

28 July 2021

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Dear Ms. Marshall,

The Right to Protection CF (R2P) avails itself of this opportunity to express assurances of its highest consideration and esteem to the Committee.

Due to [Ukraine's request of 27 June 2022](#) to the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) for advice on whether its adoption of certain measures in connection with the military aggression of the Russian Federation against Ukraine is compatible with its obligations as a Party to the Aarhus Convention and respective [Committee's call of 21 June 2022](#) to members of the public, R2P would like to inform you about the following.

Since 2019 R2P has participated in the "Reducing Disaster Risk Vulnerability in Eastern Ukraine" project, which is implemented by Fund as a member of the 3P Consortium. Within the projects supported by ECHO, R2P performs legal and policy analysis focusing on the laws on industrial and environmental risks. In particular, the project team identifies gaps in the regulations that put practical barriers to a systemic approach to disaster risk reduction. Moreover, over the years of project implementation, R2P has gained significant practical experience in guaranteeing environmental safety during military hostilities.

In the last research, R2P had paid special attention to collecting environmental information and exchanging such information between state authorities of different levels and the public. It is a necessary condition for identifying risks and reducing their occurrence, especially in the context of improving the state of the environment, achieving the goals of sustainable development and protection of human rights, and for post-war reconstruction.

[In the Ukraine's request](#), there is mentioned that "For the period of martial law, the constitutional rights and freedoms of man and citizen provided for in Articles 30 - 34, 38, 39, 41 - 44, 53 of the Constitution of Ukraine may be restricted, as well as temporary restrictions on the rights and legitimate interests of legal entities within and to the extent necessary to ensure the possibility of introducing and implementing



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measures of martial law, which are provided for in part one of Article 8 of the Law of Ukraine "On Martial Law".

R2P would like to emphasize that there is no restriction on the right to a safe environment (article 16 of the Constitution of Ukraine) and the right to environmental information (article 50 of the Constitution of Ukraine).

Constant conflicts over natural resources in developing countries, along with the international armed conflicts, in particular initiated by the Russian Federation against Ukraine in 2014, require us to take a closer look at the implementation of fundamental legal acts in the field of international environmental law. Consequently, it is possible to state that legal acts regarding prevention of the environmental damage must be properly balanced against the State's interest in protecting its national security.

After all, as indicated in the developed draft guidance [for the development of domestic legislation on responsibility, response action, and compensation for damage caused by activities dangerous to the environment](#), it does not apply to damage caused by activities dangerous to the environment, which are covered by other domestic laws establishing regimes of special responsibility or primarily related to national defense, international security or disaster management.

In 2015, a draft of the [principles of Environmental Protection in relation to armed conflict was developed](#). In particular, it is planned to regulate the "Laws of Armed Conflict", including the principles and rules of delimitation, proportionality, military necessity, and security measures in the event of an attack, applied to the [natural] environment, with a view to its protection. The next draft was published in 2019. Today, another meeting of the UN Commission on International Law is taking place, where the [Third Report on environmental protection in relation to armed conflicts is being discussed](#).

The main conclusion of this document is that the State bears the responsibility of monitoring the damage caused and its calculation and should contemplate mechanisms for its restoration and compensation if it is impossible to establish the person responsible for causing such damage.

Given the developed international principles, Ukraine should take responsibility for monitoring, collecting, and recording the damage caused to its nature as a result of military actions of the Russian Federation, as well as assess funds necessary for its restoration and compensation for the damage.

Thus, the above-mentioned position of Ukraine in its request regarding publicizing environmental information and receiving advice due to the context of the war is extremely important. Because, despite the war, Ukraine got a chance to introduce a new environmental policy development, and whether it will develop it following the world's environmental policy depends on the right actions now, in wartime.

In the application, the Ministry of Environmental Protection of Natural Resources of Ukraine suggests restricting the procedure of providing Environmental Impact Assessment (EIA) information and asks Aarhus Convention Compliance Committee (ACCC) to inform 1) whether the proposed forms of access to information and public participation in the decision-making process in the process of EIA will not be considered discriminatory; 2) will the proposed ways ensure access to information and public participation in the EIA process be sufficient and adequate? The Ministry also asks to share the Committee's experience and provide recommendations on the ways and means of respecting the public rights provided for in the Convention during hostilities.



