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ABSTRACT

of the dissertation for the degree of Doctor of Philosophy

**PROBLEMS OF ENVIRONMENTAL PROTECTION
IN THE FRAMEWORK OF INTERNATIONAL
HUMANITARIAN LAW**

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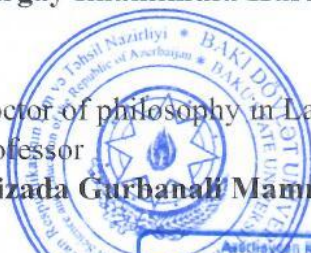
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GENERAL CHARACTERISTICS OF DISSERTATION

Relevance of the research topic and degree of scientific elaboration of the theme. One of the most important challenges facing the international community is to protect the environment from environmental pollution, preserve the ecological balance, fauna and flora, and purity restoration of the oceans and seas, including other waterways, at a time when humanity is embarking on globalization. The implementation of these tasks and the solution of problems in this area require extensive scientific and practical activity. The current period has been adequately covered by environmental issues, which necessitates international cooperation and joint initiatives by the international community. At the same time, it is important to remember that the creation of an environmentally safe system in the modern world can only be realized through the joint efforts of the international community.

The development of international legal protection on a planetary scale is of particular importance in the context of ensuring the security of the natural environment that surrounds us in the modern era. Migration, air pollution, water pollution, ozone layer depletion, exhaustion of natural resources, global warming, climate change, biodiversity degradation and habitat loss, deforestation, population growth are shown as the most pressing challenge for the environment by modern researchs (various social and management theories under UNEP, Greenpeace, carried outs by influential scientists)¹. Almost each of the problems listed can be caused by armed conflict, that is, a single armed conflict criterion contributes to the emergence of all these problems. The armed forces of the conflict parties contaminate the environment by using prohibited weapons, as well as biological and chemical weapons, destroying water resources

¹ Thomas Donlin-Smith, Shafiq Muhammad. Nature and the Environment in Contemporary Religious Contexts. Cambridge Scholars Publishing, 2018, p. 32-33. 331 p.; Rajeev Pratap, Singh, Anita, Srivastava, Vaibhav. Environmental Issues Surrounding Human Overpopulation. IGI Global, 2016, p. 253-260. 325 p.
<https://www.conserve-energy-future.com/15-current-environmental-problems.php>

and forest areas. The restoration of these environments either requires sufficient time or resources, or is almost impossible.

It should also be noted that in many armed conflicts of the modern era, weapons have been used in armed conflicts, which have a serious impact on the environment and have a negative impact on environmental security. Undoubtedly, these facts have encouraged the international community not to remain in a passive and watchful state, and to initiate international initiatives. Understanding the vital importance of the environment favorable to humanity and the active efforts of numerous environmental organizations have led to the adoption of a number of norms in the field of environmental protection. The first environmental protection initiatives were implemented at the level of individual states. In fact, according to a 2009 report by the UNEP on the role of natural resources and the environment in conflict and peacebuilding, at least 40 per cent of internal armed conflicts in the last 60 years have been related to natural resources. Most major armed conflicts between 1950 and 2000 took place in biodiversity hotspots, putting delicate ecological balances at risk. Countries experiencing conflict are also on the front line of climate change: 12 of the 20 countries which, according to the ND-GAIN Country Index, are the most vulnerable to climate change are also sites of armed conflict.²

The inability of the existing norms in international humanitarian law to positively contribute to the armed conflicts of our time and the demands of environmental protection in these conflicts has raised the question of the development of new, more realistic and more effective regulatory mechanisms and the activation of scientific research in this area. Of particular importance is the issue of international control over the observance of implementation

²Guidelines On The Protection Of The Natural Environment In Armed Conflict Rules And Recommendations Relating To The Protection Of The Natural Environment Under International Humanitarian Law, With Commentary ICRC, [Electronic resource] / September 2020 / URL: file:///C:/Users/User%206/Downloads/guidelines_on_the_protection_of_the_natural_environment_in_armed_conflict_advance-copy.pdf

of international humanitarian law norms, as well as bringing to account for the violation of international humanitarian law in the case of non-international armed conflicts. The issue of environmental protection from the use of contemporary weapons during armed conflicts is also urgent at our time. This issue has made it necessary to make significant changes to our perceptions of ways to protect the environment during armed conflicts.

The research work also covers violations of international humanitarian law related to environmental protection in the context of the conflict between Armenia and Azerbaijan. In general, the international legal aspects of the very conflict, an analysis of the legal issues, and consequences after the Victory in the 44-day patriotic war, related to the prosecution and compensation of aggressive Armenia who caused, and continues to cause sufficient damage to the environment. Currently, in territories liberated from occupation, activities on cleaning of mined areas, restorations of exploited and looted territories subjected to "environmental terrorism" are being carried out both on political and legal arena.³ When analyzing the war crimes committed by Armenia against Azerbaijan Republic, it is necessary to emphasize first of all the deliberate attacks on large-scale, long-term and serious damage to the environment. The fact that Armenia commits fires in territories of Azerbaijan affected by the conflict, discharges toxic substances into rivers, destroys soil and greens during regular military exercises, historical and cultural monuments, brings into the attention the problem of the infringement of international binding norms and makes it necessary of holding Armenia accountable for the damage to the environment.

