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Mechanisms of international reparations for environmental damage: compensation mechanism for Ukraine

Analytical review

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Introduction. In a world where the devastating effects of war on the environment are becoming increasingly evident, there is a need to better understand and more effectively address the issue of compensation for environmental damage. This document is aimed at researching the prospects of getting reparations[1] for environmental damage at the international level, through the prism of the Russian invasion of Ukraine. This document aims to contribute to the formation and development of effective mechanisms for compensation for damage caused to the environment as a result of military actions in Ukraine, as an important element of effectiveness of international law and environmental policy. In particular, the task of this document is to collect current data from the authorities responsible for developing a compensation mechanism for Ukraine and formulating recommendations for them on effectiveness of the compensation mechanism, its development and operation.

I. Overview of international standards and conventions related to reparations for environmental damage

When reviewing international standards and conventions related to reparations for environmental damage, it is worth mentioning the United Nations Convention on the Law of the Sea[2]from 1982. The UN Convention on the Law of the Sea does not contain reservations regarding its effect during a state of war or in the event of an armed conflict, so it can be concluded that its effect also extends to the time of hostilities in Ukraine. It is important to mention Article 235 of this Convention, according to which states are entrusted with the fulfillment of their international obligations to protect and preserve the marine environment. They are responsible under international law. States shall ensure that there is a possibility of recourse under their legal systems to obtain in a short period of time adequate compensation or other compensation for damage caused by pollution of the marine environment by natural or legal persons under their jurisdiction. In order to ensure prompt and adequate compensation for all damage caused by pollution of the marine environment, States shall cooperate in the implementation of current international law and in the further development of international law relating to liability, for the assessment and compensation of damage or the settlement of related disputes, as well as, when appropriate, in developing criteria and procedures for the payment of adequate compensation, such as compulsory insurance or compensation funds.

Also, within the framework of the Convention on the Conservation of Migratory Species of Wild Animals[3]back in 1995, the Agreement on the Conservation of Afro-Eurasian Migratory Wetland Birds was concluded[4]. In accordance with Annex I to this Agreement, the Parties that are States of the range of migratory species that are included in the list of Annex I will make efforts to avert, eliminate, compensate or, to the extent possible and appropriate, reduce the negative consequences of actions or obstacles (prove them to a minimum), which significantly complicate migrations or prevent them. However, the Russian Federation

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[1]Reparations is a general term used to cover reparations by various means, financial or otherwise, carried out by a sovereign state; often used to refer to compensation claims made by the victors or victims of war against the vanquished state after hostilities have ceased. Compensation and restitution are two forms of reparations when it comes to compensation for damage caused by war. Key features of reparations: a general term for reparations made by states, including financial and other means of reparations, often used in the context of reparations for damages resulting from military actions. For the context of this document, it is also important to understand that compensation is the payment of monetary damages to someone whose rights have been violated by a violation of international law. Restitution is a legal remedy available to the claimant in an international dispute, in which seized property is returned to the original owner in kind. Restitution is designed to restore the situation that would have existed if the wrongful act or omission had not occurred, including by canceling wrongful acts, returning illegally expropriated property, or refraining from further wrongful acts. Satisfaction consists of an acknowledgment of wrongdoing, an expression of remorse, a formal apology, or other appropriate form of acknowledgment of guilt and is the third form of reparation - reparation. You can read more about EPL's analytical research on these concepts at the following links:http://surl.li/qulre,http://surl.li/qulrp. This document deals with reparations, as the most general term in this part.

[2]United Nations Convention on the Law of the Sea:https://ips.ligazakon.net/document/MU82K23R

[3]Convention on the Conservation of Migratory Species of Wild Animals:https://zakon.rada.gov.ua/laws/show/995_136#Text

[4]Agreement on the Conservation of Afro-Eurasian Migratory Wetland Birds:https://mepr.gov.ua/diyalnist/napryamky/bioriznomanittya/mizhnarodni-dogovory-u-sferi-zberezhennya-bioriznomanittya-dykoyi-flory-ta-fauny/konventsiya-pro-zberezhennya-migruyuchyh-vydiv-dykyh-tvaryn/ ugoda-pro-zberezhennya-afro-yevrazijskyh-migruyuchyh-vodno-bolotnyh-ptahiv/

is not a Party to the Agreement, and therefore, it cannot be held responsible for non-fulfillment of the provisions of this Agreement or apply any sanctions to it. A similar situation exists with the application of the Agreement on the Conservation of Cetaceans of the Black Sea, the Mediterranean Sea and the adjacent Atlantic Ocean[5].

Another international document worth mentioning is the Rome Statute of the International Criminal Court[6]. The provisions of the Charter are applicable to persons who commit international crimes defined by the Charter. Most of these crimes are committed during armed conflicts (both international and non-international). Analyzing the text of the Rome Statute, it should be noted that the substantive jurisdiction of the International Criminal Court does not directly concern damage to the environment, with the exception of Art. 8(2)(b)(iv). However, this provision applies only during an international armed conflict and is limited by elements, in particular the proportionality criterion, which complicates the application of this article. The International Criminal Court is, to a greater extent, a court designed to prosecute individuals.

Almost a century ago, the Permanent Court of International Justice (hereinafter - PCIJ) (predecessor of the International Court of Justice of the United Nations) emphasized the obligation of states to compensate for damages and established the standard of such compensation. The PCIJ held that damages "must, as far as possible, eliminate all the effects of the wrongful act and restore the situation that would probably have existed if the act had not been committed." With this in mind, the PCIJ recognized that restitution is the ideal remedy for damages caused by wrongful state action. However, the PCIJ noted that restitution may sometimes be impossible. Thus, he ruled that monetary compensation can serve as an alternative to restitution when the latter is not possible[7].

