

# PROSECUTION OF ECOCIDE AS A WEAPON IN ARMED CONFLICT: REFLECTIONS ON CRIMEA

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## ABSTRACT

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Although the idea of criminalizing conduct that negatively impacts the environment and the term “ecocide” are not new in international law, their active discussion commenced only recently, notably after a group of experts known as the Independent Expert Panel for the Legal Definition of Ecocide, convened by the “Stop Ecocide Foundation”, proposed a definition of the term “ecocide”. Some forms of adverse impact on the environment are already criminalized both internationally (Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court) and in some domestic jurisdictions, even though few states use the exact term “ecocide”. Russia introduced the term into its criminal code of 1996, followed by some post-Soviet countries (including Ukraine), which copied the definition. Yet, their courts pronounced no sentences for ecocide for a quarter of a century. In 2021 however, the Russian Investigative Committee, the main federal investigating authority in Russia, initiated a case on ecocide allegedly resulting from the blocking of the North Crimean Canal by Ukraine. Ukraine also runs an ecocide investigation, although less obviously linked to the conflict. These engender several tough legal questions. Can ecocide take the form of destruction of an artificial ecosystem and its return to the original state of nature? Can an occupying power prosecute a case of ecocide allegedly taking place on the land of indigenous people, if the latter support actions characterized as ecocide by the occupying power? This ICD Brief is an attempt to raise these questions and offer responses, which may be applicable in the Crimean case. It will do so by placing the case into the global context and comparing Russian, Ukrainian, and international law. Even though the Russian case is domestic in nature, its implications may be applicable for the development of ecocide law globally.

## INTRODUCTION: CONTEXT AND ACTORS

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Russia and Ukraine are engaged in an armed conflict, which started when Russia used force to take control over the Autonomous Republic of Crimea and the City of Sevastopol (hereinafter referred to as 'Crimea' or 'the Peninsula') in February 2014. The initial intensive operations in the eastern regions of Ukraine in 2014 was followed by a long period of low-intensity confrontation between 2015 and 2022. Although there was virtually no fighting in Crimea, the situation was characterized as a military occupation in the meaning of international humanitarian law by the OHCHR,<sup>1</sup> the EU,<sup>2</sup> and the Prosecutor of the International Criminal Court.<sup>3</sup>

The goals of the parties to the conflict at that stage were opposite: Russia aimed to legitimize its effective control over the Peninsula, while Ukraine strived to restore its territorial integrity, including full control over Crimea. Both parties utilized a variety of methods, including military, diplomatic, legal, and informational ones, although the extent of these methods was different. Ukraine relied extensively on 'lawfare'<sup>4</sup> as opposed to warfare led by Russia. One of the elements of the Ukrainian lawfare was the submission of declarations on the acceptance of the *ad hoc* jurisdiction of the International Criminal Court (ICC) in relation to the 'Maidan crimes' and crimes committed in Crimea and Eastern Ukraine starting 20 February 2014 and onwards.<sup>5</sup> In December 2020, the ICC Prosecutor concluded the preliminary examination finding that 'there is a reasonable basis at this time to believe that a broad range of conduct constituting war crimes and crimes against humanity within the jurisdiction of the Court have been committed in the context of the situation in Ukraine'.<sup>6</sup> In parallel, both Ukraine and Russia

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<sup>1</sup> OHCHR, 'Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)' (25 September 2017) UN Doc A/HRC/36/CRP.3 (OHCHR Report 2017) <[https://www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf)> accessed 10 January 2022.

<sup>2</sup> European Union, 'EU statement on "Russia's Ongoing Aggression against Ukraine and Illegal Occupation of Crimea"' (27 October 2016) PC.DEL/1467/16 <[https://eeas.europa.eu/sites/default/files/pc\\_1116\\_eu\\_on\\_ukraine.pdf](https://eeas.europa.eu/sites/default/files/pc_1116_eu_on_ukraine.pdf)> accessed 10 January 2022.

<sup>3</sup> OTP, 'Report on Preliminary Examination Activities 2016' <[https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf)> accessed 10 January 2022.

<sup>4</sup> See Ministry of Justice of Ukraine, 'Law Confrontation with Russian Federation', available at: <<https://lawfare.gov.ua/>>.

<sup>5</sup> See Iryna Marchuk, 'Ukraine and the International Criminal Court: Implications of the Ad Hoc Jurisdiction Acceptance and Beyond' (2016) 49(2) Vanderbilt Journal of Transnational Law 323 <[https://static-curis.ku.dk/portal/files/170166386/VJTL\\_Marchuk.pdf](https://static-curis.ku.dk/portal/files/170166386/VJTL_Marchuk.pdf)> accessed 10 January 2022. For more information about the conflict in Ukraine, including the Maidan events, see T.M.C. Asser Instituut, 'Conflict in Ukraine: from outbreak to stalemate', *MATRA-Ukraine project*, available at: <<https://www.asser.nl/matra-ukraine/ukraine-and-international-crimes/conflict-in-ukraine/>>.

<sup>6</sup> ICC, Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination in the situation in Ukraine (11 December 2020) <<https://www.icc-cpi.int/Pages/item.aspx?name=201211-otp-statement-ukraine>> accessed 10 January 2022.

run domestic criminal investigations of the acts allegedly committed by the agents of the opposing party. These include investigations of ecocide, which is criminally punishable under the legislation of both states.

To make things even more complicated, the entire territory of Crimea is home to three indigenous peoples: the Crimean Tatars, the Crimean Karaites and the Krymchaks. These peoples are recognized as such by Ukraine but not by Russia. Since the Crimean Tatars largely oppose the occupation, Russian *de facto* authorities in Crimea subject them to different limitations in their political and cultural life, including a ban of their representative bodies.<sup>7</sup> In a case before the International Court of Justice, Ukraine characterizes Russian policies as a campaign of discrimination, oppression and cultural erasure.<sup>8</sup>

These developments coincided in time with a global rise of interest in the protection of the environment, including by legal means. In 2021, an Independent Expert Panel (IEP) for the Legal Definition of Ecocide convened by the “Stop Ecocide Foundation” offered a definition of the term ‘ecocide’ as a crime in the meaning of the Rome Statute.<sup>9</sup> The proposal caused a vivid discussion,<sup>10</sup> which seems to continue gaining momentum in 2022.

