

COMPENSATION MECHANISMS FOR ENVIRONMENTAL DAMAGE IN UKRAINE: CURRENT STATE AND PERSPECTIVES



Compensation mechanisms for environmental damage in Ukraine: current state and perspectives



This publication was compiled with the support of the International Renaissance Foundation. It's content is the exclusive responsibility of the authors and does not necessarily reflect the views of the International Renaissance Foundation.

The International Renaissance Foundation is one of the largest charitable foundations in Ukraine. Since 1990 we have been helping to develop an open society based on democratic values in Ukraine. During its activity, the Foundation has supported about 20 thousand projects. The funding amounted to over \$ 350 million.

Site: www.irf.ua

Facebook: [www.fb.com/irf.ukraine](https://www.facebook.com/irf.ukraine)

Compensation mechanisms for environmental damage in Ukraine: current state and perspectives

Index

Introduction

I. International experience in getting compensation for environmental damage: standards, challenges, problems and lessons for Ukraine

1. The experience of the UN Compensation Commission in the Case of Iraq and Kuwait
2. Tailings dam disasters in Brazil: after-effects, compensation mechanisms and lessons for Ukraine

Mariana disaster (2015): environmental consequences and recovery challenges

Brumadinho disaster (2019): a recurrence of systemic problems

Key systemic issues in the context of both disasters

Lessons for Ukraine

3. Practice of compensation for environmental damage in the jurisprudence of the International Court of Justice: the case of “Costa Rica-Nicaragua”
4. Examples of compensation for damage caused by war crimes: the cases of Croatia and Bosnia
5. Evidence and proof standards in international judicial institutions
2. International compensation mechanism for Ukraine: the path to establishment, structure and specifics of work
 - 2.1. The path to establishing an International Compensation Mechanism for Ukraine
 - 2.2. Structure of the International Compensation Mechanism

II. International register of damage as the first component of an international compensation mechanism for Ukraine

The International Compensation Commission, as the second component of the international compensation mechanism for Ukraine

- 2.3. Specifics of the work of the International Compensation Mechanism
3. The procedure for compensating Ukraine for environmental damage and the prospects for its improvement, taking into account international experience and Ukrainian realities
 - 3.1. The procedure for compensating Ukraine for environmental damage in category B 3.1. Environmental damage
 - 3.2. Prospects for improving the procedure for compensating Ukraine for environmental damage, taking into account international experience and Ukrainian realities
 - 3.2.1. Changes at the international level
 - 3.2.2. Changes at the national level

Introduction

1. International experience in compensation for environmental damage: standards, challenges, problems and lessons for Ukraine.
2. International compensation mechanism for Ukraine: the path to establishment, structure and specifics of work.
3. The procedure for compensating Ukraine for environmental damage and the prospects for its improvement, taking into account international experience and Ukrainian realities.

Conclusions

I. International experience in getting compensation for environmental damage: standards, challenges, problems and lessons for Ukraine

1. The experience of the UN Compensation Commission in the Case of Iraq and Kuwait

An armed aggression by states is often accompanied by devastating environmental consequences that extend far beyond the territory of the victim state and have long-term impacts on natural resources, ecosystems, and human health. One of the most striking historical examples of such impacts is [Iraq's aggression against Kuwait in 1990–1991](#) and establishment of an international mechanism of compensation for damages. [Experience of the functioning of the UN Compensation Commission](#) (hereinafter referred to as the Commission) demonstrates that environmental damage can be recognized as an independent category of international legal responsibility of the aggressor state, and can also be the subject of systematic assessment and compensation within the framework of a special international mechanism.

The scale of environmental damage from Iraq's aggression against Kuwait

The Iraqi invasion of Kuwait was accompanied by one of the largest man-made environmental disasters of the late 20th century. During the occupation and subsequent hostilities, Iraqi forces carried out large-scale deliberate actions that led to the degradation of the region's marine, coastal, and desert ecosystems and cultural heritage of the region.

In particular, approximately 100,000 tons of oil were deliberately dumped into the Persian Gulf. [10.8 million barrels of oil](#), which caused large-scale pollution of the marine environment and [over 600 km of](#) coastline of Saudi Arabia. In addition, during the retreat, Iraqi forces blew up [about 600 oil wells](#), which led to the formation of so-called "oil lakes" and the release into the environment of about [1 billion barrels of crude oil](#). The result was the contamination of soils, groundwater, and desert ecosystems.

