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## THE UKRAINIAN ACTUALIZATION OF JUSTICE IN GLOBAL CLIMATE POLICY.

**Matiushyna O.V.,**  
*PhD student, International Law Chair,  
Educational and Scientific Institute of International Relations,  
Taras Shevchenko National University of Kyiv  
e-mail: radiola112@hotmail.com*

### **Matiushyna O.V. The Ukrainian actualization of justice in global climate policy.**

The article examines the concept of climate justice as a key element of effective climate policy in Europe in the fight against global warming and the actualization of this issue in Ukraine as a result of Russian military aggression. The role of international law in regulating the human impact on the climate system and ensuring environmental justice is highlighted. The efforts of the European Union to implement the Paris Agreement in order to prevent an in global average annual temperature on the planet by more than 2 degrees from the pre-industrial level by 2100 are analyzed, in particular with regard to the implementation of the European Green Deal and the package of legislative initiatives «Fit for 55», which were joined by all EU members, proclaiming an ambitious goal to turn Europe into the first climate-neutral continent by 2050 and reduce emissions by 55% by 2030. The development of European policies for the transition to a carbon-free economy is aimed at integrating climate related commitments into various sectors of the economy, which historically coincided with the war on the eastern borders of EU. The author puts attention to the lack of a mechanism for reimbursement of significant volumes of greenhouse gas emissions caused as a result of armed conflicts, which is a significant gap in the modern methodology of concepts for achieving the normatively enshrined long-term goal of the EU to achieve climate neutrality by 2050 in accordance with the European Climate Law. Particular attention is paid to the situation in Ukraine, where the issue of climate justice is being actualized in connection with the consequences of the Russian aggression, which has caused large-scale environmental crimes. Attention is paid to the challenges associated with environmental racism, war environmental crimes, and ways to improve legal mechanisms to ensure climate justice at the international level are proposed. The author emphasizes the need for effective implementation and synchronization of EU environmental and climate legislation in the legal system of Ukraine, which should become an important prerequisite for the «green» and sustainable post-war recovery of the country.

**Key words:** International Law, climate change, Paris Agreement, European Green Deal, Emission Trading Schemes, CBAM, climate justice.

### **Матюшина О.В. Українська актуалізація справедливості в глобальній кліматичній політиці.**

У статті розглядається концепція кліматичної справедливості як ключового елемента ефективної кліматичної політики в Європі у боротьбі з глобальним потеплінням та актуалізація цього питання в Україні внаслідок російської військової агресії. Висвітлено роль міжнародного права у регулюванні впливу людини на кліматичну систему та забезпеченні екологічної справедливості. Проаналізовано зусилля Європейського Союзу щодо імплементації Паризької угоди з метою не допустити збільшення приросту глобальної середньорічної температури на планеті до 2100 року більш ніж на 2 градуси від доіндустріального рівня, зокрема щодо реалізації Європейської зеленої угоди та пакету законодавчих ініціатив «Fit for 55», до яких доєдналися всі члени ЄС, проголосивши амбітну мету перетворити Європу на перший кліматично нейтральний континент до 2050 року і скоротити викиди на 55% до 2030 року. Напрацювання європейських стратегій переходу до безвуглецевої економіки спрямовані на інтеграцію кліматичних зобов'язань у різні сектори економіки, що історично співпало з війною на східних кордонах. Автор звертає увагу на відсутність механізму відшкодування значних об'ємів викидів парникових газів, заподіяних в результаті збройних конфліктів, що є суттєвим недоліком сучасної

методології концепції досягнення нормативно закріпленої довгострокової мети ЄС щодо досягнення кліматичної нейтральності країнами-членами до 2050 року відповідно до Європейського закону про клімат. Особлива увага приділена ситуації в Україні, де питання кліматичної справедливості актуалізується у зв'язку з наслідками російської агресії, що спричинила масштабні екологічні злочини. Увагу приділено викликам, пов'язаним із екологічним расизмом, воєнними екологічними злочинами, і запропоновано шляхи вдосконалення правових механізмів для забезпечення кліматичної справедливості на міжнародному рівні. Автор наголошує на необхідності ефективної імплементації та синхронізації екологічного та кліматичного законодавства ЄС в правову систему України, що має стати важливою передумовою для “зеленого” та сталого післявоєнного відновлення країни.