Since the study and research that encompasses of two fundamental areas of international law, international humanitarian law and international environmental law, in conjunction is a relatively

³ İlham Əliyevin sədrliyi ilə 2020-ci ilin yekunlarına həsr olunmuş videoformatda müşavirə keçirilib.

<https://president.az/articles/49933/print>

new approach in world practice, there are few studies in this area in our republic and in the post-Soviet space. Most of the studies were conducted in the West, in particular in the United States and Europe. It has been observed that the protection of the environment and the prevention of destruction of the environment during armed conflicts have been the subject of researchers' scientific articles, monographs and dissertations.

The object of the research is the public relations arising between states for environmental damage during international and non-international armed conflicts, responsibility for such damage and compensation for the damage. In particular conflict between Armenia and Azerbaijan clearly demonstrates the problem of violating international law on environmental protection and bringing the perpetrator to justice.

The subject of the research is the collection of international legal norms on environmental protection in armed conflicts, the principles governing warfare, scientific publications on international humanitarian and international environmental law (dissertations, monographs, periodicals, teaching literature, etc.).

The aim of the study is to investigate the entire spectrum of international law regulating environmental protection in armed conflicts, the ability to address issues raised by these norms, to meet the requirements of the modern era and the needs of the international community, and to propose new recommendations.

The following tasks have been identified in the thesis for achieving the stated **goals**:

- To determine the emergence, understanding and place of international humanitarian law in the international legal system;
- To assess the important role of international humanitarian law in ensuring environmental protection;
- Reveal the importance of the principles of international humanitarian law in the field of environmental protection;
- Study of multilateral treaties and agreements in force on the researched subject, working materials of international conventions, diplomatic conferences and judicial practice in this area;

- Identification of gaps and shortcomings in international legal regulation of environmental protection in armed conflicts;
- Formation of proposals to improve international law norms on environmental protection in the context of international humanitarian law;
- Analysis of problems related to international legal protection of the environment in armed conflicts of international character;
- Analysis of international legal protection of the environment in non-international armed conflicts;
- Developing new conceptual approaches to environmental protection related to armed conflicts;
- Improvement of state control over compliance with environmental obligations during armed conflicts and justification for the need to adopt new measures;
- The emergence of contemporary trends in the international practice of states responsible for the severe violations of international environmental law during armed conflict;
- Identification of facts of violation of international humanitarian law related to environmental protection in the context of the conflict between Armenia and Azerbaijan;
- Investigation of Armenia's accountability for environmental damage in the post-conflict period.

The methodological basis of the research is the category and principles of dialectics, as well as the generally accepted and specific scientific methods in legal science. Formal-logical method, the comparative law method and the historical methods have been used in dissertation. Other research methods have also been used during the research.

The scientific novelty of the research are reflected in the following **new scientific provisions**:

1. It is established that international instruments, including other international norms that may be indirectly applied to the protection of the environment in armed conflicts, as well as to the activities of combatants regulate not only matters related to the

territories in which military operations are conducted, but also the rights of people living in the region and the world, future generations that will be born after military operations to live in a healthy environment and enjoy the right to sustainable development.

2. The investigation revealed that international humanitarian law had established certain permissible limits of legitimate measures that could be inflicted on the environment during armed conflicts by the parties to the conflict. The concepts of military necessity and proportionality also established clear restrictions on the rules of war: in times of war, only operations proportionate to legitimate objectives and necessary to achieve those objectives are permitted in military operations. That is, international humanitarian law entitles parties to an armed conflict to harm the environment within that framework.

3. There should be direct legal rules establishing the international legal responsibility of States, imposing restrictions within the principles of military necessity and proportionality, as well as new rules aimed at protecting the environment at the international level in armed conflicts, forcing States to comply with international obligations.

4. It became clear that there is a need to establish a mechanism to monitor the compliance with relevant international norms in military operations. The actual armed conflicts examined in the study showed that there was neither a threshold for environmental damage nor a mechanism for monitoring the use of the environment for hostile purposes.

5. Certain norms and systems of international armed conflict law should be used during non-international armed conflicts to fill gaps in their respective situations. The aim here is to formulate clearly defined legal norms in non-international armed conflicts. A non-international armed conflict takes place within a single state, through the control of a part of the state's territory under a responsible command, between the various armed forces and the armed forces of the state or other organized armed groups. It is considered expedient to adopt an international legal act that fills this

gap in international humanitarian law due to insufficient concrete and effective development of international humanitarian law on environmental protection in non-international armed conflicts.

6. In the events when non-State institutions or entities that have not come under the rules of international humanitarian law or do not recognize these rules are involved as a party to armed conflicts, the emergence of the right of international society, of leading States to intervene in the conflict in order to protect the rights of groups of people to the environment in this territory became crucial.