Additional environmental damage was caused by oil field fires that lasted for months and were accompanied by massive emissions of pollutants into the atmosphere. This led to transboundary

movement of pollutants, formation of so-called "black rain" and a negative impact on agriculture and public health in the region.

In addition to oil pollution, significant environmental damage was associated with the military operations themselves and by large numbers of refugees. The large-scale movement of military equipment, the construction of fortifications, trenches, and military bases led to the physical destruction of desert landscapes and the degradation of natural habitats. [Approximately 1.6 million mines were placed on Kuwaiti territory](#), and a significant amount of unexploded ordnance, which has created a long-term threat to the environment, biodiversity, and the population.

Thus, the environmental consequences of the aggression were complex and included pollution of air, sea, water, soil and groundwater, degradation of ecosystems, depletion of natural resources and increased risks to public health.

International legal recognition of liability for environmental damage

Immediately after the end of the hostilities, the UN Security Council clearly defined Iraq's international legal responsibility for the consequences of the aggression. According to [Security Council Resolution No. 687 \(1991\)](#), Iraq was found liable for any direct harm, loss or damage, including environmental damage and depletion of natural resources, caused by the illegal invasion and occupation of Kuwait.

To implement this decision, a special international body was created – the United Nations Compensation Commission (UNCC), founded through adoption of [Resolution No. 692 \(1991\) by the Security Council](#). The Commission became a unique and unprecedented international mechanism that combined elements of administrative, expert, and quasi-judicial procedures for reviewing claims.

An important feature of this mechanism was that the Commission did not act as a classic court or arbitration tribunal. Its main function was to establish the facts, verify claims for compensation, assess the validity of claims and determine the amount of compensation. For this purpose, documents submitted by the claimants, as well as the results of scientific research, monitoring, expert assessments and field missions were used.

Mechanisms for assessing and compensating for environmental damage

Within the framework of the Commission's work, environmental claims were classified as government claims (Category F). These claims concerned not only direct environmental damage, but also the costs of responding to environmental disasters, environmental monitoring, damage assessment, and restoration of natural resources.

The Commission [confirmed](#) the right to compensation, in particular, for the following types of activities:

- 1) assessment of damage to natural resources;
- 2) measures to prevent and mitigate environmental damage (for example, eliminating oil fires);
- 3) cleaning up contaminated areas and restoring ecosystems;
- 4) long-term environmental monitoring;
- 5) research into the impact of environmental damage on public health.

The Commission paid particular attention to the issue of causality between the damage and the actions of the aggressor-state. A compensation could only be awarded if it was proven that the damage was a direct consequence of the invasion of Iraq. This required reliable scientific data, including information on the state of the environment before the conflict began.

In cases where full ecosystem restoration was not possible or environmentally impractical, alternative approaches to damage assessment were used. In particular, the methodology for assessing the loss of ecosystem services ([Habitat Equivalency Analysis](#)), which made it possible to determine the amount of compensatory restoration or financial compensation for the loss of natural ecosystem functions.

Scale of compensation and results of the Commission's functioning

During its activities, the Compensation Commission reviewed approximately [2.7 million claims](#) including the environmental claims for a total amount of over [350 billion US dollars](#). Other claims were for death, personal injury, loss of business. As a result, more than [1.5 million](#) applicants received compensation with a total compensation amount of about [\\$52.4 billion](#).

Of this amount, more than [\\$5.26 billion](#) was aimed directly at compensating for environmental damage, including environmental monitoring, cleaning up contaminated areas, and restoring natural resources.

The financing of compensation was carried out through a special Compensation Fund, which was replenished by deductions from Iraq's revenues from the export of oil and petroleum products. Initially, these deductions amounted to [30%](#) from export revenues, but over time their size gradually decreased. The awards were paid and monitored to ensure that they were applied towards environmental restoration and mitigation for which it was granted

In 2022, after 31 years of work, the Commission concluded its activities, recognizing that Iraq had fulfilled its international obligations to pay compensation.

Key lessons for Ukraine

The experience of the UN Compensation Commission is important for the formation of mechanisms to hold the Russian Federation accountable for environmental damage caused as a result of the aggression against Ukraine.

