

INTERNATIONAL AND NATIONAL LEGAL REGULATION OF ECOCIDE: RETROSPECTIVE ANALYSIS AND CURRENT STATE

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Annotation. The article examines the peculiarities of the international legal regulation of ecocide. The historical prerequisites for the recognition and necessity of legal settlement of crimes against nature are analyzed. Historical examples of ecocide were highlighted as a separate aspect, primarily in Ancient Greece, during the First and Second World Wars, the Vietnam War, as well as in a number of other armed conflicts. Today, the war in Ukraine and its enormous negative consequences and dangers to nature and the lives and health of people it poses have intensified the processes of international recognition of ecocide as a crime against nature and humanity. A retrospective analysis of the recognition of ecocide made it possible to distinguish four stages of this process, which began in the 1970s. Attention is focused on the importance of legal regulation of the crime of ecocide both in the international and national space. An analysis of historical features and modern approaches to the definition of the concept of “ecocide” was carried out, and an assessment was given to them. Based on the results of the analysis, the key features that distinguish ecocide from other crimes against the environment have been identified. International lawyers and experts conduct active discussions and try to achieve the inclusion of ecocide in the list of crimes defined by the Rome Statute (genocide, war crimes, crimes against humanity and acts of aggression). This would make it possible to criminalize ecocide at the international level and launch the mechanism of international legal responsibility. A conclusion was made about the inconsistency of the current state of legal regulation of ecocide at the international level and the need to solve this problem as soon as possible in order to create a legal basis for the future prosecution of those guilty of crimes against nature.

Key words: ecocide, Rome Statute, armed conflicts, crimes against the environment, International Criminal Court, criminal liability, environmental damage.

1. Introduction.

Currently, it is obvious that the preservation of a favorable and suitable environment for human existence has become one of the mandatory conditions for the existence of mankind. Humanity continues to face the consequences of extreme environmental situations. Natural and man-made disasters occurring all over the world are becoming increasingly severe in their consequences. Despite the efforts made, it is not possible to fully prevent anthropogenic accidents, such as releases of chemical substances, accidents at nuclear power plants, oil spills. Along with this, armed conflicts are also the causes of environmental emergencies. The technical capabilities of man to exert a catastrophic influence on the environment increased significantly in the 20th-21st centuries. During armed conflicts and full-scale wars, such methods and means of conducting military operations are often used, which aim to have an indiscriminate impact on all living things. As a result, according to all forecasts, the number of environmental emergencies and critical risks for the natural environment will only increase in the near future.

The above determines the relevance of the issue of defining the content of ecocide and its international legal regulation as a crime against nature and humanity in the conditions of existing

and new environmental problems facing society and which are prone to aggravation against the background of economic and demographic growth, military armed conflicts and generally unaware external and environmental policy of many states.

2. The purpose of the article is to reveal the meaning of ecocide as a legal phenomenon and to determine the features of its international legal regulation in the context of modern challenges and threats.

3. Literature review and main problem analysis.

The study of ecocide as a legal phenomenon and a crime began relatively recently, namely from the middle of the 20th century. As a theoretical and practical basis for writing this article, international normative legal acts, as well as various conventions, which regulate the issues of environmental protection and responsibility for crimes against the natural environment, were used. In addition, the scientific basis of the study consists of the works of domestic and foreign legal scholars and practitioners who investigate the issue of ecocide, including in the context of the full-scale invasion of the Russian Federation on the territory of Ukraine in February 2022. Among the scientists whose works were used for this study, it is worth highlighting: R.V. Vereshu, A.Yu. Galyametdinov, A.D. Hlushko, H.E. John, A.B. Zazeku, O.M. Kovtuna, M.P. Kutsevich, O.P. Kuchinska, K.V. Maksakovu, I.I., Nikolini, O.S., Ovchinnikova, V.K. Rybachek, A.R. Falka, Y.V. Sirotyanko and others. However, despite numerous publications on the legal regulation of ecocide, the issue of its definition and further consolidation in legislation at the international and national level remains open.

Preservation of a natural environment that is favorable and suitable for human existence is updated every year. In a relatively short historical period of time, an important sphere of purposeful activity of people, nations, and states, aimed at achieving harmony between humanity and nature, which requires legal regulation, has emerged and is rapidly developing. The anthropogenic impact of man on nature and the consequences, scales and threats it carries requires recognition of the need to strengthen and expand the types of international responsibility for environmental offenses in all modern legal systems. Therefore, the concept of "ecocide" deserves special attention today. Ecocide, on the one hand, should be considered as a social phenomenon, the form of which can be an ecological war [1]. On the other hand, the word "ecocide" acts as an international legal category that describes one of the types of international crimes.

In the most general sense in legal science, A.D. Hlushko, A.B. Zazeka and others suggest that the term "ecocide" should be understood as "a crime against humanity, which is associated with irreversible consequences for the environment and human existence itself" [2, p. 323]. The word "ecocide" is of Latin-Greek origin and literally means "killing the house" (translated from Greek: "oikos" - "house" and Latin "caedo" - "killing"), that is, in essence, it means the destruction of the habitat of a person.