7. Existing international legal instruments applicable during armed conflicts, regardless of their being direct or indirect, primarily relate to the protection of civilians, including the protection of the environment. However, the food security issues that people may face in the post-war period remain unaddressed. An analysis of actual conflicts, including the Karabakh conflict, suggests that, both during and after the conflict and as a result of mine pollution of the territories where the military conflicts took place, large areas suitable for agriculture remain unused for a long time. This, in turn, leads to overexploitation of other territories for agricultural purposes, taking into account the demand for food corresponding to the population.

8. During the study, ecocide and genocide was investigated under equal concept of crime. Thus, on the basis of an understanding of the genocide crime, the author considers that the very international crime can be carried out by a subject aimed at its commitment, which depends on his will and can be terminated by him. On the contrary, in case of the ecocide, there is a high probability of it to become an uncontrolled process, the suspension of which may not be possible at any time depending on the will of the commiter, also the scale of ecocide can be much more larger and more long-lasting in compare. Ecocide itself can be the cause of genocide. Despite this, the concept was not reflected in the international instruments analysed, and the attention to be assigned to it was not provided by international law.

9. A State that violates rights must pay more compensation than the material damage caused. The possibility of imposing

sanctions on States within the framework of criminal responsibility should also be taken into account. In the process of imposing sanctions, property sanctions should be applied to states, and "individual" sanctions should be applied to state officials. In addition, social organizations, armed forces and other structures of the State concerned should be targeted as subject of reinforcement measures. The dissertation examined the possibility of the emergence of state responsibility for causing harm to the environment in armed conflicts from the perspective of international humanitarian law.

10. The policy of aggression pursued by Armenia against Azerbaijan has been analysed from political and economic aspects. In the course of relevant research, the issues of environmental damage, such circumstances as the serious destruction of the ecological balance in the occupied lands, the destruction of flora and fauna, unacceptable and unrecognized burial of historical and cultural monuments etc. from the aspect of international humanitarian law were studied. In addition, the scientific research in the given area can be considered as a legal basis in the activity of the Government that will be carried out for the determination of appropriate international legal liability for damage caused by Armenia.

Prior to this, a number of scientific papers were carried out on international humanitarian law, the protection of the environment, as well as many scientific works in legal literature are devoted to the various aspects of the law of armed conflicts. **The scientific novelty of the study** is that for the first time a legal study was conducted of these areas of law - damage to the environment in the context of armed conflicts within the framework of international humanitarian law. Another aspect of scientific novelty is that the research was carried out on the basis of a comparative analysis of the broad international treaty practices in these areas, the results of various conferences and events and the existing diversity of theoretical opinions in the legal literature. Despite the existence of various official documents at the level of international organizations confirming the serious damage to the environment of the territories

of Azerbaijan subjected to military occupation of Armenia in the framework of the conflict, the scientific justification of the problem was first investigated in dissertation work. After the entry into force of Additional Protocol II to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, a comparative analysis of all existing regimes for the protection of the environment in situations of armed conflict was first carried out. The dissertation also analyzed the issue of bringing Armenia to international legal responsibility after restoring historical justice in November 10, 2020. In the current dissertation study, the author proposed to create new control mechanisms aimed at improving the effectiveness of environmental protection in armed conflicts.

Theoretical and practical importance of research. The importance of the dissertation is due to its relevance in defining the modern status of environmental protection in the event of armed conflict, as well as improving the norms of international humanitarian law and international environmental law. The research allowed to substantiate a number of proposals to improve international conventions relating to environmental protection during armed conflicts. The results of the thesis can establish the scientific-theoretical basis of the activities of state bodies and institutions in their interstate relations and in the negotiation process and may be recommended for practical use. The results of the research can be applied in teaching and pedagogical activities, in particular in the teaching of international law, international humanitarian law, and international environmental law, and scientific research in international environmental and humanitarian law.

Fundamentals of the works of Azerbaijani and foreign researchers in the relevant field was used as the theoretical basis of the research. A number of local law scholars – A.I.Aliyev, T.I.Guseynov, L.G.Guseynov, R.F.Mammadov, V.I.Ibayev, R.K.Mammadov, Z.M.Gafarov, A.İ.Mustafayeva; foreign scholars - I.N.Artsibasov, V.A.Batyr, A.Y.Galyametdinov, S.A.Yeqorov, V.S.Ivanenko, V.Y.Kaluqin, A.R.Kayumov, O.S.Kolbasov, Y.M.Kolosoov, M.N.Kopilova, I.I.Kotlyarov, V.N.Kudryavtsev, A.V.Kukushkin,

I.I.Lukashuk, K.S.Rodionov, L.I.Savinski, N.A.Sokolov, A.Bouvyer, E. Koppe, M.Akehurst, N.Malcolm, J. Goldblat, C.Stahn, E. Boyle, A.Cassese, D.Uilkinson, G.Elmond, B.Qrafrat, E.David, J.Demands who have done research in the field of international law has been comparatively investigated.

Approval and implementation of research results.The results and innovations obtained in the dissertation were published in the form of scientific articles in various languages (Azerbaijani, Russian and English) in the prestigious scientific journals of the Republic of Azerbaijan and other foreign countries (2007-2019), and reflected in the materials of international and local important conferences (2009-2010 and 2018-2019 years).