It is also worth mentioning the Charter of the United Nations[8]and its part - the Statute of the International Court of Justice of the United Nations[9]. One of the main organs of the UN system is the UN International Court of Justice. It was established by the UN Charter to achieve one of the main goals of the UN– "to carry out by peaceful means, in accordance with the principles of justice and international law, the settlement or resolution of international disputes or situations that may lead to a breach of the peace." Only states can be parties to a dispute under consideration by the court. The jurisdiction of the court includes all cases that will be transferred to it by the parties, and all issues specifically provided for by the UN Charter or existing treaties and conventions. Decisions of the UN International Court of Justice are binding only on the parties involved in the case. it is also final and not subject to appeal[10]. Also, point d of part 2 of Article 36 of the Charter of the UN Security Council states that the States Parties to this Charter may at any time declare that they recognize without a special agreement on this, ipso facto[11], in relation to any other state that has accepted the same obligation, the jurisdiction of the Court is binding on all legal disputes concerning: the nature and amount of compensation due for the violation of the international obligation. However, in terms of the jurisdiction of the UN IC, it should be emphasized that this kind of "conventional" jurisdiction of this body significantly limits the number of cases that can be considered within the framework of the UN IC proceedings.

In the light of the mentioned topic, it is important to mention the Resolution of the General Assembly of the United Nations Organization No. 60/147 of December 15, 2005[12]. In accordance with this resolution, the UN General Assembly recalled the adoption by the Commission on Human Rights 2005/35 of April 19, 2005 of the Basic Principles and

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[5]Agreement on the conservation of cetaceans of the Black Sea, the Mediterranean Sea and the adjacent waters of the Atlantic Ocean:https://zakon.rada.gov.ua/laws/show/995_422#Text

[6]The Rome Statute of the International Criminal Court:https://zakon.rada.gov.ua/laws/show/995_588#Text

[7]The Right to Compensation: Basic Principles Under International Law:https://prrn.mcgill.ca/research/papers/artz4.htm

[8]Charter of the United Nations:https://unic.un.org/aroundworld/unics/common/documents/publications/uncharter/UN%20Charter_Ukrainian.pdf

[9]The Statute of the International Court of Justice of the United Nations:https://web.archive.org/web/20110629193835/http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0

[10]Kasyniuk I.V. "Jurisdiction of the International Court of Justice over acts of aggression":https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/34444/1/YURISDIKTSIA%20MIZHNARODNOGO%20SUDU.pdf

[11]Ipso facto (from Latin "by virtue of the fact itself", read as ipso facto) is a fixed Latin expression that means that a specific situation/action is a direct consequence of the states/events in question and does not require additional conditions - by default, in view of the event itself, in fact. The term is used in international law, jurisprudence, mathematics and philosophy:https://uk.wikipedia.org/wiki/Ipso_facto

[12]United Nations General Assembly Resolution No. 60/147 of December 15, 2005:https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation

Guidelines on the Right to Protection and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[13]and on Resolution 2005/30 of July 25, 2005 of the Economic and Social Council, in which the Council recommended that the General Assembly adopt the Basic Principles and Guidelines on the right to protection and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law[14]. Building on such previous decisions, the General Assembly adopted the Basic Principles and Guidelines on the Right to Protection and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
According to these principles, remedies against gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to: equal and effective access to justice; adequate, effective and quick compensation for the damage caused; access to relevant information on violations and redress mechanisms[15].
In the light of customary international law, it is worth mentioning the codification of customary law "Protection of the environment during armed conflicts" (2022) carried out by the UN Commission on International Law[16]. Principle 13 of this codification provides that the environment must be respected and protected in accordance with international law, including the law of armed conflicts. Care should be taken to protect the environment from widespread, long-term and serious damage. The use of methods and means of warfare aimed at or likely to cause widespread, long-term and serious damage to the environment is prohibited. No element of the environment can be attacked, except when it has become a military target.

According to principle 9, set out in such a codification, an internationally wrongful act by a state involved in an armed conflict that causes damage to the environment entails the international responsibility of that state, which has an obligation to make full reparations for such damage, including damage to its environment and the environment outside.
From the above, we can see that the system of international treaties, agreements, standards and customary law in terms of reparations for damage caused to the environment is quite extensive and multifaceted. However, we must emphasize that since the issue of environmental protection, unfortunately, was not a priority issue during the resolution of military conflicts in the past, the practice of applying the existing legal mechanisms is insufficiently established and developed, which can create difficulties in similar processes for Ukraine.

II. International experience and precedents of compensation for damage caused to the environment

1. General overview of the experience of the United Nations Compensation Commission in the case of Iraq and Kuwait

In 1991, Iraq committed an act of aggression against its neighbor, the state of Kuwait. Iraq's invasion of Kuwait began on August 2, 1990. The Iraqi army captured Kuwait without prolonged hostilities in 2 days. Kuwait was annexed to Iraq as the 19th province. Such aggression was accompanied by significant damage to the environment not only of Kuwait, but also of neighboring states. Thus, about 10.8 million barrels of oil were intentionally dumped in the Persian Gulf by the Iraqi military. This resulted in the pollution of 600 kilometers of the coastline of Saudi Arabia. About 1 billion barrels of oil were spilled due to the Iraqi military blowing up about 600 oil wells, which led to the contamination of groundwater and desert ecosystems. Other damage to the ecosystems of the Kuwait desert was caused by the construction of military structures, fortifications, trenches, bunkers, etc.