It is worth turning to history and noting that the facts of ecocide have been known to mankind since ancient times. Ukrainian scientist R.V. Veresha draws attention to the fact that in the period of the ancient world, warring parties during military operations resorted to measures to destroy the environment in order to ensure superiority on the battlefield. So, in the 4th century BC, during the siege of the city of Kirra, King Solon poisoned the river, which resulted in the mass death of the defenders of the city. In ancient Rome, during military campaigns, Germanic soldiers often purposefully poisoned water in wells to reduce the number of Roman legions [3, 152-159].

In ancient times, phenomena were not uncommon when after the military capture of a city, the side that won the battle could not only loot the conquered city and enslave all its inhabitants, but also resort to the use of means of influence on the environment. A documented fact is the events of the third Punic War between Rome and Carthage in 146 BC, when as a result of military operations, the Roman troops won the victory and the city of Carthage fell. Roman troops burned the city for 16 days. After the fire, the entire territory of the former city of Carthage was plowed with a plow and sprinkled with salt [4, p. 61-65]. The use of such a method of purposeful destructive impact on the

environment can be considered as the deliberate destruction of the fertile layer of the earth, which subsequently caused the impossibility of using this territory for agriculture.

Many centuries have passed since that time, but the facts of committing crimes against the environment, which fall under the category of "ecocide", continue to appear in world history. At the same time, as a result of the development of scientific and technical progress and the use of new means of warfare, the consequences of such actions are becoming more and more destructive. The use of chemical weapons by the German troops during the First World War (1915), the use of nuclear weapons by the American troops against the two Japanese cities of Hiroshima and Nagasaki in August 1945, the removal of fertile black soil by the German occupiers from Eastern and Northern Ukraine during the Second World War are only individual facts of crimes against the environment in the 20th century.

The world community began to actively talk about ecocide as a separate type of international crime only in the 60s of the 20th century, when the scale of the environmental disaster in Vietnam became clear. During the war, the American army actively used chemical substances (defoliants) to affect the environment. The effect of chemicals resulted in the actual destruction of half of the country's arable land, 2 million hectares of forests, which indirectly led to the death of 2/3 of biological species [5, p. 82-87]. That is why Vietnamese lawyers devoted so much time to the theoretical justification of the importance of studying ecocide as an international crime, its legal regulation. In addition, Vietnam became the first of the few countries in the world whose Criminal Code defines the content of the crime of ecocide and stipulates responsibility for its commission.

Understanding the negative consequences of criminal actions against the environment stimulated the emergence of scientific studies where ecocide is considered as a criminal act, numerous international conferences are held. However, until now, the definition of the term "ecocide" is not given in international legal documents, which serves as a basis for continuing discussions on the disclosure of its content.

Since the 1970s, many scientists and jurists have advocated the criminalization of ecocide, and the elements necessary for such an international crime have been discussed. For the first time, the term "ecocide" was used by Yale University professor Arthur W. Gallston during a conference devoted to the war in Vietnam and the use of "agent orange" (Conference on War and National Responsibility). During his speech, the scientist called for the immediate recognition of crimes against nature [6].

The term "ecocide" gained general recognition in 1972 after the Stockholm UN Conference on Environmental Issues. During this conference, the Swedish politician Olaf Palme in his opening speech directly called the US war in Vietnam, which was mentioned above, an ecocide. It is likely that it was thanks to the Stockholm Conference in 1972 that for the first time so much attention was drawn from the international community to the problems of the environment, namely to the deterioration of its condition and transboundary pollution as a result of criminal actions [3, p. 152-159].

In 1973, Princeton University law professor Richard A. Falk called for the adoption of the International Convention on Ecocide in his article. Falk later played an important role both in the development of human rights topics, including many years of work experience at the UN National Council for Human Rights and the Human Rights Watch organization, and in the development of discussions on the topic of ecocide [7, p. 80-96].

The signing of the International Convention on the Prohibition of the Military or Any Other Hostile Use of Means of Destruction of the Natural Environment in May 1977 became a logical generalization of the contemporary developments regarding the international settlement of criminal acts against nature and the environment [8]. It is noteworthy that the Ukrainian SSR ratified this convention less than a year later on May 25, 1978 [9].

The main purpose of the Convention [8] is to prevent the implementation of actions that cause irreparable damage to the natural environment, which can provoke the appearance of various natural disasters, mutations and pathologies among the population, as well as change climatic conditions. However, it is worth noting the fact that the 1977 Convention does not contain such a concept as

“ecocide”, instead the term “means of impact on the natural environment” is used. The concept of “ecocide” is enshrined only in the national legislation of individual states, which will be noted later.

Being in its essence a multilateral treaty of international public law, the Convention prohibits the use of means of influence on the environment, which have wide, long-term or serious consequences, as methods of destruction and causing damage through the deliberate management of natural processes in the biosphere, hydrosphere, atmosphere.

The provisions of the Convention are largely supplemented by the legal norms of Additional Protocol I to the Geneva Conventions of 1977 [10], which prohibit harming the natural environment in situations of armed conflict, imposing on the conflicting parties the obligation to take care of the protection of the environment without causing it great harm spatial, long-term and serious damage.