The aim of this ICD Brief is to reveal the potential problematic aspects of the definition of ecocide raised by the Crimean case. This will be achieved through the analysis of a practical situation where alleged ecocide takes place in the conditions of armed conflict and occupation and against the background of indigenous claims.

The Brief opens with a description of the facts of the case. It will then proceed with an analysis of available information on the two ecocide investigations taking place in Russia and Ukraine in the context of the armed conflict. The Brief will demonstrate how these cases reveal the possible problematic aspects of the ecocide definition proposed by the IEP. It will discuss the definition of the term ‘environment’ and the need to improve it by adding an explicit reference to the natural environment (as opposed to an artificial one). It will further raise the issue of the

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<sup>7</sup> OHCHR Report 2017.

<sup>8</sup> ICJ, Case Concerning Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) Memorial Submitted by Ukraine (12 June 2018) <<https://www.icj-cij.org/public/files/case-related/166/166-20180612-WRI-01-00-EN.pdf>> accessed 10 January 2022.

<sup>9</sup> Independent Expert Panel for the Legal Definition of Ecocide, Commentary and Core Text (June 2021) (IEP Definition of Ecocide 2021) <<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf>> accessed 10 January 2022.

<sup>10</sup> For some tendencies of the discussion see Christina Voigt “Ecocide” as an international crime: Personal reflections on options and choices’ (*EJIL: Talk!*, 3 July 2021) <<https://www.ejiltalk.org/ecocide-as-an-international-crime-personal-reflections-on-options-and-choices/>> accessed 10 January 2022.

possible conflict between the criminalization of ecocide and indigenous rights as well as present a possible avenue for the resolution of this conflict.

## I. FACTS: CRIMEAN WATER TRAP FOR THE OCCUPYING POWER

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### A. *The North Crimean Canal and Why it Matters*

Crimea has only moderate water resources, with its northern part being a naturally arid saline steppe. In 1975, the artificial North Crimean Canal brought water from the river of Dnipro in the Ukrainian mainland to the northern parts of Crimea. As a result, the North of Crimea became a flourishing agricultural province specializing in rice, maize and alfalfa, and, to a lesser extent, wheat, sugar beet and other technical crops.<sup>11</sup> New industries heavily dependent on water emerged, including the chemical and petrochemical industry.<sup>12</sup> According to a 2017 Russian study, Crimea depended on the Dnipro for 85% of its freshwater. 72% of that water was used for agricultural purposes, 18% for public needs and as drinking water (the study does not reveal the ratio between the two), and 10% was used in the industry.<sup>13</sup>

Ukraine owns and operates the canal via the State Water Resources Agency, which is a body of the central government. In March 2014, Russia seized the Crimean part of the canal. According to the Ukrainian officials, the occupiers drove away the personnel and ceased payments under the commercial contracts, causing the State Water Resources Agency to cease water delivery.<sup>14</sup> This had a devastating effect on both agricultural production<sup>15</sup> and the

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<sup>11</sup> Gerbert Roerink, Olga Zhovtonog (eds), *Towards Sustainable Irrigated Agriculture in Crimea, Ukraine: A Plan for the Future* (Aterra 2005) <<https://edepot.wur.nl/92534>> accessed 10 January 2022.

<sup>12</sup> Agency for Regional Development of the Autonomous Republic of Crimea, 'Investment profile of the Autonomous Republic of Crimea' (2012) <[https://advocacy.calchamber.com/wp-content/uploads/international/portals/Invest\\_profile\\_en\\_min.pdf](https://advocacy.calchamber.com/wp-content/uploads/international/portals/Invest_profile_en_min.pdf)> accessed 10 January 2022.

<sup>13</sup> Valentina A Vasilenko, 'Hydro-economic problems of Crimea and their solutions' (2017) 7 *Regional Research of Russia* 89 <<https://link.springer.com/article/10.1134%2FS2079970516040146>> accessed 10 January 2022.

<sup>14</sup> Euromaidanpress, 'Crimean self-proclaimed government spreads hype about Ukraine turning off water supply, hiding its own incompetence' (*Euromaidanpress*, 28 April 2014) <<https://euromaidanpress.com/2014/04/28/crimean-self-proclaimed-government-spreads-hype-about-ukraine-turning-off-water-supply-hiding-its-own-incompetence/>> accessed 10 January 2022.

<sup>15</sup> Ridvan B. Urcosta, 'The Geo-Economics of the Water Deficit in Crimea' (*Eurasia Daily Monitor*, 26 February 2020) <<https://jamestown.org/program/the-geo-economics-of-the-water-deficit-in-crimea/>> accessed 10 January 2022.

industrial sector.<sup>16</sup> Russia also relocated its military to the Peninsula,<sup>17</sup> and initiated a series of construction projects, including the Kerch Bridge and a nuclear power plant,<sup>18</sup> hugely increasing the need for water.

The conflict escalated dramatically in late February 2022, when the Russian Federation launched a full-scale military invasion into Ukraine.<sup>19</sup> Among other things, it took control over the junction of the Crimean Canal with Dnipro and allegedly restored water delivery into Crimea.<sup>20</sup>

Russia has on many occasions accused Ukraine of different violations connected to the cessation of water delivery. Eventually, it brought an interstate complaint to the European Court of Human Rights,<sup>21</sup> which, as of 16 July 2022, is still pending before the Court.<sup>22</sup>

### **B. Consequences of Water Ban for Agriculture, Industry and Nature**

According to a 2017 OHCHR report, 'while the situation had no negative implications on drinking water, agricultural lands were affected, and practically all rice plantations on the peninsula perished'.<sup>23</sup> The Report also makes reference to the Russian statement that 'until 2020 "Crimea's dependence on water supply via the North Crimean Canal can be eventually reduced or eliminated by searching for underground water sources, including manmade ones"'.<sup>24</sup> However, these plans did not materialize in 2020, and until today the *de facto* Crimean authorities use water rationing even in the cold season.<sup>25</sup>

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<sup>16</sup> Diana Kulchitskaya, 'Crimean Chemical Plants Threatened by Ukraine's Water War With Russia' (*The Moscow Times*, 14 May 2014) < <https://www.themoscowtimes.com/2014/05/14/crimean-chemical-plants-threatened-by-ukraines-water-war-with-russia-a35451> > accessed 10 January 2022.