[13]Resolution 2005/35 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law:https://www.refworld.org/legal/resolution/unchr/2005/en/17676
[14]ECOSOC Resolution 2005/30:https://www.un.org/en/ecosoc/docs/2005/resolution%202005-30.pdf
[15]Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law:https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation
[16]Report of the International Law Commission, Seventy-third session, (18 April–3 June and 4 July–5 August 2022):https://legal.un.org/ilc/reports/2022/english/a_77_10_advance.pdf

About 1.6 million mines and 109,000 m2 of unexploded ordnance were scattered across the territory of Kuwait, including on beaches, along coastlines, in the desert[17].
To compensate for environmental damage and other losses, the UN created a separate body - the United Nations Compensation Commission (UNCC)[18]. This body has registered, assessed and awarded compensation for cleanup and restoration of damage caused to soil, water, coastal ecosystems, etc. The UN Security Council condemned Iraq's actions as a violation of international peace and security, in accordance with the requirements of the UN Charter, and indicated that Iraq is responsible for the damage, losses and injuries caused during the invasion of Kuwait.
The United Nations Compensation Commission was established pursuant to Security Council Resolution 692 (1991)[19], which ensured its legitimacy.
The compensation fund received a percentage of the proceeds received from the export sales of Iraqi oil and oil products. This percentage was originally set by the Security Council at 30% in accordance with Security Council Resolution No. 705 (1991)[20]and was fixed in Security Council Resolution No. 986 (1995)[21], as well as in a number of subsequent resolutions. Over time, this percentage changed. The decision to approve mechanisms and stages of payments was made by the Board of Directors of the Compensation Commission, depending on the amount of income to the budget of the Compensation Commission and the amount of compensation that had to be covered.
The Compensation Commission was terminated in 2022, after 31 years of operation.In 2022, the Governing Council of the Compensation Commission found that the Government of Iraq had fulfilled its international obligations to compensate all claimants for direct injury and damage caused by Iraq's invasion of Kuwait. UN Security Council Resolution No. 2621 (2022)[22] acknowledged that the UN Compensation Commission had fulfilled its mandate.
Iraq has paid about $52.4 billion in reparations as of 2022 across all claims in all categories. Of this, 5.26 billion was paid for assessment, restoration and response to environmental damage.
We remind you that the UN Compensation Commission did not act as a court or arbitral tribunal before which the parties appear, it acted as a political body that primarily performed the function of establishing the facts, evaluating applications for compensation, confirming their truthfulness and reasonableness, and assessing damages , assessment of amounts of transfers and resolved disputed cases, which was partly a kind of quasi-judicial function.
The experience of the UN Compensation Commission shows some important areas of work currently in Ukraine at the international and national level. Thus, at the international level, Ukrainian diplomats should demand from the UN and the Security Council an increase in the number of relevant resolutions condemning the armed aggression of the Russian Federation in Ukraine, recognizing the Russian Federation's violation of the UN Charter and imposing on it the obligation to pay reparations and providing for the creation of an auxiliary body to compensate for the damage caused Ukraine under the auspices of the UN. Ukraine should demand the creation of a special fund for the payment of compensation to Ukraine and other states, legal entities and individuals affected by the aggression of the Russian Federation. Our aggressor neighbor is also rich in natural resources, some of which can be used to finance the compensation fund for Ukraine.

2. *Practice of environmental damage compensation at the UN International Court of Justice*

The study of the practice of compensation for environmental damage at the International Court of Justice of the United Nations (hereinafter - the ICJ or the Court) seems to be worth conducting through the prism of the "Costa Rica - Nicaragua" case[23].On November 18, 2010,

[17]The UN Compensation Commission – the perspective of financing the restoration of the environment in Ukraine after the war with the Russian Federation:https://epl.org.ua/wp-content/uploads/2022/05/Kompensatsiina-komisiya-OON.pdf
[18]The United Nations Compensation Commission (UNCC):https://micinitiative.iom.int/united-nations-compensation-commission-uncc-0
[19]Resolution 692 (1991) / adopted by the Security Council at its 2987th meeting, on May 20, 1991:https://digitallibrary.un.org/record/113598?ln=ru
[20]Security Council Resolution No. 705 (1991):https://www.un.org/securitycouncil/ru/content/resolutions-adopted-security-council-1991
[21]Security Council Resolution No. 986 (1995):http://hrlibrary.umn.edu/russian/resolutions/SC95/R986SC95.html
[22]UN Security Council Resolution No. 2621 (2022):https://digitallibrary.un.org/record/3958809?ln=
[23]**Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua):**https://www.icj-cij.org/case/150

Costa Rica filed a lawsuit against Nicaragua regarding "the invasion, occupation and use by the Nicaraguan army of Costa Rican territory, as well as the violation of Nicaragua's obligations to Costa Rica."[24], namely the violation of the principle of territorial integrity and the prohibition of the threat of force or its use. According to Costa Rican officials, the dredging and construction carried out by Nicaragua on Costa Rican territory during the occupation of its territory has seriously affected the flow of water to the Colorado River in Costa Rica and caused additional damage to Costa Rican territory, including wetlands lands and national wildlife conservation areas located in the region.

During the consideration of this case, the UN IC first considered the question of which of the states has sovereignty over this disputed territory. For this purpose, the Court considered, in particular, the provisions of the Treaty on Borders of 1858.[25]The UN IC came to the conclusion that the sovereignty over the disputed territory in this case belongs to Costa Rica, the activities carried out by Nicaragua in the disputed territory since 2010 are a violation of the territorial sovereignty of Costa Rica. Nicaragua violated Costa Rica's territorial sovereignty by building canals and maintaining a military presence in the disputed territory.

In connection with the above, the UN IC indicated that Costa Rica has the right to receive compensation for material damage, these states should start negotiations with the aim of reaching an agreement on compensation, if the parties cannot reach such an agreement within a year from the date of the judgment, at the request of one of them, the Court will determine the amount of compensation.

