I. Definitions and preliminary remarks

For the purpose of this document, the term “environmental crimes” covers international crimes (genocide, crimes against humanity, war crimes and the crime of aggression) that directly harm the environment. Extraterritorial jurisdiction (EJ) allows States to prosecute perpetrators of international crimes committed outside of their territory, based on the nationality or the residency of the victim/s and/or perpetrator/s, as well as on the basis of the universal jurisdiction (UJ) principle. Some international crimes being so serious that they constitute offenses against all humankind, UJ gives States the option – and sometimes the obligation – to prosecute perpetrators of such crimes when present on their territory, regardless of where the crimes may have been committed or of the nationality of the parties involved. Several States can even exercise criminal jurisdiction without the presence of any suspect on their territory. EJ types of actions can be initiated by domestic prosecutors autonomously, following denunciations or complaints made by victims, witnesses or civil society organizations (CSOs) or on the basis of cooperation request from Third States – depending on the specific legal system. In some domestic jurisdictions political authorization is necessary for the prosecutor to proceed.

EJ is an increasingly effective tool at the service of international justice. It allows for the domestic prosecution of a number of international crimes committed abroad, thus reinforcing access to justice for victims and survivors, and generating a deterrent effect on the commission of further violations. For instance, a criminal investigation is ongoing in Switzerland concerning the alleged illegal exploitation of rosewood in Casamance, a region of Senegal where a decades-long conflict is taking place, with long-term consequences on the environment. Even though the EJ-based prosecution of environmental crimes might have been rare, the conflict in Ukraine and an increased awareness of the global degradation of the environment could very well lay the foundation for new practices. Strong legal precedents are likely to have an impact not only on further cases related to the conflict in Ukraine but also more largely on the prosecution of on environmental crimes world-wide.

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1 This document has been prepared by TRIAL International, an NGO fighting impunity for international crimes. The organization investigates and files complaints based on EJ and has developed a recognized expertise on the topic (see its Universal Jurisdiction Annual Reviews – published since 2015, as well as its Universal Jurisdiction Law and Practice Briefing Papers – both series available here). TRIAL International would like to thank for their expert contribution to this document (in alphabetical order): Kelly Matheson, Maud Sarliève, Thomas Unger.

2 For the purpose of this document, this definition does not encompass ecocide, as it is not (yet) included in the list of international crimes under the Rome Statute.

3 See for instance the structural investigation opened by German authorities over suspected war crimes and crimes against humanity committed in link with the conflict in Ukraine.

4 See TRIAL International, online universal jurisdiction database.

5 The destruction of Casamance forests is a disaster with long-term environmental consequences such as the decrease in rainfall and the increased desertification of the region. More information on this case can be found here.

6 For instance, regarding UJ, until early 2020, “the international community ha[d] not applied the principle of universal jurisdiction in the field of the environment” (UNEP, Observations on the scope and application of universal jurisdiction to Environmental protection, submission to the UN General Assembly on the scope and application of universal jurisdiction). However, cases tackling crimes with an environmental impact (such as destruction of property, looting of natural resources, usage of chemical and other forbidden weapons of war, attacks against indigenous communities etc.) have been the object of investigations and prosecutions both at the national and international level (See for instance the Al-Bashir case at the International Criminal Court and the Hostages Trial at the International Military Tribunal at Nuremberg with reference to the “scorched earth” policy).
Whilst the present document primarily focuses on criminal jurisdiction, a few recommendations – as indicated below - aim at exploring other extraterritorial avenues towards justice that could well advance accountability for environmental crimes. The transboundary effect of environmental crimes coupled with the gravity of international crimes strongly call for complementary approaches to accountability encompassing individual, corporate and State responsibility.

II. Strategic use of EJ for environmental crimes related to the conflict in Ukraine

In Ukraine, despite unprecedented efforts undertaken by the authorities documenting, investigating and prosecuting environmental crimes, opportunities to hold high-level perpetrators under command responsibility accountable, or for certain grave crimes like crimes against humanity, remain limited. Moreover, some perpetrators, either individuals or legal entities, reside abroad and their complex transnational structures and opaque links to the crimes are difficult to investigate and prosecute by the Ukrainian authorities alone. In those cases, the use of EJ can be particularly strategic as it allows:

- victims residing abroad to access justice;
- perpetrators, including legal entities, outside of Ukraine to be apprehended and prosecuted (or extradited);
- the full scale of implication of individuals to the commission of crimes to be recognized;
- the systematic and/or generalized violence to be qualified as crimes against humanity (CAH).