In general, the period of the 70s of the 20th century can be considered the first stage when the world began to take important steps towards the recognition and international settlement of crimes against the natural environment, the term “ecocide” was introduced to describe such crimes, and the International Convention was adopted on the prohibition of military or any other hostile use of means of destruction of the natural environment [8].

The time frame of the second stage can be tentatively limited to the 80s of the 20th century, when the UN International Law Commission had the opportunity to include environmental crimes in the Draft Code of Crimes against the Peace and Security of Mankind (“Code”) [11, p. 43]. Later, this document was transformed in 1998 into the Rome Statute of the International Criminal Court [12]. The Rome Statute entered into force on July 1, 2002. The document defines 4 international crimes, namely: genocide, war crimes, crimes against humanity and acts of aggression. It is worth paying attention to the fact that today the Rome Statute, defining the four crimes listed above, does not regulate such a crime as ecocide. In fact, such a crime is not prescribed in it. However, large-scale crimes against nature can be considered by the International Criminal Court under the categories of war crimes. At the same time, crimes related to environmental pollution, deforestation, depletion of natural ecosystems, etc. remain outside the jurisdiction of the ICC. That is, those actions that lead to climate change.

From the beginning of the 90s of the 20th century until now, the process of including the crime of ecocide in the national legislation of some countries of the world continues. The criminalization of ecocide is carried out in the relevant articles and sections of the criminal codes [13, p. 220-223]. The first country to include the crime of ecocide in its national legislation, as mentioned above, was Vietnam and, it is not surprising, considering the consequences that the country experienced after the corresponding criminal actions of the American army against the environment during the 1959-1975 war. Vietnam became the first country to pass a law on ecocide and include this crime in the criminal code in 1990. However, it is interesting that, first of all, recognition at the national level of mass, large-scale crimes against the environment is characteristic of the countries of the post-Soviet space: Kazakhstan (1997), Kyrgyzstan (1997), Tajikistan (1998), Belarus (1999), Georgia (1999), Ukraine (2001), Moldova (2002), Armenia (2003). In addition to the mentioned countries, ecocide at the level of national law is also recognized in Ecuador (2008, 2014). France became the first country in the European Union to recognize genocide in 2021. Work on the inclusion of ecocide in national legislation is also carried out in other countries of the world, in particular: Belgium, Canada, Spain, etc. [6].

In parallel with the recognition of the crime of ecocide at the national level by some countries of the world, since the 1990s, an active struggle has been waged for the official legal consolidation and regulation of this crime in international legal practice (fourth stage). Thus, in 1991, the International Law Commission formulated a relevant article (Article 26) directly related to ecocide, with the aim of its subsequent inclusion in the Draft Code of Crimes Against the Peace and Security of Mankind [14].

However, all the measures taken did not have the sufficient necessary effect to include the crime of ecocide in the list of crimes defined by the Rome Statute. Therefore, after 2002, an international campaign to recognize large-scale and destructive crimes against the environment began.

In 2016, the Prosecutor of the International Criminal Court published a program document, which defines the principles and approaches regarding the prioritization and selection of cases. This document, in particular, states the following: “The Bureau will pay particular attention to the prosecution of crimes under the Rome Statute that are committed with or lead to, in particular, environmental destruction, illegal exploitation of natural resources, or illegal deprivation of land” (paragraph 41) [15].

The activation of the processes of recognition and legal consolidation at the international level of the crime of ecocide took place in 2019 and continues to this day. So, for example, in 2019, Pope Francis advocated recognizing ecocide as the fifth crime against humanity (that is, including it in the Rome Statute) [16]. In December of the same 2019, during the 18th meeting of the Assembly of States Parties to the Rome Statute, the two countries most affected by climate change (Maldives and Vanuatu) called for the inclusion of ecocide in the Rome Statute. A similar attempt was made a year later by Belgium.

In January 2021, the European Parliament called on the member states of the European Union to support the recognition of ecocide, and at the European Law Institute there is currently an initiative that is engaged in lobbying the issue of international recognition and the inclusion of the crime of ecocide in the list of crimes against peace and humanity.

Since the beginning of Russia’s large-scale invasion of Ukraine in 2022, there has been more talk about ecocide at the international level, which has given a chance for already established and formed initiatives to gain even greater support and recognition. Cases such as the destruction of the Kakhovskaya HPP or the systematic destruction of the ecosystems of Eastern Ukraine have become another example of targeted large-scale and long-term destruction of the environment, which will have large-scale and long-term negative consequences.

An important achievement in lobbying the interests of nature protection at the international level was the program document of the Stop Ecocide Foundation, presented by a group of 12 independent lawyers and experts in June 2021 [17]. Experts and lawyers carried out a critical analysis of the revised EU Directive of 2008 on environmental protection through criminal law [13, p. 220-223]. The policy document of the group emphasizes the importance of criminalizing offenses against nature in the updated EU Directive of 2008 on the protection of the environment, and not just mentioning this type of crime in the preamble. The author of the study agrees with the position of the group regarding the fact that it is the criminalization of ecocide that will allow creating an effective legal mechanism to deter criminal acts against nature in the future.