Costa Rica sought about US$6.7 million in damages, as well as approximately US$0.5 million in interest for the time owed. However, based on the theory of "restoration payments" and referring to an amount of US$309 per hectare (the amount Costa Rica pays to landowners and communities as incentives for habitat protection under national environmental conservation programs) per year for a restoration period of 20 to 30 years, Nicaragua estimated that Costa Rica was entitled to reparations of no more than US$188,504.00.

The court was guided by the concept of "damage and causation". It is important to note that the Court did not develop criteria for the sufficiency of the causal relationship, especially when environmental damage is caused by illegal actions of the state. The court stated that "damage to the environment and the related deterioration or loss of the environment's ability to provide goods and services are compensable under international law." In the end, the Court drastically reduced the amount of compensation. The total amount of compensation awarded to Costa Rica was US$378,890.59, which is approximately 5% of Costa Rica's claim.

Decision of the UN International Court of Justice on compensation from February 2, 2018[26]somewhat akin to a detailed list of what the Court deemed appropriate, given the circumstances of the parties and Costa Rica's own natural hazard mitigation obligations, without clearly establishing any scientific or factual basis for charging one or another amount of compensation for causing damage to each of the items of damage related to the illegal activities of Nicaragua.

The court stated that "it is appropriate to approach the assessment of environmental damage from the point of view of the ecosystem as a whole, making a general assessment of the deterioration or loss of environmental goods and services before recovery, rather than assigning a value to specific categories of environmental goods and services and estimating recovery periods for each of them." 27.

In general, the Court was guided by the following algorithm for each of the aspects of damage assessment: 1. Establishing the presence of damage; 2. Establishing a cause-and-effect relationship between the violation and damage; 3. Research of the sufficiency of the evidence confirming such a cause-and-effect relationship; 4. Determination

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[24]Request by Costa Rica for the Indication of Provisional Measures:https://www.icj-cij.org/sites/default/files/case-related/150/16281.pdf

[25] Cañas–Jerez Treaty:https://en.wikipedia.org/wiki/Cañas–Jerez_Treaty

[26]The decision of the International Court of Justice of the United Nations on compensation in the "Costa Rica - Nicaragua" case of February 2, 2018:https://www.icj-cij.org/sites/default/files/case-related/150/150-20170202-ORD-01-00-EN.pdf

of the approximate value of the objects that were damaged during the violation, which is confirmed by appropriate evidence.
Thus, during the organization and implementation of the process of compensation for the damage caused to the environment during the war, the Ukrainian side should take into account the position of the UN IC in the described case, because it is likely that the compensation body created for Ukraine will proceed from similar principles, taking into account cited by the UN IC in this case.

III. The current state of progress on the creation of a compensation mechanism for Ukraine

In order to obtain the most complete and up-to-date information on this issue, the EPR sent information requests to the Ministry of Justice and the Ministry of Foreign Affairs regarding the existing developments in terms of creating and ensuring the operation of a compensation mechanism for Ukraine.

Some of the key theses stated in the response of the Ministry of Foreign Affairs of Ukraine No. 51/18-200-22133 dated February 16, 2024 are as follows:

1. "As of today, there are no prerequisites that would indicate that the Russian Federation or its so-called partner China voted for a resolution that would state that the Russian Federation is a violator of international peace and security in Ukraine, and therefore bears responsibility for any damage caused by military actions on the territory of Ukraine."
2. "In fulfillment of Clause 8 of the Peace Formula of the President of Ukraine, the International Working Group (IWG) on the environmental consequences of the war was created, which presented on February 10, 2024, an environmental protection agreement for Ukraine, which contains a unified approach to assessing the impact of the Russian war in Ukraine on the environment, will determine the approaches to compensation for the damage caused, as well as proposals for "green" restoration of the environment."
3. "Partner countries, international organizations and experts will also be involved in the implementation of the main provisions of the Environmental Treaty, which in the future will ensure that the Russian Federation is held accountable for damage to the environment of Ukraine."

In general, from the text of the answer received from the Ministry of Foreign Affairs, we conclude that the Ministry of Foreign Affairs does not see prospects in the creation of a compensation body for Ukraine in the same way as such a body (UN Compensation Commission[27]) was created by the UN in the case of Kuwait and Iraq. It seems that to a greater extent this position is based on the fact that the Russian Federation and its so-called partner China is a permanent member of the UN Security Council. In connection with such circumstances, Ukraine should look for other ways to create and ensure the operation of the compensation mechanism, in particular, in the part of damage caused to the environment.

Regarding the measures that have already been taken, which are currently being implemented and are planned to be implemented, the answer we received from the Ministry of Justice No. 29851/15479-33-24/12.5.2 dated 02.23.2024 was more informative. Yes, this answer contains, in particular, the following important information:

1. "The concept of the international compensation mechanism provides for the creation and functioning of the following components: an international register of losses; the application review commission, which will review applications and award compensation amounts before payments; and the compensation fund from which such compensations will be paid."

