Ukraine No. 2697-VIII "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030". (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2697-19#Text>.

<sup>2</sup> United Nations Conference on the Human Environment. (1972, June). Retrieved from <https://www.un.org/en/conferences/environment/stockholm1972>.

<sup>3</sup> Advisory Opinion of the International Court of Justice "Legality of the Threat or Use of Nuclear Weapons". (1996, July). Retrieved from [https://ijl.org/wp-content/uploads/2016/08/Legality-of-the-Threat-or-Use-of-Nuclear-Weapons-1996.pdf?utm\\_source](https://ijl.org/wp-content/uploads/2016/08/Legality-of-the-Threat-or-Use-of-Nuclear-Weapons-1996.pdf?utm_source).

<sup>4</sup> Report of the United Nations Conference on Environment and Development. (1992, June). Retrieved from [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf).

<sup>5</sup> Rome Statute of the International Criminal Court. (1998, July). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_588#Text](https://zakon.rada.gov.ua/laws/show/995_588#Text).

<sup>6</sup> Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I). (1949, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text).

of civilian objects does not provide a sufficient level of protection for the elements of the natural environment during armed conflicts. Despite the significance of the provisions of Additional Protocol I, their application during military operations is limited, which necessitates the development and adoption of a new international agreement.

The Draft Principles on Protection of the Environment in Relation to Armed Conflicts<sup>1</sup> developed by the UN International Law Commission at its 73<sup>rd</sup> session in 2022, declared the following principles of environmental protection:

1) Principle 19: General environmental obligations of an Occupying Power – An occupying state is obligated to take appropriate measures to prevent damage to the natural environment of occupied territories;

2) Principle 20: Sustainable use of natural resources – An occupying state is obligated to take appropriate measures to: a) dispose of the natural resources of occupied territories in the interests of the population; b) ensure their proper use; c) prevent harmful effects on the environment that could harm the health of the population;

3) Principle 26: Remnants of war – Upon completion of an armed conflict, the parties are obligated to neutralise toxic or dangerous remnants of war that threaten to cause harm to the natural environment.

According to A. Radchenko (2020), the main directions of international legal regulation of environmental protection are: 1) establishing general requirements for the implementation of the principle of states' sustainable development, including their environmental component; 2) focusing on compliance with special requirements of international legal acts regarding the sustainable and continuous development of populated areas; 3) implementing legal provisions for the protection of the natural environment.

With the start of the Russian-Ukrainian war, proposals for environmental protection during military operations have taken on new meaning. The legislative changes to the norms of the Criminal Code of Ukraine (CC)<sup>2</sup> regarding liability for committing environmental criminal offences, adopted under martial law, seem insufficiently substantiated. They violate the systemic nature of the Code and may provoke excessive expansion of its scope. It is necessary to agree with the position of A. Vynnyk & I. Gazdai-ka-Vasylyshyn (2023) that these ways of improving criminal legislation appear questionable and require the use of more effective methods of legal regulation. In the process of formulating the norms of the CC

of Ukraine, it is advisable to apply a comprehensive approach that takes into account the institutions of the Special and General Parts of the CC of Ukraine.

Scientific literature emphasises the need to improve the current system of combating environmental criminal offences and to accelerate the adaptation of the CC of Ukraine<sup>3</sup> to the requirements of the European Union to achieve compliance with its goals and regulations (Marco, 2024), since Ukraine's European course necessitates the implementation of EU *acquis* into national legislation (Pasyeka *et al.*, 2024). Academics are critical of the content and essence of criminal law norms that provide for liability for environmental criminal offences. For example, there are discussions about the uncertainty of the minimum value of illegally extracted minerals of national importance, which is necessary to initiate criminal proceedings; the impossibility of differentiating liability for the illegal extraction of minerals of national importance depending on the value of the extracted minerals; the existing imbalance between the limits and severity of penalties for committing these acts; and the inadmissibility of constructing the sanction of Part 3 of Article 240 of the CC of Ukraine as an unalterable penalty, which violates such a principle of criminal liability as the principle of economy of criminal repression (Movchan *et al.*, 2022). However, one of the key problems with environmental criminal offences is the actual lack of punishment for the illegal extraction of minerals of national importance (Makarenko *et al.*, 2021), which requires an urgent solution, since the role of minerals of national importance is invaluable - deposits of minerals, which are Part of the geological environment of the state, are recognised as a special applied resource of exceptional economic value (Mostepaniuk & Pavlovska, 2020). It is necessary to remember the need to restore the environment damaged by illegal acts, since that element of the natural environment that was harmed by a committed criminal offence will remain damaged even if the guilty persons are held accountable. Therefore, criminal law sanctions in the field of environmental protection should be not only punitive but also restorative, that is, they should provide for real measures aimed at restoring the damaged ecosystem. As L.M. Babailova (2025) suggests, in cases of tree damage, the money paid by the guilty person in the form of fines should be directed specifically to the restoration of the damaged plantations and their planting at the location where the criminal offence was committed.