Some perpetrators implicated in the commission of international crimes in Ukraine do reside abroad (whether in the Russian Federation or Third States). As mentioned above, Third States exercising EJ can investigate and prosecute those perpetrators - provided some conditions are met (see above) - and closing therefore the accountability gap. In addition to natural persons (individuals), companies and other private entities abroad can also be prosecuted for their participation in international crimes committed in Ukraine, as some States established the liability of legal persons in their legislations.

- the full scale of modes of liability for international crimes: individual/joint commission, participation (aiding and abetting, ordering, instigating, participation in group activities, etc.), inchoate crimes (attempt, conspiracy, etc.), responsibility of commanders and other superiors, etc. – to ensure individuals can be prosecuted according to their implication in the commission of environmental crimes and impunity is not tolerated;
- the full scale of implication of individuals to the commission of crimes to be recognized;
- the full scale of modes of liability for international crimes: individual/joint commission, participation (aiding and abetting, ordering, instigating, participation in group activities, etc.), inchoate crimes (attempt, conspiracy, etc.), responsibility of commanders and other superiors, etc. – to ensure individuals can be prosecuted according to their implication in the commission of environmental crimes and impunity is not tolerated;
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Operational issues

- Make the prosecution of environmental crimes a strategic priority, given their life-threatening implications on civilians, the environment and the future of next generations;
- Provide national prosecuting authorities with adequate financial and human resources to handle the caseload, as environmental crimes cases (and more generally international crimes) are often long and complex;
- Establish specialized units within prosecution and police authorities to investigate and prosecute international crimes (War Crimes Units) and provide those units with specific environmental, scientific and technical expertise and resources to investigate and prosecute environmental crimes;
- Develop robust protocols to collect, store, safeguard and analyze different types of evidence (including digital and forensic ones) necessary to establish that environmental damage occurred, its extent and duration and its impact on the civilian population;
- Expedite investigations and prosecutions of environmental crimes, as key witnesses might become hard to locate, forget about the events or pass away;
- Consider the environmental impact of international crimes not directly targeting the environment (e.g. war crimes of pillaging, destruction of property, use of prohibited weapons etc.) in investigative and prosecutorial strategies;
- Increase sharing of knowledge and expertise between War Crimes Units and units specialized on environmental crimes that do not constitute international crimes to ensure the maximum availability of expert resources;
- Use international coordination platforms (such as the Eurojust Genocide Network, Interpol, Europol and the United Nations Office on Drugs and Crime) to share best practices and lessons learnt on how to investigate, prosecute and redress environmental crimes and to monitor environmental damages as well as to disseminate relevant jurisprudence;
- Consider developing legal strategies beyond criminal prosecution (including via inter-State complaints before international bodies when possible) to tackle environmental crimes linked to the conflict in Ukraine, by recognizing their transboundary impact (environmental harm and impact have no borders);
- Consider sponsoring a resolution to be adopted by the UN General Assembly or the UN Human Rights Council calling on States to advance accountability for environmental crimes committed in Ukraine through extraterritorial jurisdiction (among others).

Support to victims and witnesses

- Take appropriate and effective protective measures for victims and witnesses of environmental crimes to ensure their physical and psychological well-being and their privacy are guaranteed at all times;
- Take adequate measures to support victims and witnesses throughout the process, including by providing them with free legal and other appropriate assistance, such as medical and psychological support;
- Recognize the well-established right of victims to full and effective reparation and the specificity of environmental harm and provide them with adequate measures of reparation not limited to pecuniary compensation, but encompassing a wide range of forms, including collective reparations (see for instance the comprehensive approach to reparations followed by the International Criminal Court - ICC);
- Conduct sensitization campaigns for the benefit of victims, witnesses and civil society organizations on the definition of environmental crimes, the identification of victims, their rights in proceedings and the available support measures and assistance (including on the mandate of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine).

International cooperation

- Sign, ratify and implement international instruments facilitating the prosecution of environmental crimes, including the Rome Statute establishing the International Criminal Court, and supporting the process towards the adoption of a Convention on Crimes against Humanity; Sign, ratify and implement the Ljubljana-The Hague Convention (from February 2024) – allowing States to fully cooperate in the investigation and prosecution of international crimes before domestic jurisdictions, including by executing mutual legal assistance and extradition requests as well as requests for confiscation to provide reparations to victims;
- Promptly submit evidence to Eurojust’s Core International Crimes Evidence Database (CICED) to facilitate coordination and cooperation in the investigation of environmental crimes;
- Consider adhering to the Joint Investigation Team (JIT) to increase collaboration with other States, Ukraine and the ICC Office of the Prosecutor (OTP) in the investigation and prosecution of environmental crimes committed in Ukraine, if possible;
- Cooperate with or adhere to the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine to facilitate the Register in receiving and processing information on claims of damage and evidence related to environmental crimes and future reparations options;
- Consider the establishment of a reparation fund for victims of international crimes linked to the conflict in Ukraine – including for environmental damage – and cooperate with the ICC Trust Fund for Victims to provide assistance and support.