[27]"The UN Compensation Commission - the perspective of financing the restoration of the environment in Ukraine after the war with the Russian Federation. An overview of the activities of the UN Compensation Commission":https://epl.org.ua/wp-content/uploads/2022/05/Kompensatsijna-komisiya-OON.pdf

2. "To date, 43 countries and the EU have joined the Expanded Partial Agreement on the Register of Damages Caused by the Russian Federation's Aggression Against Ukraine, and have become participants in the Register of Damages."
3. "Ukraine is currently conducting active work aimed at developing and coordinating with EU member states and Group of Seven countries the text of a separate international document of the future international compensation mechanism, which should become the legal basis for the creation and functioning of the application review commission."
4. "In order to develop and implement an effective international compensation mechanism that will comply with the fundamental principles and norms of international law, the issue of creating a commission for the consideration of applications requires considerable time, therefore it is not considered possible to indicate specific terms."
5. "On December 1, 2023, the Cabinet of Ministers of Ukraine adopted Resolution No. 1256 "On Amendments to Resolution No. 326 of the Cabinet of Ministers of Ukraine dated March 20, 2022." The specified resolution, in particular, defines the proposals of Ukraine regarding the classification of categories of damage and losses caused by the armed aggression of the Russian Federation against Ukraine for the purpose of submitting to the Register of Damages applications for compensation for damages, losses or damage caused starting from February 24, 2022 or later on the territory of Ukraine within its internationally recognized borders, including its territorial waters, to submit them to the international Register of Damages.
   Subparagraph 4 of paragraph 11 of the resolution stipulates that damage and losses caused to the surrounding natural environment and natural resources (in particular, damage and losses caused to land resources, subsoil losses, damages caused to water bodies, atmospheric air, forestry, nature reserve fund) (subcategory B4) is one of the categories of damages offered for compensation under the international compensation mechanism."
6. "Currently, the work of the Council of the Register of Losses, the body authorized to create detailed rules and procedures of the Register of Losses, is directed to the development of rules, which, among other things, should define the categories of losses, losses and damages, applications for which will be accepted by the International Register of Losses for the purpose of further consideration by the commission from consideration of applications for compensation of losses within the framework of the international compensation mechanism. It is expected that claims for damage and loss caused to the surrounding natural environment and natural resources will be provided for in one of these categories of damages."
7. "The concept of the international compensation mechanism provides that the review of applications and the rendering of decisions on compensation for damages, losses or damage caused by the internationally illegal actions of the Russian Federation against Ukraine will be carried out exclusively by the application review commission. At the same time, the relevant rules and regulations, according to which such compensations will be made, will be developed and adopted by the future application review commission."
8. "As of the date of providing the answer, we inform you that the issue of referring the decisions of national courts on compensation for damages caused as a result of the armed aggression of the Russian Federation to evidence, with the help of which interested persons will be able to substantiate future applications for compensation for damages, losses and damages incurred within the framework of the international compensation mechanism".
9. "It is assumed that the implementation of the decisions of the application review commission will be carried out administratively by using both the sovereign assets of the Russian Federation and the funds belonging to the sanctioned persons who are involved in the armed aggression of the Russian Federation against Ukraine, for the payment of real compensations to the victims through the compensation fund ".

From what the Ministry of Justice has stated, we can see that work on establishing a compensation mechanism for Ukraine is actively underway, and our state has secured serious support from international partners in this process. The foundations for the international legal regulation of the functioning of such an element as the application review commission are currently at the stage of formation, this process seems to be quite long and it is difficult to establish how much time will be needed in order to create a sufficient legal basis for the legitimacy and appropriateness of the work of such a commission. The issue of the environment and compensation for damage, damage caused to the environment is taken into account in the current approach of Ukraine and partners in the paradigm of the compensation mechanism, which is definitely a positive factor. However, the mechanism for applying for compensation, in particular, for such damage, is still being developed. Decisions on compensation for damages, losses or damage caused by the internationally illegal actions of the Russian Federation will be made exclusively by the application review commission, which seems to be able to ensure the unity of approaches, the stability of the practice of such a body and fairness. Decisions of national courts on compensation for damages caused by the Russian invasion of Ukraine could potentially be considered as evidence during the review of applications by the application commission. Sources of financing are considered sovereign assets of the Russian Federation and funds belonging to sanctioned persons who are involved in the armed aggression of the Russian Federation against Ukraine.

Thus, the process of creating a compensation mechanism is developing, and the authorities and partner states of Ukraine are actively working in this direction. However, taking into account the complexity and multi-stage measures that must be taken, we still have a very long and difficult process on the way to full-fledged work of compensation bodies.

IV. Developed recommendations regardingreparations for environmental damage at the international level through the work of the Compensation Commission for Ukraine

1. Regarding the types of environmental damage that must be compensated

Forming a list of types of damage to the environment that must be compensated through the mechanisms of the created compensation body for Ukraine, it is worth considering the already existing experience. Thus, the powers of the UN Compensation Commission included consideration of claims for direct environmental damage and depletion of natural resources, including damage or expenses for:

1. Mitigating and preventing damage to the environment, including spending on fighting oil fires and cleaning coastal and international waters from oil.
2. Adequate measures have already been taken for cleaning and restoration of the environment or future measures that have documentary evidence of their necessity for cleaning and restoration
the environment
3. Adequate monitoring and assessment of environmental damage with the aim of calculating and mitigating the damage and restoring the environment.
4. Adequate monitoring of public health and implementation of medical screening in order to investigate and overcome increased health risks caused by environmental damage.
5. Depletion or damage to natural resources, etc.

At the same time, almost primarily, the UN Compensation Commission reimbursed the costs of monitoring and evaluation.

Based on the existing experience and taking into account the specifics of the environment of Ukraine, it seems that the damage caused to the environment of Ukraine, which must be compensated, can be divided into such types as reimbursement of costs for:

1. Prevention and mitigation of environmental damage. This includes costs for liquidation of oil spills, extinguishing fires and cleaning water bodies from pollution, aimed at preventing and mitigating the consequences of environmental accidents.
2. Restoration of the environment. This includes the costs of restoring natural resources and the environment after pollution or destruction, which are incurred at the time of compensation or are planned to be incurred for future restoration of ecosystems.
3. Monitoring and assessment of environmental damage. This includes the costs of systematic monitoring and assessment of the degree of environmental pollution in order to calculate compensations and develop recovery strategies.
4. Public health monitoring and medical examinations. This includes the costs of monitoring the health of the population and conducting medical examinations to detect and treat diseases related to environmental pollution.
5. Compensation for depletion and damage of natural resources. This includes compensation costs for the destruction or depletion of natural resources such as forests, soils, water resources and biodiversity.