<sup>1</sup> Draft Principles on Protection of the Environment in Relation to Armed Conflicts. (2022, May). Retrieved from [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/8\\_7\\_2022.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/8_7_2022.pdf).

<sup>2</sup> Law of Ukraine No. 3342-IX "On Amendments to the Criminal Code, Criminal Procedure Code of Ukraine and Other Legislative Acts of Ukraine Regarding the Improvement of Types of Criminal Punishments". (2023, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/3342-20#n160>.

<sup>3</sup> Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

In Ukraine, the problem is not just imperfect criminal law regulations concerning environmental offences. The relevant state bodies also have significant shortcomings in their regulatory functions. These issues include a lack of cohesion in the state's environmental policy, which extends to regional policies; an absence of coordination and mutual regulation among state bodies responsible for environmental monitoring; and an insufficient level of systematic tax incentives for introducing effective environmental protection mechanisms and ensuring compliance with environmental norms and rules. Criminal law measures to combat environmental crime, which include both finding appropriate criminal law means of countering crime and their practical application through law enforcement, are structural components of the state's environmental protection policy.

It is well known that criminal offences involving attacks on the environment often have blanket norms<sup>1</sup> (for example, articles 236, 237, and 238 are blanket norms). This situation hinders their full legal enforcement (Berdnik, 2019) and requires additional study of the relevant secondary legal acts for the proper application of the norms of the current Criminal Code of Ukraine.

The objects of environmental safety (which include the natural environment as the material basis of state and social development<sup>2</sup>) are the constitutional rights and freedoms of a person and a citizen<sup>3</sup>. The environmental rights of citizens should be considered the set of opportunities and means, enshrined in laws and guaranteed by legal norms, that enable people to satisfy their needs in the field of environmental protection, the use of natural resources, and the provision of environmental safety. These rights include a person's rights to a safe environment – clean surroundings, fresh air, uncontaminated land, high-quality water, and food and household items that are safe for health.

Despite the existence of these constitutional and legislative imperatives, it must be acknowledged that the situation in the field of environmental protection in Ukraine is critical. This situation, along with the gradual and deeper understanding by state authorities and the Ukrainian population of the accelerating scale of a potential environmental catastrophe and the awareness of the social danger of environmental offences, is provoking a gradual activation of relevant scientific discussions, changing the understanding of the generic object of environmental criminal offences

(Mytrophanov, 2022). For instance, one element of the modern interpretation of the generic object of environmental offences is its definition as social relations concerning the preservation of the life support system of society and humans (Turlova, 2023) or as relations intended to ensure the criminal law protection of the environment and its structural elements, the rational use of its resources, and environmental safety in general as a specific state of the environment that meets legally defined criteria, standards, limits, and norms (Mytrophanov, 2022). Therefore, a person's right to an environment safe for life and health, as a structural element of citizens' constitutional rights, should be the basis for defining the generic, specific, and direct objects of encroachment against the environment when constructing environmental criminal offences.

National legislation implicitly defines the concept of "the environment". For example, Article 1 of the Law of Ukraine No. 2059-VIII<sup>4</sup> states that "impact on the environment" is any consequence of a planned activity on the environment, the safety of human life and health, flora, fauna, biodiversity, soil, air, water, climate, landscape, natural territories and objects, historical monuments and other material objects, or on a combination of these factors, including consequences for cultural heritage objects or socio-economic conditions that result from a change in these factors.

The environment was considered to be the set of surrounding conditions and resources with which specific organisms interact. This understanding extends to the external surroundings, including biotic and abiotic factors that have a direct impact on the survival and development of organisms or populations. In contrast, the "surrounding environment" is the place where living organisms carry out the process of life or the place that a living being occupies for a certain period, including all physicochemical and biological components of the ecosystem. T. Sadova (2023) speaks of the concept of "the environment" as a synonym for "surrounding environment," which, however, is not identical and includes not only the natural environment but also the artificially modified environment. Therefore, it is correct to say that the environment is the surrounding environment relative to a person or group of people who are in it (Explanatory dictionary of the Ukrainian language, 2018). The structural elements of the environment are the physical (which includes the surrounding conditions and elements with which living organisms interact),

<sup>1</sup> Resolution of the Supreme Court of Ukraine No. 17 "On Judicial Practice in Cases of Crimes and Other Offenses Against the Environment". (2004, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0017700-04#top>.

<sup>2</sup> Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2023, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

<sup>3</sup> Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-вп#Text>.

<sup>4</sup> Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment". (2017, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2059-19#Text>.

chemical, and biological environments. The environment consists of several components: 1) the aquatic environment – marine (oceans and seas) and freshwater (lakes and rivers); 2) the terrestrial space – land; 3) the atmosphere – air; 4) outer space (Environment Definition, n.d.).