The importance of scientific developments of the Stop Ecocide Foundation Group is related not only to the actualization and lobbying of the interests of nature, but also in the above-mentioned document [17] the legal definition of the term “ecocide” was presented and its further inclusion in the Rome Statute of the International Criminal Court was proposed. The Group’s recommendations include not only the inclusion of the crime of ecocide in the list of crimes of the Rome Statute along with its definition, but also amendments to many other provisions of the Statute, in particular, Article 9, as well as to the Rules of Procedure and Evidence of the ICC and elements of the composition of crimes.

Thus, experts suggest that the term “ecocide” should be understood as follows: “ecocide means illegal or thoughtless actions committed with the knowledge that there is a significant probability of serious and large-scale or long-term damage to the environment caused by these actions” [17]. The experts also provided an interpretation of each of the elements of this definition:

“Reckless” refers to actions with reckless disregard for harm that would be excessive compared to expected social and economic benefits. “Serious” means damage that causes very significant adverse changes, disruption or damage to any element of the environment, including impacts on human life, natural, cultural or economic resources. “Wide-scale” means damage that extends beyond a limited geographic area, across national borders, or that affects an entire ecosystem or species as well as large numbers of people. “Long-term” means damage that is irreversible or that cannot be repaired through natural recovery over a period of time. “Environment” means the Earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space [17, p. 5].

As can be seen from the legal definition of the term “ecocide” presented by experts, we are talking about intentional actions aimed at destroying ecosystems or polluting the environment. In this context, it is worth emphasizing that accidents at enterprises or oil spills may not always fall under the category of ecocide, if in court the defendant can provide evidence to describe them as events of an extraordinary nature or an accident. At the same time, experts point out that, for example, those cases when the enterprise carries out emissions and has information about the destructive large-scale impact of such emissions on the environment and climate change, these actions can be classified as ecocide.

The criteria of ecocide described above, namely “serious”, “large-scale”, “long-term”, fall under a significant amount of industrial production and resource extraction around the world. Therefore, it is probably the commercial interests of large corporations and politicians that block the rapid adoption and regulatory regulation of ecocide at the international level. In fact, many global companies that have caused large-scale, serious environmental damage in the past or continue to do so today could be sued.

The lack of desire on the part of certain influential parties to include ecocide in the list of crimes against peace and humanity is confirmed by the conclusion of the Senegalese politician Duda Thiam, which was made at the end of the 48th session of the UN International Law Commission (ILC). Duda Thiam, as a representative of the Working Group, noted the following: “The decision to exclude the crime of ecocide as a separate provision was made after “some governments” expressed their views on the matter.” The politician further added: “These same governments largely opposed any form of inclusion of Article 26 in the Draft Code of Crimes Against the Peace and Security of Mankind, which later became the Rome Statute.” The outcome of the event was the complete and somewhat mysterious removal of Article 26 from the Draft Code.

Historical processes of legal recognition of the crime of ecocide at the national and international levels took place in parallel with the theoretical justification of the meaning of the term “ecocide” and its place among other crimes against peace and humanity. At the same time, the scientific debate regarding the understanding of the concept of “ecocide”, its signs and key criteria continues to this day. As mentioned above, for the first time at the international level the word “ecocide” was used during the speech of U. Palme at the Stockholm conference in 1972 [3, p. 152-159]. This was preceded by thorough scientific investigations by the American professor of biology and bioethics Arthur W. Galston. According to the proposed definition, under ecocide the scientist understood “various measures of devastation and destruction, which are aimed at damaging or destroying the ecology of geographical areas and causing harm to the life of people, animals and plants” [18]. The presented definition is difficult to call legally successful and suitable for describing large-scale crimes against nature. However, despite this, the meaningful interpretation of the term has already become well understood with clearly defined frameworks.

An important contribution to the understanding of the concept of “ecocide” was the work of another professor - R. Falk, who, along with the proposal for the adoption of the International Convention on Ecocide, also formulated the concept of “ecocide”: “ecocide is any action carried out with the aim of destruction or destruction, fully or partially, human ecosystems” [7, p. 80-96]. An important scientific achievement of the professor was the list of actions he developed that relate to the crime of ecocide. The author agrees with the scientist’s position that any of the actions listed below should be considered ecocide and qualified accordingly:

- 1) use of weapons of mass destruction (nuclear, chemical, bacteriological or any other weapons of mass destruction;
- 2) use of chemical herbicides for defoliation and felling/fire destruction of natural forests for military purposes;
- 3) the use of artillery and bombs in such a density, quantity or size that leads to the deterioration of the quality of the soil and increases the probability of diseases dangerous for people, animals, and agricultural crops;
- 4) the use of construction equipment for military purposes with the aim of destroying large forest areas or croplands;

- 5) the use as a weapon of weather influencing technologies, in particular, increasing or decreasing the amount of precipitation;
- 6) forcible removal of people or animals from their usual places of residence to accelerate the achievement of military or industrial goals [7, p. 80-96].