The institution where the dissertation work was performed. The dissertation was performed and discussed at the Institute of Law and Human Rights of ANAS.

Structure of dissertation. The dissertation consists of Introduction, 3 chapters covering 3 paragraphs, of conclusion and the list of bibliography. The Introduction consists of 23119, the main content consists of 218493, Conclusion consists of 17803 and the Bibliography consists of 30161 characters, totaling 262113 characters.

CONTENT OF WORK

Introduction justifies the relevance of the topic, identifies the subject, aims and objectives of the research, its methodological and theoretical basis, explains the scientific novelty of the work, new scientific provisions and practical significance of the research, and confirms the structure and results of the research.

Chapter I of the thesis is entitled "**International Humanitarian Law and its Relationship with the Law of Environmental Protection**" and consists of 3 paragraphs.

The first paragraph analyzes the place and understanding of international humanitarian law in the international legal system.

At present, international humanitarian law clearly and sufficiently expresses the contents of a set of international legal

norms aimed at limiting the insidious consequences of armed conflicts, including the unambiguous introduction to the system of international law. The fact that international humanitarian law is part of international law is envisaged at the similarity of their sources, identities and objects. Norms of international humanitarian law are also the source of international law⁴.

The approach of defining international humanitarian law as the sphere of international law which is trying to appoint limits to the military conflicts by figuring out means and methods of military operations causing misery and loss, to provide protection for war victims and civilians, as well as the need for international responsibility for the "serious violations" of humanitarian law is widely spread international community⁵. In this context, international humanitarian law is, in a broad sense, a sphere of international law that seeks to mitigate the process of armed conflict and the damage it causes⁶.

Researchers attribute this common understanding to the fact that the term "international humanitarian law" has traditionally been attributed to the "Geneva Law" which is related to humanity, as opposed to the "Hague Law", which is a part of *ius in bello* and encompasses war customs and rules. Thus, "Geneva Law" aims to protect non-combatants, that is, civilians and retired military personnel, and to provide them with humane treatment. The term "Geneva Law" has been used primarily to refer to the 1949 Geneva Conventions on the Protection of Victims of War. The "Hague Law" refers to the restriction or prohibition of certain methods and means of warfare in order to prevent unnecessary violence from suffering⁷.

⁴ İbayev V. *Beynəlxalq Humanitar Hüquq. Hüquq ədəbiyyatı nəşriyyatı*, Bakı – 2001, s. 55. 496 s.

⁵ Ə.Əliyev "İnsan hüquqlarının beynəlxalq-hüquqi müdafiəsi", *Dərslük*. Bakı, 2009, 490 səh. s.144

⁶ Amanda Alexander. *A Short History of International Humanitarian Law* European Journal of International Law Vol. 26 No. 1. 2015, p. 109-138. p 111.

⁷ J.Pikte, "Beynəlxalq Humanitar Hüququn inkişafı və prinsipləri", *Beynəlxalq Qırmızı Xaç Komitəsi* 1999, ss.7-8 129 səh.

In spite of such a division, it should be noted that both rights (both “Geneva Law” and “Hague Law”) are based on humanitarian values and therefore intersect and complement each other. That is why it is accepted to apply the term "international humanitarian law" to all cases of armed conflict within the framework of international law, whether by custom, treaty, or “Geneva Law” and “Hague Law”⁸.

The major part of international humanitarian law is reflected in the 1949 Geneva Conventions adopted by almost all countries of the world⁹.

Given that environmental protection is one of the most important factors that will preserve and sustain future generations, one can only imagine the extent to which international humanitarian law is committed. From this point of view, we also believe that international humanitarian law must also be developed and improved in accordance with the demands of the armed conflicts of the new era.

The second paragraph highlights the important role of international humanitarian law in the protection of the environment. In the age of rapidly evolving technologies, the control over weapons of mass destruction and the restriction of the use of force, along with a number of other current issues, constitute the very essence of environmental protection today.

There are many legal norms and obligations to limit armed conflict in various forms. These norms are reflected in a number of declarations, conventions and agreements. However, the standards set by many conventions and protocols are unsatisfactory in terms of preventing and regulating environmental damage during armed conflicts. Thus, international law itself has many shortcomings, and therefore, it is not possible to bring personal responsibility for environmental crimes that may arise during both international and

⁸ Amanda Alexander “A Short History of International Humanitarian Law” European Journal of International Law Vol.26 no. 1. 2015, p. 109-138. p 111.

⁹

https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_treatySelected=380&xp_viewStates=XPages_NORMStatesParties

non-international armed conflicts. As a rule, crimes against the environment on a domestic level do not fall under the centralized criminal code but fall under the scope of different environmental regulations. A number of environmental crimes are recognized after being subject to public judgement on specific events. Due to these shortcomings, environmental activists and scholars have sought to draw the international community's attention to the protection of the environment during armed conflicts, and this issue is still relevant today. In many parts of the world, including Karabakh, the environment continues to be an object of high tension, adversely affecting human security and community life. The consequences of these threats show their impact not only on the countries involved in the conflict, but also on civilians and neutral states, and continue to exist for a long time after the end of the armed conflict.