**Ключові слова:** Міжнародне право, зміна клімату, Паризька угода, Європейський зелений курс, Схеми торгівлі викидами, СВМ, кліматична справедливість.

**Introduction.** Scientific research and discussions on the fight against global warming have contributed to the development of international environmental law, which governs the management of human behavior related to the impact on the climate system. Legal instruments play an important role in the fight against climate change by providing mediation between different climate policy actors.

Climate justice encompasses human rights such as the right to life, health, a clean environment, access to legal remedies, and participation in decision-making. It highlights the importance of taking into account the needs of vulnerable groups and compensation for the damage caused, often becoming the basis for climate lawsuits. In Europe, the concept of climate justice is the basis of climate policy, which takes into account social and environmental equality. The European Union, aiming to reduce greenhouse gas emissions by 55% by 2030, integrates climate commitments into the national legal systems of member states, ensuring a balance between economic, environmental, and social interests.

The European approach to the climate justice is based on the cross-sectoral cooperation, integrating climate policies with energy, agriculture and transport. Initiatives such as the European Green Deal provide a comprehensive solution to climate problems and the achievement of sustainable development goals. However, fragmentation of climate legislation and uneven implementation of climate regulations in EU countries remain challenges.

**The purpose of research.** The author analyzes the concept of climate justice as a key element of effective climate policy, with an emphasis on the European experience and the actualization of this issue in Ukraine due to the consequences of Russian military aggression and related environmental crimes.

**Recent literature review.** Recent literature underscores the growing significance of climate justice as a framework for addressing global warming through human rights, equity, and historical accountability, as highlighted by UNEP. Fragmented international and national climate laws hinder effective justice, but Ukraine's reconstruction presents a unique opportunity to integrate climate justice into recovery efforts. Scholars like M. Medvedieva and R. Yedeleiev examine Ukraine's climate justice context, while global perspectives from A. Patnaik, J. Son, A. Feng, I. Anguelovski, A.T. Amorim-Maia, E. Chu, and J. Connolly, and others emphasize the importance of intersectional approaches to climate adaptation. Works by L. Porter, L. Rickards, B. Verlie, K. Bosomworth, S. Moloney, B. Lay et al. (2020) and L. Rickards et al. (2020) advocate for bridging adaptation planning with transformative action and social equity.

**Main research results.** The end of the twentieth and the beginning of the twenty-first century are marked by significant climate changes around the world. During Soviet times, Ukraine in particular suffered from the environmental injustice due to disproportionate industrial development. The industrial potential of Ukraine, as well as the entire USSR, was formed disproportionately, focusing on traditional industrial regions, such as the Donbas and the Dnieper. Industrialization was carried out at the expense of the peasants, accompanied by mass repression and significant losses.

This historical context actually testifies in particular to environmental racism – the disproportionate impact of environmental hazards on certain groups of the population. Environmental justice implies equal access to resources and institutions, respect for cultural and biological diversity, which never occurred in Soviet Ukraine.

Well-known Ukrainian researchers M. Medvedeva and R. Yedeleiev emphasize that «in the doctrine, climate justice encompasses different meanings and is used through synonymous terms, such as climate justice, climate fairness, climate equity, emphasizing the need to solve the problem when those communities and states that have caused this problem the least become vulnerable to the consequences of climate change, and combines the ideas of environmental and social justice» [1].

The international community has actualized the issue of climate change, in particular, the discussion of national contributions and actions of the countries participating in the Paris Agreement (2015). The main goal of the Paris Agreement is to manage the global increase in the average temperature below 2°C from pre-industrial levels, as well as to make efforts to limit the temperature increase to 1.5°C, while emphasizing ecosystem integrity, biodiversity protection, and the concept of «climate justice» to ensure equity in climate action [2]. The participating countries must reduce greenhouse gas emissions compared to 1990 levels through nationally determined contributions (NDCs), which each country voluntarily sets for a 5-year period, after which they are reviewed and new commitments are made. The Paris Agreement also provides support for countries that need financial and technological assistance to achieve climate goals.