It is worth emphasizing that in the Ukrainian case as well, primary compensation in terms of costs for monitoring and assessing environmental damage seems appropriate.

2. *Regarding methods of calculating environmental damage*

From the above, we can see that in different cases, different bodies, whether judicial or quasi-judicial, approached the calculation of environmental damage in different ways. However, it seems that in the case of compensation for damage caused to the environment, it is worth using methods and methods of calculations that will most fully take into account the specifics of the environment of the object of the material world, its characteristics, ecosystem services, etc.

One of the methods that can be adopted by the compensatory body created for Ukraine is the method called "Habitat Equivalence Assessment[28]» (hereinafter - NEA). This technique is actively used in the United States of America.The National Oceanic and Atmospheric Administration (NOAA) Damage Assessment and Recovery Program of the US Department of Commerce describes the application of this technique as follows. Claims for damage to natural resources have three main components: 1) the cost of restoring damaged resources to baseline, or "primary restoration"; 2) compensation for the intermediate loss of resources from the moment of damage to the restoration of resources to the base level; 3) reasonable expenses for carrying out damage assessment[29]. HEA, i.e. Habitat Equivalence Assessment, is an example of the second approach. The HEA is that the public is willing to accept a one-to-one trade-off between a unit of service from habitat lost and a unit of service gained from a restoration project.
The HEA does not necessarily imply a one-to-one trade-off in resources, but rather, a relationship in services that were provided to the environment prior to the damage and will provide similar services after remediation. For example, consider a swamp as a resource, and its main productivity as a resource service. Assume that the result of the restoration project provides only 50 percent of the productivity per unit area of the wetland, relative to the productivity that existed within the wetland prior to the damage. To restore the equivalent

[28]Habitat Equivalence Assessment:https://hcas.nova.edu/tools-and-resources/visual_hea/index.html
[29]The use of habitat equivalence analysis in natural resource damage assessments:https://www.sciencedirect.com/science/article/abs/pii/S0921800903002519

of a year's lost productivity, the restoration project would require twice as many hectares of wetlands.
Necessary conditions for the application of the HEA include the following factors: 1) for services provided by natural resources, a common metric (or indicator) can be defined that captures the level of services provided by the settlement, captures any significant differences in the quantity and quality of services provided damage and recovery; 2) changes in resources and services (due to the infliction of damage and the implementation of the restoration project) are small enough so that the cost of a unit of service does not change due to the existing level of service provision.
Conceptually, HEA goes through seven steps. The area of the affected area is assessed and it is determined which service should be central to the restoration. It should be noted that although the basic calculations use a single service, careful selection of an appropriate unit of measure to represent that service can result in effective coverage of multiple services. For example, in wetlands, shoot density of dominant species can be used to represent primary recovery, but will also reflect the potential for use by native fauna and other ecological functions.
In conclusion, it is worth noting that such calculations cannot always be put into practice. How, for example, to allocate a conditional 2.5 hectares of bottom for growing sea grass. In addition, this technique is applicable only under certain conditions described above. However, the goal of such a method appears to be progressive - achieving the restoration of the same number of services that were provided to the environment before the damage was caused. Based on this, the use of NEA, as an auxiliary technique in appropriate cases, can be quite useful and effective in calculating the amount of compensation for damages caused to the environment.

3. *Regarding evidence and proof*

As the practice of judicial and quasi-judicial bodies in cases of compensation for damage caused to the environment shows, the very fact of reparations and their amount depend almost entirely on the effective implementation of proof and the quality of the collected evidence base.

An example of the importance of the evidence base iswording of paragraph 75 of the Resolution of the International Court of Justice of the United Nations (hereinafter referred to as the ICJ) of April 19, 2017 regarding Ukraine's request for temporary measures in the case "Ukraine v. Russia" on the application of the International Convention on the Fight against the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial discrimination The UN Security Council indicated that Ukraine refers to (a) the attack on peaceful demonstrators in Kharkiv; (c) the bombing of Mariupol; (c) attack in Volnovas and Kramatorsk; and (d) the destruction of a Malaysian Airlines aircraft (Flight MH17), which resulted in the death and injury of a large number of civilians. However, Ukraine has not presented evidence that would give sufficient grounds to believe that these elements are present[30].

In connection with the above, we will consider the standards of proof in existing international judicial bodies.
Thus, the UN IC acts according to the principle of broad admissibility of evidence. Such admissibility allows almost any evidence chosen by the participating states to be included in the case. Since the issue of requirements for evidence is not spelled out either in the Statute or in the Regulations, one should rely on the practice of the UN IC. A study of case law shows that, while the ICJ provides some guidance on how it evaluates certain types of evidence, it tends to apply a very open, discretionary standard of proof.
It is also worth noting that the order of cases at the International Criminal Court (hereinafter referred to as the ICC) requires thorough preparation.The Statute of the International

[30]Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation):https://www.icj-cij.org/en/case/166/summaries

Criminal Court provides for a high threshold for proving environmental crimes. However, it is interesting that when it comes to compensation for damages: the victim does not have to coincide with the subject of the violation (attack, etc.). The victim is a natural/legal person who has been harmed as a result of the commission of any crime within the jurisdiction of the court. This means that in order to claim compensation for damage to the environment, the cause of such damage does not necessarily have to arise from a crime against the environment, but can originate from any crime that falls under the jurisdiction of the Court.Only the ICC has the authority to recognize certain evidence as admissible or inadmissible, as well as to generally recognize any information as evidence or to reject it. It is necessary to understand in which cases the collected information will usually not be taken into account by either the Prosecutor or the ICC itself. Such cases are: information collected under coercion, threat, with the use of force; information that was intentionally falsified, changed, fabricated; information collected illegally, using deception; testimonies that were obtained under the condition of financial assistance to the persons who provided them. If information is collected in violation of national legislation, this does not mean that it is automatically considered inadmissible. The prosecutor and the ICC will carefully assess the information obtained and the circumstances under which it was obtained. The relevance of evidence, its probative force and weight are fundamental criteria. The Torture Reporting Guide, published by the University of Essex Center for Human Rights, describes the formula for obtaining the best quality evidence: "First-hand + detailed + internally consistent + corroborated from multiple perspectives + evidence of sustained action + new = evidence of the highest standard."[31].