Thus, the norms of international humanitarian law on environmental protection are generally not aimed at preventing harm, but rather than at reducing it to an acceptable level. In general, international humanitarian law, as well as international law, has not been sufficient to recognize the rules envisaged for this purpose. The concept of "environment" did not act as a category of humanitarian law until 1977. However, it should be noted that the 1907 Hague Conventions forbade the destruction or occupation of the enemy's property unless the "destruction or occupation was not in line with the imperial demands of war." In the case of aggressive occupation, the Fourth Geneva Convention restricts the freedom of occupation forces. The Hague and the Fourth Geneva Convention therefore explicitly declare environmental protection by prohibiting the destruction of property. The Additional Protocol I to the Geneva Conventions directly addresses the dangers posed by modern warfare regulations to the environment. The basic rule is as follows: *"It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and*

severe damage to the natural environment”¹⁰. More broadly, Article 55 provides that this protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population and that attacks against the natural environment by way of reprisals are prohibited¹¹.

Thus, it can be concluded that the role of international humanitarian law in the protection of the environment is significant and undeniable. The scientific, theoretical and philosophical, as well as the practical significance of the joint analysis and implementation of environmental law with international humanitarian law provides greater opportunities for the effective assessment of the difficulties arising in this area, for timely and purposeful action. We can conclude that war has a devastating impact on sustainable development, that is why states must respect international law, provide environmental protection and cooperate in the event of armed conflict.

The third paragraph describes the place and role of the principles of international humanitarian law, a set of general norms and ideas reflecting the characteristics of the international regulatory system and its basic content in the system of environmental protection.

Like every independent field of international common law, the main content and essence of international humanitarian law is expressed in its principles, which are considered its guiding principles. It is possible to find references to the principles of international humanitarian law as independent sources of law in themselves. They are capable of being applied to all states without exception by complementing and strengthening the various tools offered by international humanitarian law. The legal literature lists

¹⁰ 1949-cu il 12 avqust tarixli Cənvərə Konvensiyaları və onlara əlavə Protokollar <http://www.redcrescent.az/images/ihl/aze/conv1az.pdf>

¹¹ Stahn Carsten, Jennifer S. Easterday, Jens Iverson. Environmental Protection and Transitions from Conflict to Peace. Oxford University Press, 2017, 51. 450 p.

various classifications of the principles of international humanitarian law by Jean Pictet, V.I.Kalugin, A.Y. Kapustin and others.

The paragraph gives an overview of the principles of distinction, military necessity, proportionality, and the principle of humanity. It is said that the application of the mentioned principles to the direct protection of the environment during armed conflicts is undeniable.

In our view, it is inevitable for judicial authorities and political forums to act in the direction of determining the reasonable limits of war and ultimately strengthening the implicit protection of the environment through the aforementioned general principles.

Chapter II entitled "**Problems of international legal protection of the environment during armed conflicts**" consists of 3 paragraphs.

In the first paragraph environmental protection is analyzed as an object of international legal regulations during armed conflicts.

Since its inception, international humanitarian law has been aimed at limiting the rights of warring parties aimed to impose any kind of suffering and injury, destroy facilities and objects that are part of the natural environment.

For the first time, the codification of norms for environmental protection was revealed at the level of national legislation of individual states. It should be noted that many general principles and rules of international humanitarian law, and especially the Hague Law and Geneva Law, have directly contributed to the protection of the environment in the period of armed conflicts. It is also necessary to note Article 35(3) of the Protocol I to the Geneva Conventions of 1949. The article states *that it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment*¹². In addition to the general principle, this article also establishes a specific principle of environmental protection during

¹² 1949-cu il 12 avqust tarixli Cənvərə Konvensiyaları və onlara əlavə Protokollar
<http://www.redcrescent.az/images/ihl/aze/conv1az.pdf>

armed conflict. Complementing this principle, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects provided that It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons.

The States Parties to the ENMOD Convention undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, longlasting or severe effects as the means of destruction, damage or injury to any other State Party. Not only natural resources, but also armed forces and civilian population of the waging parties act here. In our view, the concept of "hostile use" plays a special role, that is, the need for the existence of an enemy target at the time of such actions. Enmity is an extreme bias, quite the opposite, and hatred. However, any enmity or its use, but only hostility with "widespread, longlasting or severe effects"¹³ is prohibited. In addition to the notion of "hostile use", special emphasis should be placed on the term "environmental modification techniques". For the first time, the basis for the creation of such an international act was to investigate the enormous environmental damage caused by the war in Indo-China for the period 1967-1972. It should be noted that, unlike Additional Protocol I of 1977, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques more fully discloses environmental impacts and includes any means of change - through the deliberate manipulation of natural processes - the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space. Unlike the aforementioned Convention, the Additional Protocol I of 1977 to the Geneva Conventions only addresses environmental issues in the context of the protection of certain categories of participants and victims during armed conflict.

¹³ <http://www.sussex.ac.uk/Units/spru/hsp/documents/ENMOD.pdf>

In recent years, the number of countries applying to the United Nations Environment Program (UNEP) for environmental assessments has increased following the end of armed conflicts. It is the responsibility of the State to ensure that the operations carried out in its territory or under its control do not harm the environment¹⁴.