First, this experience confirms the possibility of international legal recognition of environmental damage as an independent category of reparations. It is also important that compensation can cover not only direct costs of eliminating the consequences, but also long-term losses of natural resources, ecosystem services and risks to public health. It can also cover the initial costs of assessing the environmental damage and developing the evidence to support the claims.

Second, the practice of the Compensation Commission demonstrates the key role of systematic documentation of environmental damage. The lack of baseline data on the pre-war state of the environment significantly complicated the proof of the causal link between Iraq's actions and the environmental consequences. This emphasizes the importance of conducting regular environmental monitoring and preserving relevant data.

Third, an important lesson is the need to involve interdisciplinary expertise. Assessing environmental damage requires engagement of specialists in various fields: ecology, toxicology, geology, natural resource economics, medicine, and others.

Fourth, the Commission's experience shows that compensation mechanisms can operate over a long period of time and require a stable financial source. In the case of Iraq, this source was revenues from the export of natural resources which had been placed under a UN sanctions regime. At the same time, this experience also demonstrates significant problems associated with the duration of the operation of compensation mechanisms. The process of considering claims, verifying evidence and paying compensation can take years or even decades.

Such a long procedure was not necessarily an obstacle to the timely restoration of victims' rights, as individual victims were compensated quickly, whereas cases involving ecosystem damage required more time due to the complexity of evidence collection and assessment. In addition, the significant time gap between the moment of causing the damage and the actual payment of compensation creates difficulties in ensuring the proportionality and fairness of the amount of compensation. Changes in economic conditions, inflationary processes and the accumulation of additional socio-economic losses can lead to a situation where, despite the addition of interest to account for delays, even formally significant compensation amounts do not fully reflect the real scale of the damage caused. While the UNCC's compensation mechanism sought to balance the principles of effectiveness, fairness and proportionality, achieving this balance required a nuanced approach that took into account the different types of damage, the complexity of evidence assessment and the specific circumstances of individual claims.

For Ukraine, this experience is particularly relevant in the context of creating an international compensation mechanism to compensate for the damage caused by the aggression of the Russian Federation, including environmental damage. It also confirms the need to form an evidence base, conduct systematic environmental monitoring, and develop scientifically sound methods for assessing damage to natural resources and ecosystems today. In the case of Russia, many assets have been frozen and are held by European and the US Government. These assets can be appropriated and converted to a compensation fund under appropriate legislation, thus providing a source of funds for environmental and other damage compensation.

2. Tailings dam disasters in Brazil: after-effects, compensation mechanisms and lessons for Ukraine

The context of two environmental disasters

Over the past decade, the state of Minas Gerais in Brazil has been the site of two large-scale man-made environmental disasters related to collapse of mining tailings dams [in Mariana \(2015\)](#) and [Brumadinho \(2019\)](#). Both events were directly linked to the operation of large mining companies and demonstrated the large-scale environmental, social and economic impacts, as well as the complexity of forming effective compensation and recovery mechanisms.

The dam failures have highlighted the long-term and complex impacts of human-caused disasters in the extractive industries on natural ecosystems, water resources and local communities. They have also demonstrated significant institutional and legal challenges in holding those responsible accountable, securing full redress for affected communities, and implementing environmental restoration programmes.

Mariana disaster (2015): environmental consequences and recovery challenges

Scale of destruction

[On November 5, 2015, the Fundão tailings dam, owned by Samarco, collapsed.](#) (joint venture [Vale](#) and [BHP Billiton](#)). As a result of the disaster, millions of cubic meters of mining waste were released into the environment, causing large-scale pollution of water systems.

A wave of toxic sludge destroyed settlements and spread across the Rio Doce river basin, reaching the Atlantic Ocean. The pollution covered hundreds of kilometers of aquatic ecosystems, making this one of the largest environmental disasters in Brazil.

Environmental damage

The environmental consequences of the disaster were large-scale and multi-level.

First, there was massive pollution of river ecosystems. The tailings pond sediments contained significant amounts of heavy metals, which caused deterioration of water quality, contamination of bottom sediments, and accumulation of toxic substances in aquatic organisms.

Second, the disaster [led](#) to the destruction of habitats of flora and fauna species, and loss of biodiversity. The death of fish and other aquatic organisms occurred in a significant part of the Rio Doce river basin. At the same time, pollution spread to coastal marine ecosystems.

Thirdly, there [was](#) a loss of a significant portion of the natural resources that provided local communities with water, fish, and other ecosystem services, causing long-term socio-economic consequences for the region.