It is also necessary to consider the standards of proof that took place in the practice of the UN Compensation Commission in the case of Iraq and Kuwait. The first example is the followinglawsuit: "Tapline", a company of Saudi Arabia, entered into a contract with the Ministry of Energy and Mineral Resources to deliver oil by pipeline from Saudi Arabia to Jordan.But the Ministry claimed that the invasion of Iraq and the occupation of Kuwait caused the closure of the pipeline and the suspension of oil supplies in September 1990. And "Tapline" continued to charge the plaintiff for the operating costs of the oil pipeline. The panel of the Compensation Commission believed that Jordan had acquired the shipping tanker because restrictions on oil imports from Iraq and Kuwait were imposed by the United Nations trade embargo. According to the decision of the Board of Governors, damages arising solely from the economic embargo were not accepted as a basis for compensation. Accordingly, the purchase price of the oil tanker was not subject to compensation. The panel also held that the plaintiff failed to demonstrate that the suspension of the Nuclear Research and Training Center project was a direct result of the invasion of Iraq and occupation of Kuwait. Therefore, the losses arising as a result of such suspension were not subject to compensation.

Let's consider one more lawsuit, it concernedtransportation and dispersion of pollution. The subject of the appeal was Iran.The panel found that Iran had failed to meet the evidentiary requirements for full compensation for the use of satellite imagery analyzes and related techniques to trace the transport of air pollutants from oil fires in Kuwait that Iran had requested. Procedural Order No. 2 required Iran to provide documentary and other relevant evidence to support the claimed expenses for labor, travel, purchase of maps, printing and other expenses. The Board did not receive this information in time to consider it when reviewing the claim. Consequently, the Panel found that Iran had not met the evidentiary requirements for compensation for these items. Accordingly, the Commission did not recommend compensation for such costs.

Next, we will look at the groundwater and surface water impact lawsuit filed by Kuwait. Kuwait sought compensation in the amount of US$842,812 for two completed studies that determined the extent of contamination of the Raudhatain and Umm al-Aish aquifers as a result of Iraq's invasion and occupation of Kuwait. The Panel considered that the evidence

[31]Rules of Procedure and Evidence:https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf

provided by Kuwait was insufficient to demonstrate the circumstances and amount of the claimed loss. Kuwait has not provided a convincing explanation for the absence of such evidence. Therefore, compensation for this claim is not recommended. In the Panel's opinion, the proposed study is unlikely to detect sunken oil associated with the invasion of Iraq and occupation of Kuwait in quantities that would pose a significant risk to the environment for a long time after the invasion of Iraq. The Panel considered that the study did not constitute sound monitoring and evaluation. Therefore, the Board recommended not to assign compensation for this claim.

Thus, the main standards of proof in the UN Compensation Commission can be formulated as follows:

1. Credibility and completeness of evidence. The parties must provide evidence that is reliable and comprehensive to support their claims for the resulting damages.
2. Admissibility of evidence. The evidence must be acceptable to the Commission and meet the admissibility criteria.
3. Direct connection with damages. The parties must demonstrate a direct connection between the damage caused and the actions or events that caused it.
4. Subsoil. The evidence provided must have a proper scientific or factual basis and be based on known methodologies of analysis and research.
5. Timeliness and completeness of information. The parties must provide all the necessary information and evidence in a timely and complete manner in order to avoid delays in the consideration of the case and ensure an objective decision-making.

In summary, it should be noted that the UN IC, the UN Compensation Commission and the ICC use different approaches to the organization of justice, evidence and proof. However, having prepared a proper and convincing evidence base and choosing the right strategy of behavior during the proceedings, there is every reason to hope for a positive result. It can be assumed that the main approaches practiced by these bodies will be borrowed for the compensation body created for Ukraine.Therefore, the work of national state bodies in Ukraine today during hostilities is extremely important and must be carefully documented, the facts of crimes committed by the aggressor or violations of international law on the territory of Ukraine must be properly confirmed. It is obvious that there may be a lack of human resources to document the crimes of the Russian Federation in Ukraine, so you should take advantage of the opportunity and seek help from international governmental and non-governmental organizations that have experience and human and material resources to prepare the evidence base.

4. *Regarding potential applicants for reparations*

In the context of reparations for damage caused to Ukraine's environment as a result of hostilities, potential applicants for compensatory payments or other forms of reparations may include, but are not limited to, the following parties:

1. Government of Ukraine. The Government of Ukraine has the right to reparations from the Russian Federation in accordance with international law. This includes compensation for any direct damages incurred by Ukraine as a result of environmental pollution, ecosystem destruction, and other environmental damage resulting from hostilities.
2. Citizens and residents of Ukraine. We are talking about individuals who have suffered personal losses as a result of an environmental disaster, because they should also be entitled to compensation. This may include, for example, the cost of treatment that is necessary due to water or air poisoning, the loss of the ability to live in one's home or the loss of the ability to earn due to the destruction of jobs or the ecologically harmful impact on land used for agricultural purposes.
3. International and national environmental organizations. Organizations involved in environmental protection and prevention of environmental disasters may also act as potential claimants for reparations. These organizations can claim compensation for

environmental damage that affects the ecosystems they protect or the projects they implement to restore natural resources.