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R2P would kindly ask the Aarhus Convention Compliance Committee (ACCC) to widen the scope of its advice to Ukraine to include the necessity of implementing [the multi-hazard management of disaster risk in development at all levels as well as within and across all sectors](#). Since 2015, United Nations Economic Commission for Europe (UNECE) has been actively supporting the Member States, facilitating progress in line with three of the Sendai Framework’s priority areas of action: Fostering understanding of hazards and risks nationally and in a transboundary context; Strengthening disaster risk governance; Strengthening preparedness for an effective response and to build back better. The main role of these activities belongs Aarhus Convention.

Strengthening disaster risk governance by establishing cross-sectoral coordination mechanisms, enabling countries to pursue a dialogue on closely linked “nexus” areas, such as water, food, ecosystems, and biodiversity. At the same time, systems must be implemented to enable effective and lasting cooperation with industry, academia, stakeholders, and the public. The Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (the Aarhus Convention) provides important guidance in this respect: The updated [Recommendations on the more effective use of electronic information tools set out common approaches](#) to promote public access to information and improve information exchange between public authorities, operators of hazardous activities and the public.

The formation of environmental information, its collection and distribution, and access to it is an important issue for Ukraine at the present time. Moreover, the creation of proper legal regulation of these issues and the creation of practical guides for implementing and applying such norms should be discussed. For example, “[Resolution of the Cabinet of Ministers of Ukraine on the Procedure for Determining Damages and Damages Caused to Ukraine as a Result of Armed Aggression by the Russian Federation](#).”

The procedure for determining damage and its calculation is provided based on methodologies. Representatives of non-governmental organizations, independent information, analytical centers, and public organizations may be involved in preparing drafts of the specified methods and assessing damage and losses. R2P would like to emphasize that both the procedure and the methodology provide for the calculation of damage, excluding the costs necessary for restoring destroyed property and territories. Moreover, these methods should include criteria for reconstruction, considering the achievement of Ukraine's previous environmental commitments, prevention of multilateral risks of disasters, and prevention of multi-hazards.

[The methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law](#), approved by order of the Ministry of Environment, establishes that the calculation of damage is carried out based on data collected from various sources. However, the results of the damage calculation are published only at the request of authorities and law enforcement agencies. Given the fact that such a damage calculation is important for planning the further restoration of the territories, Ukraine should provide access to such damage calculation materials to a wider range of persons with a guarantee of security measures.

[Method calculation of unorganized emissions of polluting substances or a mixture of such substances into the atmospheric air as a result of the occurrence of emergency situations](#) and/or during the state of war and determining the amount of damage caused involves the collection of data from all available sources and the provision of calculation results under the observance of laws to a wider range of persons.



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Given the fact that the issues of environmental protection are of paramount urgency during the war, given that the state of Ukraine has taken on the responsibility of guaranteeing environmental security and balance in Ukraine, given the willingness of Ukraine to restore Ukraine after the war in compliance with all environmental requirements to achieve the for Ukraine goals, R2P believes that Ukraine needs to improve the legal framework on these issues, as well as the development of practical guides for the implementation of policies and the formation of environmental information networks.

[The Recovery Plan of Ukraine section "Environmental safety"](#) indicates the interrelationship of the state environmental security of Ukraine, which was critical before the full-scale war, and environmental disasters as a result of military actions on the territory of Ukraine. The action plan for the recovery of Ukraine must undergo a strategic environmental assessment.

R2P emphasizes this in view of the fact that the recent changes to the [Law of Ukraine "On Regulation of Urban Planning"](#) provided for the need to develop programs for the comprehensive restoration of the region (territory). Thus, the programs are removed from the strategic environmental assessment procedure, even though the legislator envisages the resolution of such issues as the proper change of the functional purpose of the land planning of further development and economic development of the territories through these programs. The program also provides for taking measures to prevent the occurrence of disaster risks, both natural and man-made, which is possible only if such a plan is properly evaluated ecologically.

R2P highly appreciates the actions of the Ministry of Environmental Protection of Natural Resources of Ukraine during the hostilities and the preparedness to be a leader in environmental changes in Ukraine. We support Ukraine's request and ask the ACCC to consider it, taking into account the provisions of the Sendai Framework Program, the environmental policy of ENECE, and the peculiarities of the martial law in Ukraine.

Sincerely yours,

Right to Protection CF President



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