



Concept Note: Test Case Examining War-driven Damage to the Environment in Ukraine

NB: This test case will take the shape of a mock trial¹ with the aim of a tribunal.² A mock trial simulates a 'real' trial, which aims to present a complete case, including witness examination, evidence introduction, and opening/closing arguments whereas a tribunal is done to enact a trial that should take place as a means to reflect on alternative ways of finding justice and points towards future change.

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Website: (under construction)

1. INTRODUCTION

The Russian military aggression against Ukraine has caused immense human suffering and devastation. Beyond the tragic loss of life and displacement of millions, the invasion has inflicted significant damage on the environment, potentially constituting a breach of, amongst others, international criminal law, international humanitarian law and international customary law.³

¹ [2011 Ecocide Trial](#), coordinated by the late UK Barrister, Polly Higgins. Assumed that ecocide is already a 5th crime under the Rome Statute tried in the Supreme Court of London, focused on the Deepwater Horizon oil spill in the Gulf of Mexico and the extraction of tar sands in Alberta, Canada.

² The [Monsanto Tribunal](#) and the [Uyghur Tribunal](#), focusing on ecocide, and genocide and crimes against humanity respectively.

³ Richard R. Rogers, Kate Mackintosh and Maksym Popov, '[No Longer the Silent Victim: How Ukrainian Prosecutors are Revitalising Environmental War Crime Law](#)' (Just Security article, 23 January 2024).

This ongoing war in Ukraine is impacting its biodiversity in many ways through direct and indirect means, with threats such as pollution, debris, chemicals, landmines and explosive ordnance creating risks that may be irreversible or long-term. Living organisms, their habitats, and a wide diversity of wildlife, have been destroyed and will continue to be destroyed, leading to an insurmountable loss of biodiversity and damage to ecosystems. Targeted attacks such as the one on the Kakhovka Dam on 6 June 2023, bring to fore not only the questions of accountability, but also issues of crimes against the environment during armed conflict.

The scope of the war-driven damage to the environment in Ukraine should be assessed and prosecuted under the crimes listed in the Rome Statute. Article 8(2)(b)(iv) states that “[i]ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” would constitute a war crime. However, the threshold for damage to the environment during war as per Article 8(2)(b)(iv) is high and this requires significant investigation efforts and capabilities from the International Criminal Court (ICC) and national investigatory/prosecutorial bodies. Despite this limitation, there may be other provisions under Article 8 that need to be examined to complement or make up for the high threshold of Article 8(2)(b)(iv). Sadly, the ICC lacks both an investigative and procedural precedent on this provision despite clear cases past and present of significant environmental damage during armed conflicts.

The Environmental Justice Project proposes a test case in the form of a mock trial examining the application of, amongst others, Article 8(2)(b)(iv) of the Rome Statute, encompassing acts causing ‘widespread, long-term and severe damage to the natural environment’. The mock trial will focus on the destruction of Kakhovka Dam on 6 June 2023 as a test case application of the relevant provisions under Article 8. It will also take into consideration the ICC Office of the Prosecutor’s pending [policy paper on Environmental Crimes](#) under the Rome Statute, which is due to be published at the end of 2024 after two rounds of public consultations.

2. VISION

To create a framework for collaborative action, led by Ukrainians, to address environmental harms caused by the war.

3. GOALS

This mock trial has the primary aim to **test, amongst others, Article 8(2)(b)(iv) in the context of the situation in Ukraine**, as well as to achieve the following:

Raise awareness: Educate the public, policymakers, diplomats and legal professionals about the potential application of the provisions under Article 8 of the

Rome Statute to investigate and prosecute large-scale environmental harm as a war crime and the eventual need for criminal prosecution.

Gather evidence: Document and analyse environmental damage caused by Russia's aggression against Ukraine, using state-of-the-art case management software to build a solid legal case for future accountability.

Build consensus: Foster dialogue and collaboration among legal experts, NGOs, and government officials on the need for strategic, legal frameworks addressing war-driven environmental harm.

Secure political support: Advocate for the international community to support the international prosecution of crimes against the environment.

Generate momentum: Lay the groundwork for future initiatives focusing on holding perpetrators accountable for environmental destruction in armed conflict.

Create pathways to environmental recovery and reconstruction: Inspire partners and those in authority to come up with a comprehensive strategy for, plan of action on, and prioritisation of post-war environmental recovery and reconstruction.

Campaign for change: Set the tone for the International Criminal Court to investigate the violation of, amongst others, Article 8(2)(b)(iv) and the possible amendment of Article 8(2)(b)(iv) of the Rome Statute.

3. METHODOLOGY

Assemble a legal team: Recruit renowned international lawyers with expertise in environmental law, international criminal law, international humanitarian law, international customary law, and Ukrainian law.

- The legal team can be further assisted by students, particularly by law students from Ukraine

Develop a collaborative case file: Create a depository of documentation related to environmental damage in relation to the destruction of Kakhovka Dam.

- Identify experts for evidence gathering and testimonies
- Identify potential witnesses (protection of their identities will apply where required)

Conduct a mock trial: Simulate a legal proceeding that adheres to international criminal law standards and procedures.

Disseminate findings: Publish a comprehensive (digital) report summarising the trial's proceedings and legal arguments.

Organise outreach campaigns: Engage with media, policymakers, international organisations, and the public to amplify the project's message.

Build capacity: Develop a toolkit for investigators and prosecutors to help push the ambition for better protection of the environment during war times, including post-war recovery and reconstruction.

Harness cooperation: Encourage information sharing and coordinated action amongst investigators, prosecutors, and enforcement authorities involved in the prosecution of war-driven environmental damage or ecocide in Ukraine.

4. EXPECTED OUTPUTS

As top priority, there will be a presentation of findings to the International Criminal Court's Office of the Prosecutor to push for a preliminary investigation into, amongst others, and/or where possible, Article 8(2)(b)(iv) in the context of Ukraine. In turn, complement the on-going efforts to prepare a sound restoration and recovery plan for Ukraine using the evidence that were gathered.

Increased public understanding of the laws that exist to protect the environment and their application in Russia's military aggression against Ukraine.

→ A high-level symposium with presence of relevant media

Strengthened legal arguments for holding perpetrators accountable for large-scale environmental destruction.

→ A series of publications/events aimed at pushing for accountability

Reinforce methodological improvements on data collection and compilation.

→ A centralised depository that intersects with restoration and recovery plans

Enhanced international cooperation on developing a legal framework on the protection of the environment during war times.

→ A coalition of like-minded organisations and institutions that will assist the Office of the Prosecutor General of Ukraine

Political and institutional support for Ukraine to effectively pursue environmental prosecutions.

→ A collaboration with international bodies

Momentum for future initiatives addressing environmental crimes in war times.

→ A follow-up mock trial for other situations

5. BUDGET AND TIMELINE

A detailed budget and timeline will be developed and presented upon request.

6. CONCLUSION

This mock trial will represent a crucial and concrete step towards achieving environmental justice in Russia's military aggression against Ukraine and will forge a precedent for future accountability. By bringing together legal expertise, NGO collaboration, and political support, this project can pave the way for a world where large-scale destruction of the environment during war time is recognised and prosecuted, safeguarding our planet for generations to come.