<sup>17</sup> Svitlana Andrushchenko, 'The Environmental Impact of Military Actions in Eastern Ukraine and the Annexation of Crimea' (2016) 1(3) *Ukraine Analytica* 38 < [https://ukraine-analytica.org/wp-content/uploads/Andryushcheno1\\_3.pdf](https://ukraine-analytica.org/wp-content/uploads/Andryushcheno1_3.pdf) > accessed 10 January 2022.

<sup>18</sup> Ridvan B. Urcosta, 'Crimea: Russia's newest Potemkin Village' (*European Council of Foreign Relations*, 30 April 2019) < [https://ecfr.eu/article/commentary\\_crimea\\_russias\\_newest\\_potemkin\\_village](https://ecfr.eu/article/commentary_crimea_russias_newest_potemkin_village) > accessed 10 January 2022.

<sup>19</sup> For a detailed account of the events see: Global Conflict Tracker: < <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> > accessed 16 July 2022.

<sup>20</sup> Jason Beaubien 'Russia has achieved at least 1 of its war goals: return Ukraine's water to Crimea' < <https://www.npr.org/2022/06/12/1104418128/russia-ukraine-crimea-water-canal> > accessed 16 July 2022.

<sup>21</sup> For a description of the complaints and the application to the ECtHR see Oleksii Plotnikov, 'The Proceedings Flow While Water Does Not: Russia's Claims Concerning the North Crimean Canal in Strasbourg' (*EJIL: Talk!*, 24 August 2021) < <https://www.ejiltalk.org/the-proceedings-flow-while-water-does-not-russias-claims-concerning-the-north-crimean-canal-in-strasbourg/> > accessed 10 January 2022.

<sup>22</sup> < <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/interstate&c=> > accessed 10 January 2022.

<sup>23</sup> OHCHR Report 2017, para. 216.

<sup>24</sup> *Ibid.*

<sup>25</sup> Diana Kulchitskaya, 'Crimea's Capital Faces Water Shortage, Plans Daily Shutoffs' (*The Moscow Times*, 6 February 2020) < <https://www.themoscowtimes.com/2020/02/06/crimeas-capital-faces-water-shortage-plans-daily-shutoffs-a69186> > accessed 10 January 2022.

Water shortages have already caused at least one environmental disaster. Early in the school year 2018, four thousand children in the town of Armyansk did not go to school and were evacuated because of an emission of chemicals from the Crimean Titan – the largest producer of titanium dioxide in Europe.<sup>26</sup> The *de facto* Russian governor of Crimea accused Ukraine of a failure to deliver water necessary for the regular operation of the plant.<sup>27</sup>

Meanwhile, the Crimean nature is slowly returning to its pre-Canal state. According to Russian studies of Syvash, a natural water reservoir adjacent to the Perekop Isthmus, ‘salinity of the Sivash Bay water continues to change and its ecosystem is being rebuilt’,<sup>28</sup> while ‘the cessation of irrigation farming in North Crimea and absence of dumping of large volumes of fresh water from the sewage farms (rice bays) into the bay (...) its hydrological and hydrochemical regime are becoming natural’.<sup>29</sup>

### ***B. Position of the Indigenous People***

Russia attempts to retain, and Ukraine attempts to reclaim control over Crimea; however, it should not be omitted that the Peninsula is home to three indigenous peoples, with the Crimean Tatars being relatively numerous (over 250 thousand, according to a 2001 census),<sup>30</sup> and having a long history of statehood, political development and human rights activism.<sup>31</sup> In 2021, the Ukrainian Parliament adopted a Law “On Indigenous Peoples of Ukraine”<sup>32</sup>, opening doors for official registration of already existing representative bodies of the Crimean Tatars (Qurultay (National Congress) and Mejlis (National Assembly)), and providing guarantees similar to those contained in the UN Declaration on the Rights of Indigenous

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<sup>26</sup> Iuliia Mendel, ‘4,000 Children Flee Pollution Disaster on Ukraine-Crimea Border’ (*The New York Times*, 14 September 2018) <<https://www.nytimes.com/2018/09/14/world/europe/crimea-ukraine-pollution.html>> accessed 10 January 2022.

<sup>27</sup> Warsaw Institute, ‘Ecological disaster in the Crimea’ (*Warsaw Institute*, 7 September 2018) (Warsaw Institute 2018) <<https://warsawinstitute.org/ecological-disaster-crimea/>> accessed 10 January 2022.

<sup>28</sup> Elena Sovga, Ekaterina Eremina and Aleksandr Latushkin, ‘Research Expeditions Performed by Marine Hydrophysical Institute in the Syvash Bay Waters in Spring and Autumn 2018’ (2020) 36(2) *Morskoy Gidrofizicheskiy Zhurnal* 176 (In Russian) (Sovga et. al. 2018) <<https://mhiras.elpub.ru/jour/article/view/246>> accessed 10 January 2022.

<sup>29</sup> Elena Sovga, Ekaterina Eremina and Vasilii Diakov, ‘The system of environmental monitoring of the bay of Syvash in the contemporary conditions’ (2018) 2 *Ecological Safety of Coastal and Shelf Zones of Sea* 22 (In Russian) <<http://ecological-safety.ru/repository/issues/2018/02/03/20180203.pdf>> accessed 10 January 2022.

<sup>30</sup> Tetyana Matychak, ‘Indigenous Peoples in Ukraine You May Have Never Heard About’ (*Ukraine World*, 23 July 2019) < <https://ukraineworld.org/articles/ukraine-explained/indigenous-peoples-ukraine-you-may-have-never-heard-about> > accessed 10 January 2022.

<sup>31</sup> For the political history of the Crimean Tatars, see Brian G. Williams, *The Crimean Tatars: From Soviet Genocide to Putin’s Conquest* (Oxford University Press 2015).