In general, by the end of the 70s of the 20th century, the term "ecocide" became well understood. But it is necessary to pay attention to the fact that its use mainly concerned those large-scale crimes against nature, which are committed precisely in wartime. However, the crime of ecocide, as the worst environmental crime, can also be committed in peacetime. Also, despite the understanding of the importance of recognizing and criminalizing large-scale crimes against nature that can be committed by humans to achieve their goals, ecocide remained outside the scope of its legal regulation. In this regard, a group of scientists led by A. Gauger in their study "Ecocide - the missing fifth crime against peace" [19] asks a reasonable question: "How did it happen that an international crime whose name was known to many who participated in the development of the basic Crimes Against Peace, was completely ignored and deleted?" [19, p. 2]. In this case, despite all the seriousness of the crime of ecocide, the answer is very simple and this was confirmed by the analysis presented above, namely "the lack of political will and determination of governments and influential people".

The actual political debate on the criminalization of ecocide, which began in the 1970s, continues to this day, as does scientific research on this crime of great importance to humanity. Thus, legal scholars Whitaker [20], Mark Gray [21], Polly Higgins [22] continued to form the theoretical foundation of ecocide based on Falk's work. The scientist Whitaker uses the term ecocide in a report in 1985: According to the scientist, "ecocide is not a separate crime, but is a component of another crime - genocide. At the same time, Whitaker notes that among the developers of the concept of ecocide there are also supporters of its integration into the composition of crimes against peace and humanity along with genocide [20, p. 200]. In his writings in the 1990s, Gray wrote that there is already an international delict (illegal act) of ecocide and that in the future "the criminalization of ecocide will happen because it has to be" [21]. In turn, Higgins in the 2010s proposed a definition of ecocide, by which the scientist understands "significant damage, destruction or loss of an ecosystem (ecosystems) ... to such an extent that the ability of residents to peacefully use this territory has significantly decreased [22, p. 9]. The term "ecocide" presented by Higgins is much broader than existing provisions of international criminal law, such as Article 8(2)(b)(iv) of the Rome Statute, and international humanitarian law, such as Articles 35(3) and 55(1) of the API. The term "ecocide" given by scientists offers a holistic understanding of ecological crises and the need to protect entire ecosystems [24, p. 303] rather than a limited assessment of the damage caused to the environment during an armed conflict.

In order to formulate a complex, comprehensive definition of the concept of "ecocide", L. Neiret turned to the interpretation of crimes against humanity set forth in Article 7 of the Rome Statute. Accordingly, the scientist proposes to understand ecocide as "any widespread or systematic action, included in the list of offenses, which causes large-scale, long-term and serious damage to the natural environment, committed intentionally and with awareness of the consequences of such action" [23, p. 173-199]. In general, despite the long-term intellectual efforts of scientists and legal scholars, the consideration of the issue of criminalization of ecocide carried out by the International Law Commission remains uncoordinated and unsettled.

Activation of processes of theoretical justification and steps in the direction of criminalization and international recognition of crimes against nature took place in recent years. In particular, one of the most thorough theoretical developments of the concept of ecocide is the work of Joja Mehta and Polly Higgins within the framework of the Stop Ecocide project (started in 2017), which was mentioned above.

In order to achieve the goal of criminalizing ecocide by the end of 2020, the Stop Ecocide project formed an Independent Expert Group (IEP), which included twelve international legal experts with different work experience. The main task of the Group was to develop a definition of the crime of "ecocide", which will be proposed as an amendment to the Rome Statute. Regarding the need to criminalize the crime of ecocide, Higgins notes the following: "By charging responsible individuals

for environmental damage, rather than “fictional” corporate entities (i.e., corporations), one can complete the cycle of destruction of nature through the elimination of so-called “silent” rights, that is, the rights to pollute/destroy the environment, which corporations actively and impunity use” [25, p. 62-83].

It is important that the Group’s work was aimed not only at finding a solution to the problem of ecocide, but also at reviving the discussion and giving it a new impetus. Thus, one of the members of the Group, a professor from the University of Oslo (Norway), noted the following regarding the presented definition of “ecocide”: “The proposed definition stimulated scientific discussion and debate... and this is what the group hoped to achieve” [26]. Since the Stop Ecocide Group released its proposed definition of “ecocide” and proposed the inclusion of this crime in the Rome Statute, there has been a flurry of academic debate on the merits of adopting a new crime of ecocide and the plan proposed by the Group. According to Heather Alberro and Luigi Daniele, the auspicious end of this path to the recognition of ecocide “should be a historical shift that would pave the way for nature and its constituent elements to act as independent objects of legal protection” [27].

However, everyone supported the position of the Stop Ecocide Group regarding the recognition of ecocide. Thus, Michael Karnavis noted that the crime of ecocide does not require separate recognition. According to the scientist, “The Rome Statute sufficiently provides for the prosecution” of actions that cause environmental destruction [28]. According to the scientist, without underestimating the importance of the crime of ecocide and, in principle, its important role in supplementing international law, the Group’s project is undermined at almost every stage due to its anthropocentric bias. This bias often shows up in the proposal and limits its usefulness. Of course, law is a social construct, so it would be unrealistic to propose a “purely” ecocentric approach. At the end of his reflections, the scientist comes to the conclusion that if there is a spectrum from ecocentrism to anthropocentrism, then the Group’s project largely gravitates towards the anthropocentric end. Therefore, the main goal of further developments should be to find a compromise approach, within which scientifically based and legal developments of the concept of ecocide will become acceptable both for states that sincerely want to fight environmental destruction, and for states that want to preserve the practice of destroying and exploiting the natural environment.