Thus, the stricter regime of international legal responsibility will be determined when the damage is the result of a deliberate and purposeful policy.

The second paragraph deals with international legal protection of the environment during armed conflicts of international character. Armed conflicts can also be of non-international character, this provision is also enshrined in the UN International Court's decision in the case of "Nicaragua v. The United States"¹⁵. Approaches by N.Berman, A.Casesse, Wolfgang Graph Vitstum are given in this section.

Among the many existing international legal acts that directly or partially address environmental issues, following ones should be mentioned: the 1949 Geneva Conventions, Additional Protocol I of 1977, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 1976, the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons of 1980.

Taking into account the new ecological challenges, the trend towards the definition and improvement of norms in the development of the international regulatory framework should be given the priority. In this case it is important to speak separately from the duties of each state. Each state is obliged to: 1) take into account interests of other states; 2) not to interfere with the exercise of its sovereign rights in the protection of the environment and to violate its rights; 3) respect the inherent independence of states.

¹⁴ Final Declaration of the U.N. Conference on Human Environment, U.N. DOC. A / Conf48/14, 16 June, 1972.

¹⁵ Timothy McCormack. Yearbook of International Humanitarian Law. 2003, Vol. 6. Cambridge University Press, 2006, P. 212. (874 p).

Thus, due to its destructive nature, modern armed conflicts pose different threats to the environment. Examples include long-term on-site chemical pollution as well as water and atmospheric pollution. In this regard, the protection of the natural environment, including the marine environment, is of particular importance today and is one of the most important problems of the global nature facing mankind.

We believe that refraining from participating in addressing environmental protection issues during armed conflicts of international character is a global problem with a devastating effect to the civilisation.

In the third paragraph, the international legal protection of the environment during armed conflicts of non-international character is analyzed and studied.

In our view, certain norms and systems of international armed conflict law should be used during non-international armed conflicts to fill gaps in their respective situations. The aim here is to formulate clearly defined legal norms for non-international armed conflicts. The study shows that the right to non-international armed conflicts does not include the concepts of military facilities or civilian populations. However, such an appointment is a prerequisite for at least not attacking civilian objects.

In the third paragraph provisions of treaties like Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, The Convention concerning the Protection of World Cultural and Natural Heritage was adopted by the General Conference of UNESCO of 1972, The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, usually called the Geneva Protocol of 1925, The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 1972, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980, the Convention

on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction were analyzed by the author.

Chapter III of the dissertation is entitled **“Violation of international humanitarian law related to environmental protection in the conflict between Armenia and Azerbaijan”** and includes two paragraphs.

The first paragraph of the third chapter, **“International Legal Aspects of the conflict between Armenia and Azerbaijan”**, investigates the international legal aspects of the Armenian-Azerbaijan conflict which was ended in 2020 with the glorious victory of The Republic of Azerbaijan, the historical and political background, the territorial claims of the Armenians, losses of the Azerbaijani side, legal analysis of the damage Armenia has caused to the Azerbaijani population and territories. The glorious Victory of the Republic of Azerbaijan which was the result of military actions began on September 27, 2020 as a result of Armenia's military provocations against Azerbaijan, and lasted 44 days, ended on November 10 with the capitulation of Armenia ending in overall conflict between Armenia and Azerbaijan, will remain in history as one of the most difficult armed conflicts in history. Conflict that lasted for nearly 30 years, has ended as a result of successful wise policy, thoughtful military-strategic tactics conducted with the restoration of historical justice, the return of occupied lands by Azerbaijan, the infliction of crushing attacks on the enemy and its surrender. Today, the involvement of the Republic of Armenia to the international responsibility as an aggressor should be one of the most important international legal issues. Therefore, we consider it expedient, first of all, to evaluate the international legal evaluation of conflict between Armenia and Azerbaijan.

On January 6, 2021 at a meeting under the chairmanship of the President of the Republic of Azerbaijan Ilham Aliyev, devoted to results of 2020, the head of state noted in the during his speech: *“I have repeatedly said that if this issue is not resolved peacefully, we*

will resolve it by military means, and so it was. Only after that, the issue was resolved politically and historical justice was restored.”¹⁶

The decision of the European Court of Human Rights on Chiragov and others against Armenia, dated June 16, 2015, is one of the best legal documents that explicitly affirms Armenia's occupation of Azerbaijan. This resolution also confirms Armenia's responsibility for the 1992 law violations, as well as the existence of effective control of Armenia in the territories of Azerbaijan affected by the Armenia-Azerbaijan conflict ¹⁷.

While assessing the international legal evaluation of conflict between Armenia and Azerbaijan, we note that the Armenian side always relies on the principle of self-determination of the people to justify their position in the conflict. In the conflict between Armenia and Azerbaijan (regarding the situation existed until November 2022), this principle cannot be applied, as it is a matter of the illegal, forced withdrawal and integration of ethnic Azerbaijani land to the Republic of Armenia.