<sup>32</sup> “On the Indigenous Peoples of Ukraine. Law of Ukraine of July 1, 2021 No. 1616-IX < <https://cis-legislation.com/document.fwx?rgn=133995> > accessed 10 October 2022.

Peoples,<sup>33</sup> including the right to sustainable development, protection of the environment, and participation in decision-making concerning the management of lands and natural resources of Crimea.<sup>34</sup>

In contrast, Russia neither recognizes the indigenous status of the peoples of Crimea nor guarantees their special rights. The Russian Parliament condemned the new Ukrainian law as 'an insult to historical memory'.<sup>35</sup> Moreover, the Russian court banned the Mejlis from any activities on the territory of the Russian Federation on charges of extremism<sup>36</sup> – a decision that it did not revoke even after the International Court of Justice ordered Russia to '[r]efrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*'.<sup>37</sup>

Notably, an overwhelming majority of the Crimean Tatars oppose the occupation.<sup>38</sup> The Leader of the Crimean Tatar People, Mustafa Dzemilev,<sup>39</sup> and the Head of the Mejlis, Refat Chubarov<sup>40</sup> (both members of the Ukrainian Parliament), repeatedly support the water ban. The Crimean Tatar Resource Center, which plays a leading role in the representation of the Crimean Tatars globally, launched a campaign, "Not a single drop to the occupant", calling the Ukrainian government not to renew the delivery of water to Crimea before de-occupation.<sup>41</sup>

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<sup>33</sup> United Nations Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007 A/RES/61/295).

<sup>34</sup> Unofficial translation by an AI translator available at: < <https://cis-legislation.com/document.fwx?rgn=133995> > accessed 10 January 2022.

<sup>35</sup> The State Duma: the Federal Assembly of the Russian Federation, 'Members of the State Duma condemned decision of Ukrainian authorities not to recognize Russians as indigenous people' <<http://duma.gov.ru/en/news/51715>> accessed 10 January 2022.

<sup>36</sup> Eleanor Knott, 'What the Banning of Crimean Tatars' Mejlis Means' (*Atlantic Council*, 2 May 2016) <<https://www.atlanticcouncil.org/blogs/ukrainealert/what-the-banning-of-crimean-tatars-mejlis-means/>> accessed 10 January 2022.

<sup>37</sup> ICJ, *Case Concerning the Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation)* (Request for the Indication of Provisional Measures: Order) General List No 166 [2017] ICJ 1 <<https://www.icj-cij.org/public/files/case-related/166/166-20170419-ORD-01-00-EN.pdf>> accessed 10 January 2022, para. 102.

<sup>38</sup> Justyna Prus and Konrad Zasztowt, *How the Crimean Tatars Spoil Putin's Annexation Myth* (2015) 15(117) *The Polish Institute of International Affairs Policy Paper* <[https://www.files.ethz.ch/isn/191060/PISM%20Policy%20Paper%20no%2015%20\(117\).pdf](https://www.files.ethz.ch/isn/191060/PISM%20Policy%20Paper%20no%2015%20(117).pdf)> accessed 10 January 2022.

<sup>39</sup> Canan Kevser, 'Russia's 6 million tourist claim contradicts water shortage narratives in Crimea' (*Qirim news*, 5 May 2021) <<https://qirim.news/en/crimean-tatars/russia-s-6-million-tourist-claim-contradicts-water-shortage-narratives-in-crimea-dzemilev>> accessed 10 January 2022.

<sup>40</sup> Halya Coynash, 'By renewing water supplies to Crimea, Ukraine would make Russia's illegal occupation permanent' (*Kharkiv Human Rights Protection Group*, 14 July 2018) <<https://khhpg.org/en/1565725182>> accessed 10 January 2022.

<sup>41</sup> Crimean Tatar Resource Center, 'Not a Single Drop to the Occupant: CTRC launches a new information campaign' (Crimean Tatar Resource Center, 30 July 2021) <<https://ctrcenter.org/en/news/7056-ni-krapli-okupantu-krc-zapochatkovuye-novu-informacijnu-kampaniyu>> accessed 10 January 2022; *Not a Single Drop to the Occupant: water - after de-occupation* (Crimean Tatar Resource Center, 17 August 2021) <<https://ctrcenter.org/en/news/7109-ni-kapli-okkupantu-voda-posle-deokkupacii>> accessed 10 January 2022.

## II. INVESTIGATIONS OF ECOCIDE IN RUSSIA AND UKRAINE AND THE USE OF LAWFARE

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### ***A. Russia: First to Criminalize, Late to Investigate***

Domestic criminal laws of many states include offenses against the environment; however, few of them use the exact term 'ecocide'. Russia was second only to Vietnam,<sup>42</sup> when in 1996 it criminalized ecocide as "massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe".<sup>43</sup> Ukraine included an identical definition into its Criminal Code in 2001. Between 1996 and 2021, only one criminal investigation was launched in Russia on charges of ecocide, and the case never reached the court.<sup>44</sup>

In April 2021, an entity known as 'a working group that analyzes the economic damage caused to Crimea by Ukraine', established by the *de facto* 'State Council of Republic of Crimea',<sup>45</sup> addressed the Federal Security Service (FSB) and the Investigative Committee of Russia (ICR), the main federal investigating authority in Russia, concerning crimes of terrorism and ecocide allegedly committed by Ukrainian officials and Crimean Tatar leaders in the form of "blockades" at the Peninsula.

On 24 August 2021, the ICR launched an investigation stating that

unidentified persons located in Ukraine and opposing the reunification of Crimea with Russia, in violation of the provisions of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Impacts [sic], decided to cause damage to the economic, social and environmental situation of the Crimean peninsula by blocking the North Crimean channel.<sup>46</sup>

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<sup>42</sup> The term appeared in the Penal Code of Vietnam in 1999. See ICRC, 'IHL Database Customary IHL: Practice Relating to Rule 45. Causing Serious Damage to the Natural Environment' (Practice Relating to Rule 45 <[https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2\\_cou\\_vn\\_rule45](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2_cou_vn_rule45)> accessed 10 January 2022.