Practicing lawyer and professor of the department of criminal law, comparative jurisprudence, international criminal law Kai Ambos emphasizes not only the importance, but also the usefulness of formulating a legal definition of the concept of “ecocide”. The scientist adheres to the position that expanding the list of international crimes by adding the crime of ecocide to it will ensure better legal protection of nature and the environment. Professor K. Ambos refers to Art. 8(2)(b)(iv) of the Rome Statute, which defines international war crimes against the environment [29]. As a result, he comes to a conclusion and proposes to consider ecocide as a legal phenomenon that has the same level of public danger as international war crimes against the environment. Therefore, ecocide should be considered as a separate type of international crime along with other crimes defined by the Rome Statute.

Spanish scientist H.V. Baeza also considers the inclusion of ecocide in the list of crimes of the Rome Statute to be a logical and well-founded position. Accordingly, the scientist understands ecocide as one of the types of international crimes [20, p. 195-203]. Also H.V. Baeza emphasizes the fact that serious crimes against nature are criminalized at the national level in many countries of the world, and the number of such countries is increasing. It is difficult to disagree with the author’s position, since ecocide is defined as a crime in national criminal codes, including Ukraine (Article 441 of the Criminal Code).

Positions regarding the problem of defining the concept of “ecocide” in the doctrine of international law differ significantly. So, for example, D. Robinson reveals the meaning of the concept of “ecocide” as “mass destruction of nature, which can lead to an ecological disaster”: “Ecocide is the mass destruction of plant or animal life, poisoning of the atmosphere or water resources, as well as the commission of other actions, capable of causing an ecological catastrophe” [30, p. 313-347]. Contrary to D. Robinson’s understanding, another scientist, N. Koing, sees ecocide as the most serious crime against peace and humanity, since the world community tends to consider ecocide along with genocide as an international crime defined by the Rome Statute. Thus, the scientist proposes to

understand ecocide as “one of the international crimes that encroaches on the peace and security of mankind, damages the surrounding natural environment as the biological basis of human existence and various living organisms, undermines ecological security.” According to N. Koing, the crime of ecocide is aimed at undermining or destroying the biological environment for human life and thus causing deterioration of the population’s well-being and health, which in the worst case can lead to complete or partial extinction [31].

There is also an approach in international law, according to which ecocide is understood as “the use of geophysical, meteorological and other technologies (technical means) with the aim of changing the composition, structure or dynamics of the Earth, including its biosphere, hydrosphere, lithosphere and atmosphere, as well as outer space, which caused or may lead to the mass destruction of flora, fauna and flora, poisoning of water resources, the atmosphere or other serious consequences for nature” [32, p. 1287-1298].

The large-scale war of Russia against Ukraine, which was launched against our country in 2022 and has been going on for the third year, has intensified the importance of the issues of theoretical justification of the concept of ecocide, as well as the prosecution of those responsible for the commission of this international crime. It is worth reminding that ecocide is one of the crimes regulated by the Criminal Code of Ukraine (Article 441), according to which ecocide means “mass destruction of flora and fauna, poisoning of the atmosphere or water resources, as well as the commission of other actions that can cause environmental catastrophe” [33]. It is noteworthy that for a period of more than 20 years in Ukraine, there is actually no law enforcement practice regarding prosecution under the above-mentioned article of the Criminal Code. Also, scientific studies of the problem of ecocide and responsibility for its commission are quite limited.

Among candidate theses there is only one work by M.P. Kutsevich, 2007, in which the author directly examines the crime of ecocide and the specifics of criminal liability for its commission in an international and national context. From the standpoint of international criminal law, the Ukrainian scientist defines ecocide as “an international crime that consists in intentionally causing extensive, long-term and serious damage to the surrounding natural environment, as a result of which a threat is created to the ecological safety of mankind” [34, p. 6]. Similar elements in the definition of the concept of “ecocide” 15 years later (in 2021) were laid in the basis of the definition that was developed by the international Group as part of the implementation of the project “Stop Ecocide”. These characteristics are “extensive”, “serious” and “long lasting”.

In addition to the formulated and, as it turned out, currently relevant definition of the concept of “ecocide”, the scientist also revealed the generic, specific and direct objects of ecocide, substantiated the position that ecocide is a multi-objective crime. The ancestral object of ecocide, according to M.P. Kutsevich, there are the vital interests of the international community, and the security of humanity is a special one [34, p. 7]. As for the immediate object of ecocide, its multiobjective nature is manifested in it. Its main object is the ecological safety of mankind, and the additional ones are the health of each individual person, which has been or may be negatively affected as a result of the committed crime, and the economic interests of a single state or several states.

The dissertation presented above, as mentioned previously, is the only comprehensive study of ecocide in Ukraine. However, at the same time, separately ecocide as one of the types of crimes against nature was also partially considered by L.G. Huseynov in his dissertation work “State responsibility for international environmental crimes” (1994) [35] and T.S. Sadova in her doctoral dissertation “War crimes against the environment under international criminal law” (2023) [36]. Thus, L.G. Huseynov considers ecocide exclusively as “a type of international environmental offense and a basis for the international responsibility of states” [35, p. 8]. As for comprehensive monographic scientific studies on the problem of ecocide, at the moment there are no such studies in Ukraine.