The Republic of Azerbaijan tried to solve conflict through the authoritative universal and regional organizations: UN, OSCE, European Union, Council of Europe, Organization of Islamic Conference, Commonwealth of Independent States and others. However, the artificial extension of the negotiation process, the neglect of the presented proposals, warnings about the withdrawal of the enemy from the territories of Azerbaijan subjected to military occupation of Armenia and, on the contrary, the provocation against the occupied territories and the civilian population of Azerbaijan during the ceasefire required a military solution to the issue.

It is evident that, during the consistent efforts of the heads of state and presidents in bilateral and multilateral meetings, international forums, OSCE summit meetings and discussions with

¹⁶ İlham Əliyevin sədrliyi ilə 2020-ci ilin yekunlarına həsr olunmuş videoformatda müşavirə keçirilib.

<https://president.az/articles/49933/print>

¹⁷ Çıraqov və digərləri Ermənistanı qarşı.
hudoc.echr.coe.int/eng/?i=001-157251

the Minsk Group co-chairs Heydar Aliyev's policy have always been prioritizing interests of the people of Azerbaijan above all other issues¹⁸. The strategy of Heydar Aliyev, which is aimed at strengthening Azerbaijan's statehood, positioning it seriously in the system of international relations, ensuring national interests and restoring its territorial integrity, is being continued by its successor, President Ilham Aliyev. He proved this not only with his historical speeches from higher courses, but also with the exceptional leadership of the Supreme Commander-in-Chief for the II Karabakh War.

The conflict between Armenia and Azerbaijan, as an urgent problem of modern international law, is undergoing a stage of the post-conflict period. Efforts to clear the occupied territories of mines and rebuild the territories on the basis of a unified concept are now being successfully pursued. At the same time, work is also on progress for bringing the perpetrators and attackers to justice.

The second paragraph of the third chapter is entitled **"Violation of international humanitarian law norms related to environmental protection in the conflict between Armenia and Azerbaijan and the problem of accountability"**. Since the conflict, Armenia has not ceased its policy of occupation and environmental terrorism, exploited natural resources and minerals of the occupied territories, viciously destroyed historical and cultural monuments, systematically violating all basic principles and norms of international law. Armenia, which joined the Convention on September 5, 1993, continued to violate the requirements of Article 12 of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict¹⁹.

¹⁸ Mirbəşiroğlu E. Ermənistan-Azərbaycan, Dağlıq Qarabağ münaqişəsinin tənzimlənməsi istiqamətində

Heydər Əliyevin fəaliyyəti // Tarix və onun problemləri, 2009, №1-2, s. 114-115.

¹⁹ States Parties are countries which have adhered to the World Heritage Convention.

<https://whc.unesco.org/en/statesparties/>

The radioactive substances used in the Armenian NPP are buried in the occupied lands, the mined areas and the flora under heavy machinery are in an ecological crisis. Armenians, realizing that their reign on these territories is temporarily, brutally exploited natural resources, mineral deposits there. All these facts unfortunately came to be true as the result of the return to those liberated territories after the Victory on November 10, 2020. The scale of environmental terror, environmental damage caused as the consequences of occupation is devastating. Currently, the restoration and reconstruction of the territories is ongoing. However, it is extremely important to carry out parallel work on calculating the harm done in order to bring attackers to justice and make them to pay for the crimes committed. Here, in addition to the calculation of actual damage, the income that could have been obtained by the State heir, but lost as a result of 30 years of occupation, must be calculated as well.

Later on explanations by international scholars such as D.A.Lipinsky, V.A. Batyr, D.D.Ostapenko, M.M.Brinchuk, I.I.Lukashuk and others on the understanding of international legal responsibility are analyzed and explained.

The basis of the material and legal liability in accordance to the international norms of the Armenian side for the actual environmental damage to the environment is analysed in this chapter. The responsibility of states is directly related to the damage to the environment. The state, which may or may not harm its activities, must take all necessary measures to prevent this. Failure to do so by States will result in liability for damages. In our view, the damage to the environment as a result of armed conflict can only be compensated by restitution and compensation. We believe that creating of a specialized international fund is needed. Such an organization can provide a set of measures to clean and restore the environment affected by armed conflicts. Compensation does not eliminate the damage to the environment, but compensation is an important tool in the implementation of specific rehabilitation activities, for example, it is an important tool for providing financial

resources for planting trees in damaged forests, restoring beneficial properties of soils, restoring various species of flora and fauna in the area, and other resources.

The Conclusion of the dissertation notes the important proposals and results obtained in connection with the research. In general, they can be expressed as follows:

1. Since armed conflicts occur for various reasons and interests, it can be called an international armed conflict in one case, and a non-international armed conflict in another case. International conflicts based on practice: interstate armed conflicts; internal armed conflicts in which one or more states intervene; conflicts related to national freedom; should be classified as armed conflicts related to separatism (secession).

2. It is considered appropriate to adopt an international legal act that fills this gap in international humanitarian law due to insufficiently specific and effective preparation of international humanitarian law norms on environmental protection in non-international armed conflicts. Certain norms and systems of the law of international armed conflicts should be applied in non-international armed conflicts to fill the gaps in the situations related to them.