<sup>43</sup> The English versions of the texts of the ecocide laws are available at <<https://ecocidelaw.com/existing-ecocide-laws>> accessed 10 January 2022. The versions of the Russian and Ukrainian laws on this website differ only because of different translations, their text in Russian and Ukrainian is identical.

<sup>44</sup> The case concerned poisoning of salmon fry in 2001. See Ekaterina A. Soboleva, 'Criminal Liability for Ecocide in Legislation of Russia and Germany' (2017) 4 Сравнительное правоведение 13 (In Russian) <[https://www.elibrary.az/docs/jurnal/jrn2017\\_506.pdf](https://www.elibrary.az/docs/jurnal/jrn2017_506.pdf)> accessed 10 January 2022.

<sup>45</sup> The Moscow Times, 'Russian Lawmakers to Assess Damages From Ukraine's 'Annexation' of Crimea' (*The Moscow Times*, 21 March 2019) <<https://www.themoscowtimes.com/2019/03/21/russian-lawmakers-to-assess-damages-from-ukraines-annexation-of-crimea-a64899>> accessed 10 January 2022.

<sup>46</sup> The Investigative Committee of Russia, 'The Investigate Committee of Russia initiated a criminal case of ecocide', 24 August 2021, <<https://en.sledcom.ru/news/item/1603214/>>, accessed 10 January 2022.

This had a negative impact on agricultural lands, increased salt levels in the Gulf of Syvash and a negative impact on the quality of drinking water.<sup>47</sup> No other information on this case is available from open sources, and little is known about its development, except brief remarks in the media that the case still exists.

### ***B. Ukraine: Routine and Transparent***

Ukraine's first investigation on ecocide commenced in 2016 and touched upon the activities of the Crimean Titan – an enterprise near Perekop, where the 2018 accident took place (see Section I(B) above). Before 2021, the plant, under the commercial name “Ukrainian Chemical Products”, was owned by Group DF – a group of industrial companies registered in Ukraine.<sup>48</sup> Originally, the case was qualified under Article 364 of the Ukrainian Criminal Code (abuse of authority) due to improper documentation of disposal of hazardous waste on the Ukraine-controlled territory directly adjacent to the plant.<sup>49</sup>

In 2019, after the 2018 emission, the investigators requalified the case under Articles 441 (Ecocide) and 241 (Air pollution). The case became much more expansive both in terms of subject matter and charges. Available procedural decisions demonstrate that the case now concerns two other enterprises registered in Russia, but associated with Group DF – the Crimean Soda Plant and the Brom Plant, which are part of the same industrial cluster as the Crimean Titan. The alleged unlawful activities are claimed to be causing grave consequences, including in the form of misuse of natural resources 'by the occupational authorities for their own needs'.<sup>50</sup> As of January 2022, no further information on this case is available from open sources.

To place things in context, this is not the only Ukrainian case. Since 2016, at least three other investigations have been initiated on charges of ecocide. One of them concerned the so-called “Clivage” object – an industrial nuclear explosion site located in a coal mine at the territory of Donetsk Oblast of Ukraine controlled by the Russian-backed armed groups. According to available procedural documents, the *de facto* authorities controlling the site failed to pump groundwater from the nuclear cavern creating a risk of radioactive contamination of local

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<sup>47</sup> Ibid.

<sup>48</sup> ADF Group web-site, <<https://groupdf.com/en/o-kompanii-angl/istoriya-ang>> accessed 10 January 2022.

<sup>49</sup> Procedural decisions in this case are available in Ukrainian from Ukraine's State Register of Judicial Decisions at <<https://reyestr.court.gov.ua>> Criminal proceedings No 42016010000000238, Court cases 752/13071/17, 766/22955/19, and others.

<sup>50</sup> <<https://reyestr.court.gov.ua/Review/88261641>> accessed 10 January 2022.

basins, including the Sea of Azov.<sup>51</sup> However, this case was later requalified under a less strict Article 236 of the Criminal Code of Ukraine (violation of environmental safety rules).<sup>52</sup>

### ***C. Comparison in the Light of the Lawfare***

Both the Russian and Ukrainian investigations seemingly correspond to the “lawfare” goals of the parties. Ukraine attempts to make the aggressor “pay the price” while Russia tries to use legal mechanisms to minimize its losses. It is unclear whether either of the parties genuinely takes interest in the protection of nature with both cases entailing a considerable political element.

The context and publicity around the Russian case is the strongest argument in favor of an assumption that the ecocide case is another manifestation of the “Crimean witch-hunting”. This is confirmed by some aspects of the press release published by the ICR. For example, the formula ‘unidentified persons on the territory of Ukraine, who oppose the reunification of Crimea with Russia’ looks like a premature determination of the possible suspects and their motives at the early stage of the investigation.

The Ukrainian case may seem more ecologically motivated. Nevertheless, some indicators hint at other motives like the prevention of economic activities that can be beneficial for the occupying power. This does not mean that the environmental dimension of the case would be eliminated by other dimensions, but rather that there is a risk of another “requalification” or dismissal of the case based on political developments.

For these reasons, the below considerations are more than hypothetical. The cases raise a number of tough legal questions both for domestic and international law. The paper will address two of them, which reveal problematic elements of the proposed definition of ecocide.

## **III. WHAT IS THE ENVIRONMENT FOR THE PURPOSES OF THE ECOCIDE DEFINITION AND CAN IT BE ARTIFICIAL?**

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The first question raised by the ecocide cases concerns the definition of the environment. As was mentioned above, the paradox of the Russian criminal case is that it revolves around an alleged destruction of an artificially created environment that is favorable for agriculture,

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<sup>51</sup> Illia Ponomarenko, ‘Ecological disaster feared in Donbas as Russian-led forces inundate infamous ‘nuclear pit’ (Kyiv Post, 13 April 2018) <<https://www.kyivpost.com/ukraine-politics/ecological-disaster-feared-donbas-russian-led-forces-inundate-infamous-nuclear-pit.html>> accessed 10 January 2022.

<sup>52</sup> Procedural documents from the case available at <<https://reyestr.court.gov.ua>> Criminal proceedings No. 4201805000000265.

industry and human existence, but which is in no way natural. Thus, a question arises: *Can damage to an artificially created environment, returning the artificial environment to its previous natural state, constitute a form of ecocide?* It seems that both Russian law and international law have a response, but these responses are different.