Russia’s large-scale aggression in Ukraine and the crimes committed by the aggressor against the environment have activated the scientific community, as evidenced by the large number of published scientific publications related to ecocide, carried out during 2022-2024. Thus, a group of Ukrainian scientists led by doctor of biological sciences, professor, academician of the National Academy of Sciences of Ukraine Ya.P. Didukhom presented a thorough study in which ecocide is

proposed to be understood as “a human action that has led to the loss of natural ecosystems or their components that are incapable or have lost the ability to self-restore, poses high risks of threats, can cause an extraordinary ecological situation, negative processes, phenomena, loss of biodiversity, which negatively affects the state of the environment and the well-being of society” [37, p. 1145]. An important conclusion of the researchers is the need to use clear criteria for classifying a crime against the environment as ecocide. The author agrees with the position of the researchers regarding the fact that most of the existing definitions of the concept of “ecocide” are built on the basis of evaluative judgments. Therefore, an important direction of future scientific research should be the development of signs and clear criteria of an illegal act that can be considered ecocide. Accordingly, J.P. Didukh and other members of the author’s collective [37] developed a system of 6 criteria, where compliance with at least one of them refers an illegal act to the crime of ecocide. At the same time, the scientists themselves note that the list developed by them is not exhaustive, as scientific work is ongoing.

A rather interesting and extensive definition of the concept of “ecocide” was formulated by another Ukrainian scientist V.K. Rybachek. According to the scientist, the crime of ecocide should be understood as “illegal and intentional actions of a subject of international law regarding the destruction of the environment or its components, which have significant and long-term consequences and are associated with serious violations of obligations to the international community in terms of harming vital interests current and future generations of people” [38, p. 82-87]. The advantage of this wording is that it notes the most essential characteristics of ecocide as a crime against peace and humanity. Each of the components of the definition of V.K. Rybachek allows to fully reveal the meaning of ecocide as a crime. So, first of all, the scientist notes in the initial part of the definition that ecocide is an “illegal and intentional act.” Illegality and the main intention of an act against nature distinguish ecocide from other crimes against the environment. It is worth mentioning that the intentionality of actions during the commission of the crime of ecocide was also emphasized by M.P. Kutsevich, noting the following “intentional nature of the crime is mandatory for ecocide in its international legal sense” [34]. Secondly, the person responsible for committing the crime of ecocide is most likely a subject of international law. Thirdly, the crime of ecocide is directed against the environment and its components. Fourth, a mandatory distinguishing feature of ecocide compared to other crimes against the environment is its “significant and long-lasting consequences.” The last part of the definition appeals to the fact that a crime committed by a subject of international law is a serious violation of obligations to the international community, since the harm is not to the interests of a single person or group of persons, but to the entire current and future generations of people. In the opinion of the author, the chosen words and the approach to formulation define the concept of “ecocide” by V.K. Rybachek as one of the most capacious and complex.

4. Presentation of the main material.

Foreign and Ukrainian scientific intelligence is not limited to the presented analysis of discussions regarding the theoretical justification of the concept of ecocide. However, the presented generalizations and conclusions make it possible to highlight key features that distinguish the crime of ecocide from other crimes against nature and the environment:

- the object of the crime of ecocide is the international safety of the environment as a natural environment for human life;
- the subject of the crime of ecocide is plant and animal life, water resources, the atmosphere and outer space, as well as any other components of the ecosystem, including land, subsoil, etc.;
- the objective side of the crime of ecocide includes the existence of an illegal act in the form of an action;
- the consequence of the crime of ecocide is an ecological disaster, which is described as large-scale (extensive), serious and long-term (long-term) damage to the environment;
- the crime of ecocide can be committed both during an armed conflict and in peacetime;

- the subject of the crime of ecocide can be general or special;
- the subjective side of the crime of ecocide is manifested in the form of intent, which can be both direct and indirect.

Therefore, the existing theoretical developments in general make it possible to formulate the general framework of ecocide as an international crime against nature. However, this does not mean that future scientific research will be superfluous, as discussions should continue in order to form clear criteria for ecocide and generally achieve the goal of criminalizing this crime at the international level.

Returning to Ukraine and the crimes committed by the aggressor against Ukrainian nature, it is worth remembering that the war continues, and the relevant legal institutions at the international level have not yet been formed. Therefore, the initiation of consideration by the UN International Criminal Court of the first case of the crime of ecocide is not possible. At the moment, Ukraine is engaged in collecting data and forming an evidence base regarding the environmental consequences caused by an aggressive war. The main official platform for data collection is the Ecozagroza resource, which was launched by the relevant ministry - the Ministry of the Environment. The advantage of this information platform is not only that it presents all the data collected by the Ministry of Environment and related to the environmental consequences of the war, but also that ordinary citizens have the opportunity to provide data for recording environmental crimes of the Russian Federation.