Thus, the environment in a broad sense is a combination of natural and anthropogenic environments, which include elements of biological, chemical, and physical components and are divided into aquatic, terrestrial, and atmospheric environments. In contrast, a subordinate term to the above should be considered the “natural environment,” which includes all living organisms and inanimate objects on Earth, which, in turn, distinguishes it from artificial objects that are created not by nature but by humans, despite their inclusion in the surrounding environment (Environment Definition, n.d.). In addition, the terms “ecosystem” and “surroundings” have a similar meaning to the term “environment,” but, at the same time, they have distinguishing features: the term “ecosystem” should be understood as the interaction between a living organism and its surroundings. That is why the “surrounding environment” should be considered a broader concept, and the terms “ecosystem” and “surroundings” should be considered narrower. Thus, the surrounding environment includes biotic and abiotic factors that play an important role in the survival, evolution, and development of the organisms that inhabit it (Environment Definition, n.d.). Based on the above, it should be considered that the environment consists of biological (all living organisms) and physical (the inanimate Part – the atmosphere, hydrosphere, and lithosphere) components.

When talking about the environment in the context of *erga omnes* obligations, it should be borne in mind that all its key components in the form of the atmosphere, outer space, marine environment, biodiversity, tropical rainforests, climate system, etc., are characterised by a combination of economic and legal features (Nigreieva, 2021). For example, the atmosphere can be considered a global public good; the open sea and outer space are classified as global commons; tropical rainforests are located within the territories of a number of countries, so the obligations of states to preserve them are conditioned by the existence of constitutional supremacy and sovereign rights over these territories of specific states. Therefore, the protection of the surrounding environment requires the implementation of effective ways and means of ensuring them, including *erga omnes* obligations. But the inclusion of environmental obligations in them requires the identification of the constituent elements of this complex object of legal regulation, the formulation of their legal essence, and the distinction between the obligations of states

regarding objects that are located within territories characterised by a different international legal regime (Nigreieva, 2021).

Thus, the main shortcomings of national and international legal norms that regulate the protection of the environment during armed conflicts are: 1) the lack of clear criteria for establishing unacceptable environmental damage; 2) the legal ambiguity regarding the protection of elements of the environment as civilian objects; and 3) the hypothetical nature of the proportionality principle when environmental damage is considered only as additional losses (Pakhomi, 2024). The existence of these gaps increases the potential for the development of a system of legal norms, giving rise to fundamental scientific discussions. One option for solving a number of shortcomings in the norms of international humanitarian law could be the enhanced application of the provisions of international environmental law. Its norms and mechanisms would help clarify and expand the basic principles of international humanitarian law to hold those responsible for causing environmental damage during armed conflicts accountable. Therefore, attention should be paid to the possibility of expanding the subject of regulation of current humanitarian legal principles, as well as the need to supplement law enforcement practice with the provisions of multilateral environmental agreements.

International practice has seen isolated cases of prosecution for international criminal environmental offences. These include the case of Austrian General Lothar Rendulic, which was heard by the Nuremberg Military Tribunal in 1945. The tribunal acquitted the accused for implementing a “scorched earth” tactic in Norway, based on the principle of military necessity (Orellana, 2005). Another example is the bombing of Yugoslavia by NATO forces, where the tribunal also ruled that the Alliance’s actions were based on the principle of military necessity (Weinstein, 2005).

The obligations of states regarding liability for violating the requirements of international legal acts on the protection of the natural environment are the basis for ensuring the proper “greening” of international law (Grushko, 2023). According to O. Bazov (2023), the international legal obligations of participating states regarding environmental protection are provided for in both ordinary environmental treaties and special treaties, the prerequisite for whose implementation is an active armed conflict. The existence of an armed conflict is not considered a condition for the automatic termination of environmental treaties that the participating states of the armed conflict joined in peacetime. That is why the legal regulation of environmental protection issues during armed conflicts should be considered an important basis for forming a progressive system to reduce the negative impact on the natural environment.

## ■ Conclusions

Thus, the results of the study confirm that the goal has been achieved by identifying the problematic issues in the interpretation of the concept of “the environment”. All of the above suggests that studying the problems of the environment as an object of criminal law protection in a national and international context has allowed for the identification of a number of inconsistencies in the understanding and interpretation of this phenomenon. It has been proven that only the full integration of international economic and political efforts can prevent a global environmental catastrophe.