The definition of ecocide in the Russian criminal code includes: 1. Destruction of animal and plant kingdoms; 2. Contamination of atmosphere or water resources; 3. Commission of other actions capable of causing an ecological catastrophe. The third element looks like an open list, which may encompass any actions reaching a certain degree of adverse influence on the ecology. The latter term is itself very broad, and may be interpreted as covering the relationship between organisms and any type of environment, whether natural or man-made. This seems to be the case in the Russian investigation, which, according to the press release published by the ICR, addresses the 'depletion of agricultural land' and 'quality of water used for household'. Another aspect is the alleged damage to the 'wetlands of international importance "Central Sivash" and "Eastern Sivash"'. However, according to Russian studies, these wetlands are now returning to their natural state previously altered by artificial irrigation.<sup>53</sup> Thus, the Russian vision of the *actus reus* of ecocide includes the destruction of an artificial ecosystem and its return to the state of nature.

This is, however, not the case with the possible international definition, which favors the term 'ecocide', but omits the term 'ecology'. According to the definition proposed by the IEP, 'environment means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space'.<sup>54</sup> In the accompanying commentary, the authors observe that 'defining the 'environment' (or 'natural environment') has proved to be challenging for international law' and suggest that definitions in criminal law require 'greater clarity'. Therefore, the definition consisting of five 'spheres' was utilized.<sup>55</sup>

Other international instruments seemingly support the limitation of the term 'environment' for the purposes of the ecocide definition to the natural environment only. One parallel can be drawn with the well-established instruments of international humanitarian law. The first "environmental" instrument in this branch of law was the Convention on the prohibition of military or any other hostile use of environmental modification techniques, which may have been the rationale for the adoption of the Russian definition of ecocide (see Section II(A) above). Article II of that Convention describes 'environmental modification techniques' as

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<sup>53</sup> Warsaw Institute, 2018; Sovga et. al. 2018.

<sup>54</sup> IEP Definition of Ecocide 2021.

<sup>55</sup> IEP Definition of Ecocide 2021.

'deliberate manipulation of natural processes'.<sup>56</sup> Similarly, Additional Protocol I to the Geneva Conventions in Article 55 obligates the belligerents to 'protect the natural environment', prohibits the use of methods and means of warfare causing 'damage to the natural environment' and prohibits attacks 'against the natural environment by way of reprisals'.<sup>57</sup> The 1987 Commentary clarifies that

[t]he concept of the natural environment should be understood in the widest sense to cover the biological environment in which a population is living. It does not consist merely of the objects indispensable to survival (...) but also includes forests and other vegetation (...) as well as fauna, flora and other biological or climatic elements.<sup>58</sup>

Finally, the Rome Statute itself, to which the authors of the definition of ecocide referred as a source of inspiration, criminalizes intentional attacks that may cause 'long-term and severe damage to the natural environment'.<sup>59</sup>

The second parallel can be drawn with non-binding instruments on the protection of the environment during armed conflict in order to clarify whether the emerging international law expands the definition of ecocide. Perhaps the most important of such instruments are the Draft Principles for the Protection of the Environment in Relation to Armed Conflicts adopted by the Drafting Committee of the International Law Commission in the first reading. Draft Principle 13 explicitly states that 'natural environment shall be respected and protected in accordance with applicable international law and, in particular, the law of armed conflict'. Draft Principle 14 stipulates that '[t]he law of armed conflict (...) shall be applied to the natural environment'.<sup>60</sup> In the same vein, the 2020 Red Cross Guidelines for Military Manuals and

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<sup>56</sup> *ibid* 38 Convention on the prohibition of military or any other hostile use of environmental modification technique (adopted 10 December 1976, entered into force 5 October 1978) 1108 U.N.T.S. 151 <[https://treaties.un.org/doc/Treaties/1978/10/19781005%2000-39%20AM/Ch\\_XXVI\\_01p.pdf](https://treaties.un.org/doc/Treaties/1978/10/19781005%2000-39%20AM/Ch_XXVI_01p.pdf)> accessed 10 October 2022.

<sup>57</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=D9E6B6264D7723C3C12563CD002D6CE4>> accessed 10 January 2022.

<sup>58</sup> Yves Sandos, Christophe Swinarsi and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers 1987) (Sandos & Zimmermann) 661 <[https://www.loc.gov/rr/frd/Military\\_Law/pdf/Commentary\\_GC\\_Protocols.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf)> accessed 10 January 2022.

<sup>59</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute), art 8(2)(b)(iv) <<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>> accessed 10 January 2022.

<sup>60</sup> International Law Commission, 'Protection of the environment in relation to armed conflicts: Text and titles of the draft principles provisionally adopted by the Drafting Committee on first reading' (6 June 2019) UN Doc A/CN.4/L.937 <<https://documents-dds->

Instructions on the Protection of the Environment in Times of Armed Conflict never use the word 'environment' separately, but only in combination with the word 'natural'.<sup>61</sup> Moreover, the 2020 Guidelines follow the ICRC customary international humanitarian law study, according to which 'the general principles on the conduct of hostilities apply to the natural environment'.<sup>62</sup> Hence, the facts in favor of the view that ecocide is a crime affecting exclusively the natural environment seem to be overwhelming. Falk's early definition proposed in 1973 was less nature oriented with ecocide meaning ' (...) acts committed with intent to disrupt or destroy, in whole or in part, a human ecosystem'.<sup>63</sup> He repeatedly mentions 'human ecology',<sup>64</sup> 'life-supporting ecology',<sup>65</sup> 'human ecosystem',<sup>66</sup> and in general links ecocide to human rights. At that, he explicitly refers to the 1972 UN Conference on the Human Environment<sup>67</sup> and the Stockholm Declaration,<sup>68</sup> which proceed from a fundamental assumption that humans have 'the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being'.