Regarding the international settlement of the crime of ecocide, the executive director and board member of the organization "Ecology-Pravo-Lyudyna" Olena Kravchenko noted the following: "The main problem is the development of a "gold standard" for the documentation of ecocide. This means collecting data, interviewing witnesses, and forming criteria for damage assessment" [39].

One of the most large-scale and high-profile, purposeful, deliberate actions that had a devastating impact on the environment in Ukraine during the war was the destruction of the dam of the Kakhovka hydroelectric power station on June 6, 2023. The consequences of the destruction of the dam meet all the criteria of ecocide, defined by the expert group of Stop Ecocide Foundation. After this event, it was announced the creation of an international group to investigate this crime with the aim of creating opportunities to demand reparations from the responsible party for compensation of losses in the future. The group included both experts and specialists, as well as a well-known media personality fighting for the environment, namely Greta Thunberg.

For Ukraine, the most important task, next to the end of the war, is also the international recognition of the consequences that this war has on nature and the environment. Thanks to international recognition and court decisions, it will be possible to obtain reparations in the future for the restoration of the country. Therefore, recognition of ecocide as a crime only at the national level will not allow one to receive compensation, but it is necessary to recognize it at the international level.

The importance of international recognition of the crimes of ecocide is important not only for Ukraine, whose nature is suffering as a result of the aggressive Russian war, but also for all of humanity. Activation of the summons on the recognition of ecocide at the international level gives hope for the recognition of large-scale crimes against nature. The author supports the position of many interested parties regarding the fact that without the formation of an appropriate international legal framework, without the initiation of consideration of court cases related to ecocide, crimes against nature will continue to go unpunished.

The problem of large-scale and long-term crimes of ecocide remains relevant for the whole world. This is evidenced by the examples of such crimes given by EndEcocide, in particular: the ongoing deforestation of the Amazon forests and Indonesian palm plantations, the disappearance of the entire Aral Sea in Central Asia, the extraction of oil in the Niger Delta and many other examples that have a commercial effect, but cause significant damage to peace and security of mankind. Therefore, thanks to the international recognition of ecocide as a crime, lawyers will be able to exert pressure on responsible persons and entities for whom short-term financial interests are higher than the interests of the Earth and its existence.

At the level of the European Union, an important and, in the opinion of many, historic decision to recognize the crime of ecocide has already been made. By its decision, the European Parliament supported the inclusion of ecocide in the updated EU Directive on environmental protection through the criminalization of crimes against nature. This is the first case in history when such a definition is included in the text of a regulatory act at the European level. The definition of the term “ecocide” proposed in the updated EU Directive is as close as possible to the definition of ecocide, which was proposed in 2021 by an independent group of experts and lawyers formed by the Stop Ecocide Foundation.

The impetus for making this historic decision was the fact that, by analogy with 1945, when the world was faced with crimes of genocide against humanity, today the world community is faced with a new and no less serious threat, which is large-scale damage to the environment [42].

The next stage will be, in the case of reaching the agreement of the European Council and the European Commission, the inclusion of the crime of “ecocide” in the structure of national legislation by all EU member states. According to many experts, this will be a decisive step towards the international recognition of this crime and its inclusion in the list of crimes of the Rome Statute, because the member states of the European Union make up more than 20% of the signatory states of the Rome Statute.

The criminalization of the crime of ecocide should become an important tool to protect the environment, achieve the goal of sustainable development, and bring responsibility for the damage caused to the environment and humanity, both in peacetime and in wartime. Preservation of natural resources and environmental protection in general is one of the most important tasks facing the civilized world. Therefore, in the opinion of the author, it is thanks to the criminalization of crimes against nature that it will be possible to increase the effectiveness of the fight against these problems, which will ensure the sustainable development of the world in the future.

5. Conclusions.

Summarizing the analysis of the features of the international legal regulation of the crime of “ecocide”, it should be noted that the provisions on environmental protection in the context of ecocide appeared relatively recently and refer to the time when armed conflicts occur. The conducted study showed that the provisions prohibiting the use of the natural environment for hostile purposes do not apply to peacetime. Retrospective analysis showed that the first mentions of ecocide at the international level date back to the 1970s, when some representatives of the world community understood the consequences of the actions of the American army during the Vietnam War. The following years are characterized by a period of evolution of understanding, recognition and legal regulation of the crime of “ecocide” mainly at the national level. At the same time, it was established that at the time of conducting this research, the crime of ecocide was not included in the list of crimes against the peace and security of humanity defined in the Rome Statute. Theoretical discussions regarding the formulation of the legal definition of the term “ecocide” have been going on for more than 50 years. The current state of scientific intelligence makes it possible to assert that the key framework of ecocide as an international crime has already been determined. Based on the analysis of a wide range of foreign and Ukrainian scientific sources, the author formulated the characteristics of the crime of ecocide, which distinguish it from other crimes against nature. The war in Ukraine intensified the processes of international recognition of ecocide as a crime against nature and humanity. In 2023, the European Union made a historic decision to include and criminalize the crime of ecocide in the updated EU Directive on environmental protection. The next important step regarding the legal regulation of ecocide should be its inclusion in the Rome Statute in accordance with the findings of the group of experts and specialists of the «Stop Ecocide» Foundation.

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