B. To the international community (including Eurojust, Europol, the ICC OTP, UN and regional human rights protection mechanisms and special procedures)

- Increase support to Ukrainian authorities and practitioners (including lawyers and CSOs) through transfer of knowledge and technical resources on the investigation and prosecution of environmental crimes;
- Support Third States investigating and prosecuting environmental crimes in link with the conflict in Ukraine with transfer of knowledge and technical resources, when necessary;
- Favor increased sharing of expertise, cooperation and coordination among different actors investigating and prosecuting environmental crimes in link with the conflict in Ukraine;
- Develop thematic studies, reports and policy papers on environmental harm as a specific aspect of international crime investigations and prosecutions (including through joint initiatives and/or cooperation with the UN Special Rapporteur on human rights and the environment);
- Develop a specific mapping of existing legal framework and jurisprudence related to environmental crimes under multiple types of jurisdictions to favor cross-fertilization;
- Develop solid and impactful jurisprudence on strategic environmental cases (at the international and regional level) that can be referenced in further cases (including at the domestic level) – in order to advance accountability;
- Recommend that States advance accountability for environmental crimes committed in Ukraine through extraterritorial jurisdiction.

C. To Ukraine

- Continue promptly collecting, preserving and archiving evidence of environmental crimes;
- Enhance coordination and cooperation among different units investigating and prosecuting environmental crimes;
- Share the expertise acquired in investigation and prosecution of environmental crimes with Third States and disseminate relevant jurisprudence to foster the debate around environmental crimes and their impact in situations of conflicts and beyond;
- Continue prioritizing the investigation and prosecution of crimes against the environment as in the Strategic Plan on the implementation of powers of the General Prosecutor’s Office in the area of prosecution for international crimes for 2023-2025, adopted on 15 September
Consider supporting EJ environmental crimes cases abroad when strategic for prosecution (for instance in case of specific crimes or liability forms not covered in the Ukrainian criminal code);

Cooperate with Third States exercising EJ over crimes committed in Ukraine, including through sharing of evidence, JIT or judicial cooperation agreements;

Sign, ratify and implement international instruments facilitating the prosecution of environmental crimes and inter-State cooperation on the matter, including the Rome Statute establishing the International Criminal Court, the Ljubljana-The Hague Convention (from February 2024) and supporting the process towards the adoption of a Convention on Crimes against Humanity;

Promptly submit evidence of environmental crimes to Eurojust’s Core International Crimes Evidence Database (CICED) to facilitate coordination and cooperation in the investigation and prosecution;

Conduct sensitization campaigns at the benefit of victims, witnesses and civil society organizations on the definition of environmental crimes, the identification of victims, their rights in proceedings and the available support measures (including on the mandate of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine);

Secure funding and adequate resources for long-term monitoring of the environmental damage as a result of the full-scale invasion;

Secure funding and adequate resources for provision of redress and reparation to victims of environmental harm (with special attention to vulnerable categories).

IV. Conclusive remarks

International crimes are complex in their legal and factual elements, often imply transnational dimensions, a multitude of victims and perpetrators and thousands of different pieces of evidence, and require – for efficient prosecution – adequate human and financial resources, collaboration and expertise. This is even more complex when these challenges intersect with the ones proper to environmental crimes, such as specific legal qualifications, difficulties in the identification of victims, collective harm and adequate forms of reparation as well as in the collection of evidence. It is therefore paramount to use all the available prosecution options, including EJ, to ensure accountability of perpetrators for their different degrees of implication in the crimes and for the multifaceted impact environmental crimes have. EJ can only work and be efficient in the context of the broader accountability network on Ukraine. Complementarity of actions of multiple domestic and international jurisdictions and increased cooperation and coordination (such as within the JIT, with the Atrocity Crimes Advisory Group, etc.) are indeed the only viable solution to fully address environmental crimes committed in the conflict in Ukraine and provide justice and support to victims and survivors worldwide.