Further discourse did not accept this approach, and concentrated on defining environment as a separate entity that exists independently of the benefits it provides to the human species. Moreover, a discussion about the rights of nature as a separate corpus of law has also emerged.<sup>69</sup> The notion of "natural environment" was used already in Protocol I to the Geneva Conventions in 1977.

Thus, it can be asserted that existing international law favours the understanding of the term 'environment' as 'natural environment'. It arguably does not cover the environment created by

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[ny.un.org/doc/UNDOC/LTD/G19/153/11/PDF/G1915311.pdf?OpenEI%20ement](https://ny.un.org/doc/UNDOC/LTD/G19/153/11/PDF/G1915311.pdf?OpenEI%20ement)> accessed 10 January 2022.

<sup>61</sup> Guidelines on the Protection of the Natural Environment in Armed Conflict (*International Committee of the Red Cross*, 2020) <<https://casebook.icrc.org/case-study/environment-and-international-humanitarian-law>> accessed 10 January 2022.

<sup>62</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law. Volume I: Rules* (CUP 2009) 143 <<https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>> accessed 10 January 2022.

<sup>63</sup> Richard A. Falk, 'Environmental Warfare and Ecocide – Facts, Appraisal and Proposals' (1973) 4(1) *Bulletin of Peace* 80, 101 < <https://journals.sagepub.com/doi/abs/10.1177/096701067300400105>> accessed 10 January 2022.

<sup>64</sup> *Ibid* 88, 94.

<sup>65</sup> *Ibid* 100.

<sup>66</sup> *Ibid* 101.

<sup>67</sup> Report of the United Nations Conference on the Human Environment (Stockholm, June 1972) A/CONF.48/14/Rev.1 <<https://undocs.org/en/A/CONF.48/14/Rev.1>> accessed 10 January 2022.

<sup>68</sup> Declaration on the Human Environment (Adopted by the United Nations Conference on the Human Environment, Stockholm, 16 June 1972) <<https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf?sequence=1&isAllowed=y>> accessed 10 January 2022.

<sup>69</sup> For example, see Jan Darpö, 'Can Nature get it Right? A Study on Rights of Nature in the European Context' (Study requested by the JURI committee 2021) < [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2021\)689328](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)689328)> accessed 10 January 2022.

humans in the course of altering natural landscapes. In other words, an attack affecting the rainforest may qualify as ecocide, while an attack against an irrigated field may not. This does not mean that destroying or damaging artificial objects in the course of hostilities may never be a crime. There are plenty of other norms of international humanitarian law and international criminal law (for example, that of Article 8(2)(b)(xiii) of the Rome Statute<sup>70</sup>) which protect such objects, but they do not concern the protection of the environment.

Remarkably the existing norms of international humanitarian law apply only in armed conflicts, while the definition proposed by the IEP does not. As mentioned in the Commentary, the proposed '*scope ratione materiae* [sic] of the new crime of ecocide would develop the existing law by extending the protection of the environment by international criminal law beyond times of armed conflict to times of peace'.<sup>71</sup> Yet the 'extension' approach itself implies that the definition of crimes against the environment would apply in peace times just as it is applied in times of war. That existing definition refers to the natural environment. Perhaps one may find it puzzling that the authors of the draft definition prepared by the IEP omit the word "natural" in their definition. Hence, an explanation from the IEP would be helpful as to whether this omission means something more than simply sparing of words. However, as of now, nothing indicates that the IEP excluded 'natural' from the proposed definition for any other reason. Adding the word 'natural' would perhaps be beneficial for the proposed ecocide definition in order to avoid any further ambiguity.

#### **IV. ECOCIDE AND THE INDIGENOUS PEOPLES: A POTENTIAL CONFLICT?**

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The second question raised in the context of the Russian and Ukrainian criminal cases on ecocide is the balance between indigenous rights and the preservation of nature. As was described above, the indigenous people of Crimea ardently encourage the actions which the Russian investigators believe to constitute ecocide. Even if the cessation of artificial hydration is not ecocide, the question remains: what if the norms on ecocide are in conflict with indigenous rights? For example, what if indigenous people commit or tolerate the commission of ecocide on their lands in pursuit of economic interests or in the course of its traditional practices? Indeed, the prevailing view is that traditional knowledge may be helpful for the preservation of nature.<sup>72</sup> As the UN Secretary-General put it, 'people can draw wisdom from

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<sup>70</sup> Rome Statute, art. 8(2)(b)(xiii).

<sup>71</sup> IEP Definition of Ecocide 2021.

<sup>72</sup> For example, see Eduardo S. Brondizio and others, 'Locally Based, Regionally Manifested, and Globally Relevant: Indigenous and Local Knowledge, Values, and Practices for Nature' (2021) 46 Annual Review of

the long-established indigenous beliefs and traditions that (...) formed the basis for a life in harmony with nature. The “holistic vision” inherent in all of them and the importance given to being in constant communion with nature is perhaps one of the key lessons’.<sup>73</sup> However, there also exist accounts of destructive practices like slash-and-burn cultivation, shifting cultivation,<sup>74</sup> destructive methods of illegal hunting like noon trapping,<sup>75</sup> and fishing practices detrimental for coral ecosystems.<sup>76</sup> Although such practices are not always likely to reach the level of an international crime war and other disasters may increase their scale. Another risk stems from the predatory exploitation of nature by settlers or corporations under cover of unequal, imposed or fake agreements with indigenous people.

Indigenous rights and the protection of the environment were always closely linked. The first official discussion of the concept of ecocide in the UN took place under the auspices of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Human Rights Council. During discussions in 1978, the Sub-Commission expressed the view that ‘any interference with the natural surroundings or the environment in which ethnic groups lived was in effect a kind of ethnic genocide because such interference could prevent the people involved from following their own traditional way of life’.<sup>77</sup> In 1985,

[s]ome members of the Sub-Commission have (...) proposed that the definition of genocide should be broadened to include cultural genocide or “ethnocide”, and also “ecocide”: adverse alterations, often irreparable, to the environment (...) which threaten the existence

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Environment and Resources 481 <<https://www.annualreviews.org/doi/pdf/10.1146/annurev-environ-012220-012127>> accessed 10 January 2022.