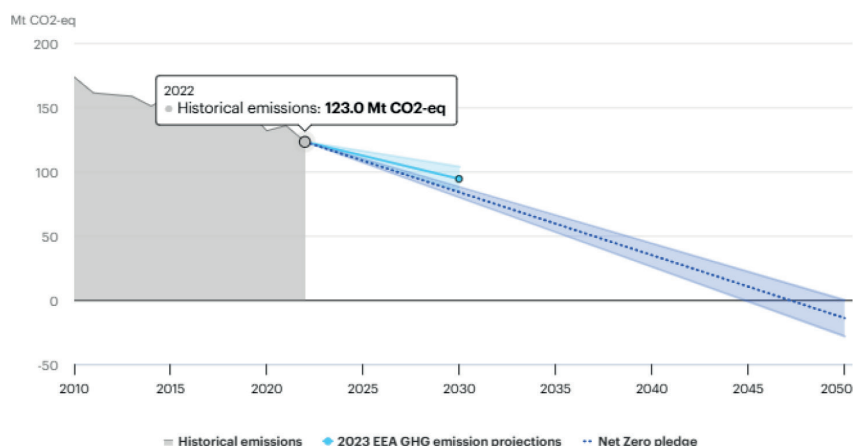
In 2013, the Warsaw International Mechanism on Loss and Damage Related to the Effects of Climate Change was established, which has become an important tool for supporting vulnerable countries in overcoming the negative consequences of climate change. The main purpose of this mechanism is to promote the understanding, prevention and management of losses and damages arising from extreme weather events, sea level rise and other adverse climatic impacts. These provisions were further developed in particular in Article 8 of the Paris Agreement, which obliges the parties to recognize the importance of preventing, minimizing and resolving issues of loss and damage. It also calls for international cooperation to increase the resilience and adaptation of vulnerable countries, ensuring their ability to respond to the effects of climate change. Thus, the Warsaw Mechanism and Article 8 of the Paris Agreement are key elements of global efforts to achieve climate justice.

Europe, having declared a leading position in the fight against climate change, has been facing a large-scale environmental catastrophe on the eastern borders since 2022 due to Russian armed aggression on the territory of Ukraine. The energy crisis and the war in Ukraine have become catalysts for environmental change [3].

Shortly after the start of the war, the European Parliament recognized gas and nuclear energy as «green» and «sustainable» sources, which caused deep criticism. In fact, ending Europe's energy dependence on Russia is becoming a priority over reducing or phasing out hydrocarbons.

The Russian military aggression against Ukraine undoubtedly leads to an increase in greenhouse gas emissions. According to the Ministry of Environmental Protection and Natural Resources of Ukraine, at least 180 million tons of CO<sub>2</sub>eq were emitted in the first year of the war, and the carbon footprint of Ukraine's reconstruction costs is estimated at about 48.7 million tons of CO<sub>2</sub>eq. According to IEA statistics [4], in fact, the volume of greenhouse gas emissions of one of the EU countries, such as the Netherlands, is less than the volume of emissions in Ukraine due to hostilities. It is important to note that European industry pays for emissions, unlike the aggressor state Russia, since a procedure for reimbursement of market cost of emissions during armed conflicts has not yet been developed.

Historical and implied greenhouse gas emissions from energy by NDCs and NZE targets



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Pic. 1 (Statistics IEA, [www.sei.org](http://www.sei.org))

Just before the war in Ukraine, European politicians have developed a package of legislative initiatives «Fit for 55», which includes 13 proposals. The goal of this package is to bring EU legislation in line with the goal of reducing emissions by 55% by 2030. The package provides a coherent and balanced framework for achieving the EU's climate goals, including «a just and socially fair transition, support for innovation and industrial competitiveness, and a level playing field for economic operators of third countries» [5]. It was proclaimed the ambitious goal of transforming Europe into the first climate-neutral continent by 2050, designing a legislative architecture for a just transition and green transformation, rather than reacting to or adopting it, with the aim of protecting the environment for future generations. If the text of the Paris Agreement did not provide a direct definition of «climate neutrality», and the term itself has become established over time due to the interpretation of «achieving a balance between anthropogenic emissions from sources and removals by sinks of greenhouse gases», then the European Climate Law enshrined the obligation to achieve climate neutrality by 2050 in accordance with Article 2 (Regulation (EU) 2021/1119), which provides a basis for achieving progress towards the goal global adaptation set out in Article 7 of the Paris Agreement».

One of the most controversial proposals is the Carbon Border Adjustment Mechanism (CBAM), which introduces additional taxation on carbon-intensive goods such as cement, aluminum, fertilizers, energy, ferrous metallurgy produced by non-ecological technologies [6]. This mechanism complements the European Emissions Trading System (EU ETS), established in 2005. Ukraine planned to join the EU ETS by 2025 [7].