3. Unfortunately, neither the Hague Convention of May 14, 1954 nor the two additional Protocols are directed to the protection of natural environment objects. Therefore, we propose the adoption of the Third Protocol to the 1954 Convention. Provisions on the protection of cultural resources in the event of an armed conflict should be established in that Protocol. In this document, a list of cultural assets unique from a historical and cultural point of view (large national parks, nature reserves, canyons, waterfalls, etc.) should be established in relation to any area.

4. An Additional Protocol to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons That May Be Extremely Harmful or Have Indiscriminate

Effects should be adopted to cover modern weapons that may have a negative impact on the environment.

5. In order to increase the effectiveness of the current norms of international humanitarian law, it is necessary to adopt a norm providing for the right and mechanism of a complaint in case of extensive, long-term and serious damage caused to the environment of any participating state by another participating state in the form of an addendum to Additional Protocol I to the Geneva Conventions (Article 55). A similar procedure is defined in the 1976 ENMOD Convention. Such a complaint should be submitted to the UN Security Council, and the complaining state should actively cooperate with the Security Council in conducting any investigations for the adoption of necessary measures.

6. As can be seen from the research work, the need to adopt an international document that defines the nature and concept of ecocide crimes, which can be even more dangerous than crimes such as genocide, as well as the responsibility of the subjects who commit and prepare for the commission of such crimes, is even more important for every past period in which technology has developed. In order to implement the regulation in the mentioned field, a relevant international legal document should be developed.

7. The Rome Statute of the ICC's jurisdiction covers genocide, war crimes, crimes against humanity, including the crime of aggression. The ICC, which has jurisdiction over war crimes, also has jurisdiction over cases of extensive, long-term and serious damage to the environment during the course of war that is not justified by military necessity (8m.2.b).iv). As already mentioned, taking into account the consequences that can be caused by ecocide crimes, the scale of damage that can be caused to the environment by applying the technological and military capabilities of the modern era, including the fact that the environment itself can be used as a weapon in such operations, the protection of the environment during

armed conflicts in the activity of the Court problems should be brought to the fore, the possibilities of its jurisdiction should be considered.

8. Considering that environmental protection is important for all eras and states, and that it is a factor that is essential to ensure the peace of humanity as a whole and future generations, organizing monitoring of areas where military operations are conducted during armed conflicts, during the conflict and in the post-conflict period, and international norms ensuring the implementation of the law should be included in the existing documents or an independent international document should be adopted by the subjects of international law.

9. For the damage caused to the environment during the armed conflict, the belligerent states should bear responsibility for financial compensation or restore the damaged object, and the individuals guilty of those actions should be brought to criminal responsibility under the domestic legislation. In order to ensure the effectiveness and efficiency of international humanitarian law norms on monitoring compliance by warring parties with environmental protection obligations, an Additional Protocol to the Geneva Conventions containing a detailed mechanism for that monitoring should be adopted.

10. In modern times, when determining the forms of compensation for damage caused to the environment during an armed conflict, international legal acts of an imperative nature are preferred, rather than acts of a recommendatory nature. However, the non-binding nature of these acts allows states to evade responsibility. As an initial step in the prevention of such a situation and the development of effective mechanisms for the compensation of environmental damage during an armed conflict, imperative multilateral agreements and conventions that impose specific obligations on states should be adopted.

11. The occupation of 20% of the territory belonging to Azerbaijan by Armenia, which continued until November 10, 2020, did not affect the ecological security of those territories. In the post-occupation period, a unified concept for the restoration of the territories should be developed, the actual damage done, as well as the material damage lost during the occupation period should be assessed. As a result of this, a demand for payment of compensation from the other party should be made accordingly. At the same time, the companies owned by foreign countries, which illegally used nature in the occupied territories during this period, and were engaged in the transportation and sale of natural and cultural resources belonging to Azerbaijan, should be identified and they should be held responsible for compensation. In this regard, the relevant authorities of the Republic of Azerbaijan should take into account the possibility of transferring work materials to international control institutions in the future, taking into account the fact of the destruction of forests, lands and other components of the environment, on the basis of domestic legislation, the initiation of a criminal case and the bringing of the aggressor to international responsibility should be carried out.

12. The first condition for achieving efficiency in the application of international humanitarian law in armed conflicts, including non-international armed conflicts, is that the norms in this field dominate the legal thinking of subjects in a wider composition. Another important point is to show the connection of humanitarian law norms with moral, ethical and religious values. The teaching of international humanitarian law as part of the human rights course to military personnel, lawyers, and political science courses should be ensured in order to eliminate some of the problems in legal application.

The following scientific works were published by the author in connection with dissertation research:

1. Silahlı münaqişələr zamanı ətraf mühitin mühafizəsinin beynəlxalq hüquqi əsasları: nəzəri və praktiki məsələlər // Bakı: Beynəlxalq Hüquq və İnteqrasiya Problemləri, – 2007. № 3-4 (11-12), - s. 3-8.

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Бейнəлхəлq Həqуq və İnteqrasiya Problemləri, – 2017. № 1(49), - s. 45-49.

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