Summarising the results, it is possible to note the formulation of substantiated provisions for improving the legal regulation of the application of the norms of the CC of Ukraine, which provide for liability for committing offences against the environment by strengthening the implementation of the provisions of international environmental law. The precepts of this law will help to clarify the basic principles of international humanitarian law to ensure the unimpeded prosecution of individuals when socially dangerous consequences in the form of harm to the natural environment occur during armed conflicts. The use of more effective methods of legal support when formulating the norms of the CC of Ukraine concerns the implementation of comprehensive approaches, taking into account the provisions of the Special and General parts of the CC of Ukraine. It is the rationalisation of current humanitarian legal principles and the improvement of law enforcement practice by supplementing it with the provisions of multilateral environmental agreements that will contribute to achieving this goal. There was a need to strengthen the imperative nature of the legally defined guarantees of the right to a safe environment and to strengthen the normatively enshrined link

between the right to a safe environment and other human rights. Conceptually, the above indicates that legislators are focusing on the priority of the possibilities for implementing guarantees of the right to a safe environment, which should become an integral element not only of environmental but also of Ukraine’s national security. After all, it is obvious that the problems of protecting human environmental rights in Ukraine will remain unresolved for many years after the active phase of hostilities ends.

The results of the study have shown the need to comply with the requirements of international legal acts aimed at ensuring the protection of the environment or its individual structural elements during military operations and in the post-war period, the clarity of recording violations of the requirements of current Ukrainian legislation and international legal acts aimed at ensuring the protection of the environment or its individual structural elements during military operations and in the post-war period in this area, and the careful assessment of the damage caused to the natural environment. Further research in this field is promising from the point of view of studying European experience of criminal liability for environmental offences, taking into account the level and state of pollution of the natural environment, as well as with a view to strengthening work on reforming the provisions of the current CC of Ukraine.

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## ■ Conflict of Interest

None.

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## **Довкілля як об'єкт кримінально-правової охорони: проблеми визначення в національному й міжнародному законодавстві**

**Людмила Мостепанюк**

Кандидат юридичних наук, доцент  
Національна академія внутрішніх справ  
03035, пл. Солом'янська, 1, м. Київ, Україна  
<https://orcid.org/0000-0003-2894-0654>

**Олена Матюшенко**

Кандидат наук з державного управління, доцент  
Національна академія внутрішніх справ  
03035, пл. Солом'янська, 1, м. Київ, Україна  
<https://orcid.org/0000-0003-1507-2085>

**Наталія Симоненко**

Кандидат юридичних наук, доцент  
Національна академія внутрішніх справ  
03035, пл. Солом'янська, 1, м. Київ, Україна  
<https://orcid.org/0000-0003-1048-278X>

■ **Анотація.** Актуальність роботи полягає в необхідності усвідомлення суспільством і державою реальності загрози довкіллю, що знаходить вияв у напрямках державної екологічної політики, основними принципами якої визначено гарантування екологічної безпеки в Україні, підвищення її рівня в зоні відчуження, забезпечення екологічної рівноваги й невідворотності відповідальності за порушення природоохоронного законодавства. Метою статті став системний аналіз проблематики охорони довкілля з огляду на положення національної та міжнародної кримінально-правової доктрини, виявлення її неузгодженостей та суперечностей, надання науково обґрунтованих рекомендацій, розроблення пропозицій щодо вдосконалення його застосування та усунення виявлених суперечностей. Методологічну основу дослідження склала система загальних і спеціальних методів, яка охоплює системно-структурний, логіко-догматичний, формально-юридичний, термінологічний методи. Виявлено недоліки кримінально-правової охорони довкілля та запропоновано шляхи їх подолання, а саме: означено механізми захисту довкілля в національному й міжнародному вимірах, окреслено проблемні питання та неузгодженості, що можуть виникати на законодавчому рівні під час формулювання чи вдосконалення відповідної кримінально-правової заборони, визначено норми, які здатні призвести до правових колізій, доведено необхідність посилення імперативного характеру законодавчих норм з метою забезпечення гарантій права на безпечне довкілля. Проаналізовано доцільність активізації зв'язку права на безпечне довкілля з іншими гарантованими Конституцією України правами людини. Сформульовано висновки у сфері вдосконалення законодавства щодо відповідальності за кримінальні правопорушення проти довкілля, зосереджено увагу на необхідності врахування реалізації гарантій права на безпечне довкілля як елементу не тільки екологічної, а й національної безпеки держави, запропоновано конкретні напрями вдосконалення чинного кримінального законодавства України, з огляду на положення міжнародних актів, спрямованих на посилення ефективності кримінально-правової охорони довкілля, доведено доцільність використання принципу чіткості формулювання юридичної термінології в законодавчій практиці. Практична цінність роботи полягає в тому, що результати наукового пошуку сприятимуть повній і правильній кваліфікації практичними працівниками аналізованих діянь, дотриманню принципу справедливості в межах реалізації кримінальної відповідальності

■ **Ключові слова:** кримінальне правопорушення; кримінальна відповідальність; міжнародно-правовий акт; воєнний стан; навколишнє природне середовище; корисні копалини; надра