Since the start of the war in Ukraine, some EU governments have questioned the functioning of the EU ETS policy, arguing that it provokes an even greater increase in energy prices. CBAM, in turn, causes discontent in countries exporting carbon-intensive goods to the EU, and may become the subject of appeals to the WTO as a discriminatory trade barrier. It is worth noting that CBAM is not applicable in the United States and China. This is an exclusively EU tax instrument aimed at stimulating environmentally friendly production by trading partners who import their goods to European markets in order to achieve global climate goals.

The EU's 90% decarbonization target by 2040 will determine the number of CO<sub>2</sub> allowances under the EU Emissions Trading Scheme, which sets limits on carbon emissions by large industrial emissions [8]. Financial analysts predict EU carbon prices could exceed €400 by 2040 for businesses lagging in decarbonization under the 90% scenario. The London Stock Exchange estimates that with the current 2030 target of a 55% reduction, carbon prices may reach €160/t by 2030. [9]. At the same time, a pricing procedure for greenhouse gas emissions caused by armed aggression, which is critical for achieving global climate goals, has not yet been developed. No international legal act provides for a procedure for reimbursement of greenhouse gases caused by hostilities. That is, for the largest polluters, who are actors of armed aggression, a «zero» rate on emissions is currently applied, unlike EU member states and their trading partners in European markets.

Ukraine has consistently implemented international climate commitments in accordance with the UNFCCC, the Kyoto Protocol and the Paris Agreement. In particular, the Nationally Determined Contribution (NDC) was adopted with the declared goal of achieving climate neutrality no later than 2060. The National Economic Strategy for the period until 2030 and the Concept of Ukraine's Green Transition until 2050 integrate the principles of climate justice. However, these documents do not take into account the escalation of hostilities, which could not be predicted at the time of their development.

In May 2023, at the summit of the Council of Europe, an agreement was signed on the register of damage caused by the Russian aggression, the statute of this register, approved by a resolution of the Council of Europe, separately indicates the damage caused to the environment, which indicates international recognition of the need to take into account environmental damage in the context of war. [1]

Environmental crimes have become the fourth largest criminal activity in the world, along with trafficking in drugs, weapons and human beings. During the first two years of Russia's full-scale invasion of Ukraine, almost 4.5 thousand crimes of Russia against Ukrainian nature were recorded, according to the published information of the Ministry of Environmental Protection and Natural Resources [10]. According to the UN, Ukraine is the most mined country in the world. Forests on an area of about 3 million hectares, or almost 30% of all Ukrainian forests, were affected by the war [11]. In the temporarily occupied territories, pollution is possible on an area of 1 million hectares. In the occupied Crimea, protected areas are being destroyed due to military activities, in particular due to the lack of water resources. Clearing the Black Sea of mines is an important challenge for Ukraine and

the international community. Mining and other warfare can affect fish, mammals, and birds, altering their behavior.

At the same time, the first additional protocol to the Geneva Convention, paragraph 3 of Article 35, states that «it is prohibited to use methods or means of conducting military operations that are intended to cause or can be expected to cause large-scale, prolonged and serious destruction of the natural environment...» [12]. There are similar norms in the 1977 Convention on the Prohibition of the Military or Any Other Hostile Use of Means of Influencing the Environment, to which both Ukraine and Russia are parties [13].

It can be stated that Russia does not comply with the norms of international law, in particular, does not comply with the provisions on environmental protection during armed conflicts enshrined in international conventions, which is confirmed by numerous cases of destruction of the natural environment during its military operations in Ukraine.

Ecocide has an international legal definition as illegal or unjustified actions committed with the knowledge that there is a significant likelihood of serious, large-scale or long-term damage to the environment caused by such actions.

Legal experts from around the world have compiled a «historical» definition of ecocide as «illegal or reckless acts committed with the knowledge that there is a significant likelihood of serious and large-scale or long-term damage to the environment caused by such actions», which should be adopted by the International Criminal Court to prosecute the most egregious crimes against the environment [14].

Ecocide is not currently criminalized as a separate crime under the Rome Statute of the International Criminal Court. Non-governmental organizations and civil society are increasingly voicing demands for the criminalization of ecocide, prosecution within the framework of international law and the transformation of global governance to strengthen international security, and the development of mechanisms for effective counteraction to transboundary pollution in order to counteract climate change.