<sup>73</sup> UN General assembly, ‘Harmony with Nature. Report of the Secretary General’ (18 August 2010) UN Doc A/65/314, para 47 <[https://www.un.org/esa/dsd/resources/res\\_pdfs/res\\_ga65\\_unedited/SGReportHarmonywithNature.FinalVersionSingleSpace.pdf](https://www.un.org/esa/dsd/resources/res_pdfs/res_ga65_unedited/SGReportHarmonywithNature.FinalVersionSingleSpace.pdf)> accessed 10 January 2022.

<sup>74</sup> J.Z. Katani, ‘Assessment of fire prevalence and reduction strategies in Miombo woodlands of Eastern Tanzania’ (2014) 84(1) Tanzania Journal of Forestry and Nature Conservation 24, 32. <[https://www.academia.edu/24406276/Assessment\\_of\\_fire\\_prevalence\\_and\\_reduction\\_strategies\\_in\\_Miombo\\_woodlands\\_of\\_Eastern\\_Tanzania](https://www.academia.edu/24406276/Assessment_of_fire_prevalence_and_reduction_strategies_in_Miombo_woodlands_of_Eastern_Tanzania)> accessed 10 January 2022.

<sup>75</sup> Daniel M. Mwamidi, Shem M. Mwasi and Abdrizak A. Nunow, ‘The Use of Indigenous Knowledge in Minimizing Human-Wildlife Conflict: The Case of Taita Community, Kenya’ (2013) 5(1) International Journal of Current Research 1, 5 <<http://journalcra.com/sites/default/files/issue-pdf/1565.pdf>> accessed 10 January 2022.

<sup>76</sup> Damaso P. Callo Jr. and Alfredo N. Darag Jr., ‘Manual of Seaweed Production and Field Guide of Discovery-Based Exercises for Farmer Field Schools’ (September 2015) <<https://www.fao.org/3/CA0873EN/ca0873en.pdf>> accessed 10 January 2022.

<sup>77</sup> See Nicodème Rughashyanlkiko, ‘Study on the Question of the Prevention and Punishment of the Crime of Genocide’ (4 July 1978) E/CN.4/Sub.2/416 <[https://digitallibrary.un.org/record/663583/files/E\\_CN.4\\_Sub\\_2\\_416-EN.pdf](https://digitallibrary.un.org/record/663583/files/E_CN.4_Sub_2_416-EN.pdf)> accessed 10 January 2022.

of entire populations whether deliberately or with criminal negligence. Indigenous groups are too often the silent victims of such actions.<sup>78</sup>

This concern is reflected in the UN Draft Principles on the Protection of the Environment in relation to Armed Conflicts. According to Draft Principle 5:

1. States should take appropriate measures, in the event of armed conflict, to protect the environment of the territories that indigenous peoples inhabit. 2. After an armed conflict that has adversely affected the environment of the territories that indigenous peoples inhabit, States should undertake effective consultations and cooperation with indigenous peoples concerned, through appropriate procedures and in particular through their own representative institutions, for the purpose of taking remedial measures.<sup>79</sup>

Both the importance of the environment and the duty to consult with the indigenous peoples are reflected in the relevant ILO Convention,<sup>80</sup> and in the UN Declaration on the Rights of Indigenous Peoples.<sup>81</sup> According to Article 32(2) of the latter, states are to consult with the indigenous peoples and obtain their free and informed consent prior to the approval of any project affecting their lands or territories and their resources.

The duty to consult may be a key in the determination of a balance between the rights and interests of indigenous peoples and the protection of the environment by means of criminal law. Without a doubt, a `balancing exercise` is hardly applicable in criminal law; however, the connection between the indigenous peoples and the environment may be a valuable factor in the determination of the *actus reus* of ecocide. It may be used for the evaluation of the degree of adverse influence on the environment, and the destruction or preservation of the environment of the indigenous peoples may be an indicative element of gravity. This assumption is already reflected in the commentary to the proposed definition of ecocide, where the term `severe` is linked to `the cultural value of elements of the environment, particularly to indigenous peoples`.<sup>82</sup>

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<sup>78</sup> B. Whitaker, Review further developments in fields with which the Sub-Commission has been concerned (4 July 1985) E/CN.4/Sub.2/1985/6, para 33 <[https://digitallibrary.un.org/record/108352/files/E\\_CN.4\\_Sub.2\\_1985\\_6-EN.pdf](https://digitallibrary.un.org/record/108352/files/E_CN.4_Sub.2_1985_6-EN.pdf)> accessed 10 January 2022.

<sup>79</sup> Sandos & Zimmermann.

<sup>80</sup> C169 - Indigenous and Tribal Peoples Convention (Adopted 7 June 1989, entered into force 5 September 1991) No 169, art 4(1), 7(4), 13(2) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)> accessed 10 January 2022.

<sup>81</sup> United Nations Declaration on the Rights of Indigenous Peoples (Adopted 13 September 2007) A/RES/61/295 <<https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>> accessed 10 January 2022.

<sup>82</sup> IEP Definition of Ecocide 2021.

Consultations with the indigenous peoples may be helpful both for mitigation of negative environmental consequences resulting from traditional practices, and for ensuring that indigenous rights are not misused. According to the Stop Ecocide Foundation, certain outside experts and public consultations enabled proper consideration of indigenous perspectives when drafting the definition of ecocide. If that definition becomes law, further consultations with the indigenous peoples will be necessary in the course of its implementation.

## **V. SOME PRELIMINARY CONCLUDING REMARKS**

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This paper does not intend to provide exhaustive answers. It is doubtful whether such answers are possible at this stage of development of the international definition of ecocide. Rather it is to provide a practical perspective of an existing conflict, where ecocide is one of many aspects. Both the Russian and the Ukrainian ecocide cases emerged not in connection, or, at the very least, not *only* in connection with the genuine concern about the environment. However, they appeared to be illustrative of some practical problems surrounding the definition of ecocide. The question of the ecocide definition will remain subject to further discussion, including what the role of indigenous rights is in this context.

Further developments of the Crimean ecocide cases are unpredictable. Yet if at least one of them reaches the verdict stage, it will become a valuable element of state practice that will deserve consideration in future efforts of codifying ecocide as an international crime.