4. Local communities and organizations. Local communities, as well as local non-profit organizations and other groups, may have an interest in compensation for damages related to the destruction of the environment on their territory or the impact on the health and well-being of the relevant territorial communities.
5. Private legal entities. For example, these can be legal entities that act as owners of real estate that have been damaged as a result of hostilities, or companies that have suffered losses, in particular, due to the loss of access to natural resources.
6. Scientific and scientific research institutions that study the impact of military conflicts on the environment can also claim compensation for the costs incurred in the course of carrying out research caused by the conduct of military actions.
7. Other interested parties.

Taking into account the interests of these potential claimants for reparations is important for the development of effective mechanisms for compensation for environmental damage caused by military actions. Determining specific damages and determining responsibility for them are key aspects of the reparations process.

Based on such a variety of entities that can apply to the potentially created compensation body for Ukraine, it is possible to formulate several important recommendations that should be taken into account during the work of such a body. Yes, the needs of various parties, including government, citizens, organizations and private companies that have suffered environmental damage, must be taken into account. It is also important to ensure a transparent process for assigning and paying reparations to avoid corruption and ensure accessibility for all interested parties, to ensure the use of scientific data and research to determine environmental damages and assess their impact on the health and welfare of citizens. A monitoring system should be created and operated to monitor the impact of reparations payments on the restoration of the environment and the health of citizens. These recommendations can help the compensation commission for Ukraine effectively take into account the interests of various parties and ensure fair and efficient payment of reparations for environmental damage.

5. *Regarding the possible mechanisms of payment of reparations at the international level*

Regarding the possible mechanisms for paying reparations, it seems appropriate to once again refer to the experience of the UN Compensation Commission in the case of Iraq and Kuwait, the mechanisms that were used in this case.
As already noted above, the Commission received a percentage of the proceeds received from the export sales of Iraqi oil and oil products. This percentage was initially set at 30%, at 25% in December 2000 under Security Council Resolution 1330 (2000)[32]. Subsequently, the level of revenues from all export sales of Iraqi oil, petroleum products and natural gas, which were included in the budget of the Compensation Commission, was reduced by another 5 percent in accordance with paragraph 21 of Security Council resolution No. 1483 (2003), adopted on 22 May 2003[33].
In order to effectively distribute payments among applicants whose claims were satisfied, the UN Compensation Commission divided applicants' claims into 6 categories from "A" to "F". You can find out more about this division in the developments of the EPL at the link:http://surl.li/qtkjn. Based on this, deadlines were established for filing lawsuits of various categories. The deadline for submitting category "A", "B", "C" and "D" claims was set to January 1, 1995, and for category "E" and "F" claims to January 1, 1996, except

[32]Resolution No. 1330 (2000) of the Security Council:https://digitallibrary.un.org/record/428974/usage?ln=en

[33]Security Council Resolution No. 1483 (2003), adopted on May 22, 2003:https://digitallibrary.un.org/record/495555

environmental claims of category "F", which were to be submitted by February 1, 1997. In 2004, the Board of Governors passed a resolution in which it decided that the Board would not consider or accept any further requests for untimely claims of any category.
Upon completion of consideration of a particular batch of claims, each Board of Commissioners submitted a written report through the Executive Secretary to the Board of Governors on the claims received and the recommended amount of compensation for each claim. The reports also provided brief explanations. The amounts recommended by the Boards of Commissioners were subject to approval by the Board of Governors, and the Board of Governors could increase or decrease the amounts if it determined that circumstances warranted. Decisions made by the Board of Governors regarding the award of compensation were final and not subject to appeal or review. The review of all claims was completed in 2005. According to the Governing Council's decision, governments and international organizations were required to distribute funds awarded by the Commission to successful claimants within six months of receipt of payment and to report payments made to claimants no later than three months later. In addition, governments or international organizations that received compensation payments on behalf of claimants were required to submit “distribution” reports to the Governing Council over a period of time, describing the arrangements for payment to claimants and detailing the amount and date of payment. These reports allowed the Commission to monitor the distribution of compensation. In addition, at its forty-ninth session in September 2003, the Board of Governors determined that submitting entities must also provide an audit certificate with the submission of each payment distribution report or annually within three months of the end of the calendar year. to increase the transparency of the distribution of future payments. According to the decision of the Board of Governors, money that has not been distributed within twelve months, for example, if the government cannot find a claimant within twelve months of receiving the money, must be returned to the Commission. The Board of Governors subsequently decided that further payments to governments and international organizations should be suspended if governments and international organizations do not report disbursements or return undistributed funds in a timely manner. In the event of a refund to the Commission, the Commission held the amount refunded until the claimant was found, after which the money was returned to the Government for distribution to the claimant. At its fifty-sixth session (June 2005), the Board of Governors set 30 September 2006 as the final date for payments to applicants whose whereabouts are unknown[34].
Thus, it seems that the mechanisms used by the UN Compensation Commission in the described case can be borrowed for the work of the compensation body created for Ukraine. However, the aspect of control over the funds distributed to applicants by the compensation body is very important.
Conclusions. Ukraine faces serious challenges related to environmental damage caused by the war. In order to compensate for these losses and restore the environment, it is necessary to create effective reparation mechanisms. Compensation bodies for Ukraine should definitely be created. The recommendations outlined in this document, in particular, regarding engagement of various stakeholder groups, including the government, citizens, organizations and private companies, as well as the use of the above mechanisms, which have already been developed at the international level, can contribute to the fair and effective payment of reparations for environmental damage. At the same time, it is necessary to continue cooperation with international partners and organizations to ensure effectiveness of these measures.

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