Russia has not ratified the Rome Statute, which in turn limits the possibilities of bringing it to justice for environmental crimes within the framework of the International Criminal Court. The experience of creating a UN Commission to Consider Claims for Compensation for Damages as a Result of Iraq's Invasion of Kuwait is not relevant for Ukraine, since the creation of such a commission requires the permission of the UN Security Council, where, unfortunately, Russia has the right of veto. Other international mechanisms, such as special tribunals or sanctions, can be used to respond to these crimes, which unfortunately have so far been ineffective.

In 2023, the European Parliament approved new rules on environmental crimes and related sanctions [15]. The new directive includes the updated list of criminal offences within the EU, such as illegal timber trade, depletion of water resources, serious breaches of EU chemicals legislation, and pollution caused by ships. The new rules include qualified offenses, such as large-scale forest fires and widespread pollution, which lead to the destruction of the ecosystem and can be equated with ecocide. Penalties for environmental crimes include imprisonment and fines. For qualified crimes, up to eight years in prison are provided, for those that caused the death of a person - up to ten years. In addition, all offenders must restore the damaged environment and compensate for the damage caused. Companies can be fined up to 5% of their annual global turnover or €40 million. Member states will be able to decide whether to prosecute crimes that did not take place on their territory. Ukraine, as a candidate for EU membership, must also synchronize its legislation accordingly. The post-war reconstruction of Ukraine must meet the criteria of sustainable development.

Another issue that Ukraine will face after the war is the disposal of remnants of military equipment, demining and re-profiling of degraded land. This is a colossal task, and Ukraine will need the support of the EU and the international community to solve it.

Article 37 of the Charter of Fundamental Rights of the European Union emphasizes the need for a high level of environmental protection and its improvement in accordance with the principle of sustainable development [16]. The European Commission has proposed the Nature Restoration Act, which «sets specific, legally binding goals and obligations for nature restoration in each of the listed ecosystems – from terrestrial to marine, freshwater and urban ecosystems» [17]. The prospect of adopting this Law at the EU level, and subsequently implementing it in Ukraine, is critically important from the point of view of the prospects for Ukraine's green recovery. Of course, this will not directly solve the issue of holding Russia accountable for committing environmental crimes in Ukraine, but it will determine the framework for decision-makers at all levels regarding the feasibility of the green agenda and the effectiveness of taking into account climate risks.



**Conclusions.** In the forecasts of the world's leading think tanks, including the OECD, for 2023, the risk of the climate crisis was included in the top 5 threats, largely due to the Russia-Ukraine war. Many European countries have expressed concern about the achievement of climate goals due to the increased use of nuclear energy, coal mining and oil and gas exploration, caused by the desire to reduce dependence on Russian hydrocarbons. This has drawn criticism that points to the use of war as a reason for slowing down green policy. At the same time, the re-elected President of the European Commission, Ursula von der Leyn, has a legacy of commitments under the European Green Deal, which is a solid foundation for the prospect of combating global warming. Within the EU, climate is becoming an integral part of priorities such as competitiveness, innovation and investment.

In the context of the war on Europe's eastern borders, the issue of climate justice has become even more relevant, as the armed conflict causes significant environmental damage, as well as an increase in greenhouse gas emissions, which has a detrimental effect on the climate and casts doubt on the likelihood of achieving climate neutrality in Europe by 2050. This raises the issue of the need to develop an international legal mechanism for compensation for environmental damage and emissions caused by armed aggression.

Undoubtedly, Ukraine's reconstruction must be in line with the European green and digital agenda, and the support mechanism must have a specific governance structure that will ensure that investments are aligned with climate and environmental policies and EU standards.

It is important not to lose focus on ensuring justice in matters of compensation for environmental damage, compensation for the volume of greenhouse gases caused during military aggression and prosecution for environmental crimes.

A significant gap in the development of emission reduction methodologies and global decarbonization strategies is the failure to take into account emissions from armed conflicts, a just transition and a carbon footprint for the reconstruction of destroyed territories as a result of hostilities.

The EU's ambitious leadership in the fight against global warming, provided that Ukrainian diplomacy works effectively, can potentially enrich the mechanisms of cooperation between states in the field of climate change mitigation and adaptation within the framework of general international law and within the framework of EU law, including in the development of mechanisms to ensure climate justice.

Improving the legal mechanisms for regulating activities that negatively affect climate change is possible only through effective cooperation at the international level, which allows overcoming national egocentrism.

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