Thus, the environmental damage was not only local, but also regional in nature, covering the entire river basin.

Compensation mechanism

To address the consequences of the disaster, a special compensation mechanism was created following the signing of agreements between the companies responsible, the federal government and state authorities. In the case of the Mariani Dam, [there were three of them](#): 1. Settlement and Behavior Change Agreement ([Termo de Transação e Ajustamento de Conduta \(TTAC\)](#)) (March 2, 2016). 2. Agreement on the Amendment of Arrangements ([Termo de Ajustamento de Conduta \(TAC-GOV\)](#)) (June 25, 2018). 3. New agreement on the settlement of the situation in the Dose River Basin ([New Rio Doce Agreement](#)) (October 25, 2024).

Following the signature of the first agreement, one of the key elements of the redress mechanism was the creation of [Renova](#) Foundation, established by the companies as a non-profit organization in 2016. Renova was given the authority to manage restoration and compensation programs, both in relation to environmental and socioeconomic losses. Its activities included dozens of programs aimed at: restoring ecosystems; cleaning river systems; restoring infrastructure; compensating affected communities.

The foundation became the main operator of restoration programs, receiving significant financial resources from polluting companies.

Main problems of the mechanism

Despite large-scale financial resources, the recovery mechanism faced a number of systemic problems.

One of the key problems was the low efficiency of environmental restoration. The implementation of environmental programs was slow, and a significant part of the affected areas remained contaminated even several years after the disaster.

The second problem was the [lack of participation of affected communities](#) in the decision-making process. Local residents did not have sufficient influence on the formation of recovery programs, which led to conflicts and distrust in the compensation process.

The third problem was the internal conflict of the institutional model, as the organization established by the companies was simultaneously responsible for implementing the recovery programs. This raised doubts about the independence and transparency of the process.

Renova ceased its operations following the conclusion of the New Rio Doce Agreement in late 2024. The mining company Samarco is now directly handling remediation efforts, compensation, and socio-environmental programs, supervised by the federal government, the states of Minas Gerais and Espírito Santo, and the participating municipalities.

Brumadinho disaster (2019): a recurrence of systemic problems

The scale of the tragedy

On January 25, 2019, [a tailings dam](#) of [Vale company](#) collapsed in the municipality of Brumadinho. Unlike the one in Mariana, this disaster [led](#) to a much higher number of human casualties.

About [12 million m³ of](#) iron ore waste were released by the dam failure in Brumadinho, entered the Ferro Carvão stream and the Paraopeba river, affecting [26](#) settlements. The flow destroyed Vale's infrastructure, part of the city's buildings and took lives of [272 people](#); [two](#) are still missing. After the disaster, about [24,000 people](#) downstream, a significant portion of the population have lost access to water and livelihoods.

Chronic effects of heavy metals on the health of residents of the Paraopeba Basin [were recorded](#) for several years: elevated levels of cadmium, lead, and arsenic (20–50 times above the normal level) have been found in people's blood, which has led to an increase in somatic and mental illnesses. As of 2023, hypertension affected [30% of adults](#), [depression – 22%](#). Psychological consequences include PTSD, anxiety, and sleep disturbances, affecting approximately [one-third of](#) the population.

Environmental consequences

The disaster caused significant environmental consequences, including:

- 1) pollution of river waters with heavy metals;
- 2) accumulation of toxic substances in bottom sediments;
- 3) death of aquatic organisms;
- 4) degradation of natural ecosystems.

About [125 hectares of Atlantic Forest](#), bordering the biologically rich Cerrado savannah, were devastated by a flow of mining tailings, causing the near-total disappearance of native plants and loss of natural habitats for wildlife. Aquatic ecosystems suffered significant damage: silt displaced the water column, causing mass fish kills [on the first 45 km of the Paraopeba River](#), and subsequent observations showed a prolonged lack of biological resources in the lower areas. Terrestrial animals, including amphibians and small mammals, died or were forced to leave their usual ranges.

Sediment monitoring as of 2025 [revealed](#) elevated levels of arsenic, lead, mercury and manganese; traces of cadmium have been recorded at a distance of more than [300 km from the accident site](#). [The total area of the affected area is 270 hectares](#). The Atlantic Forest has been exposed to heavy metals for the second time, which has worsened the condition of its flora and fauna.

Financial losses from the dam collapse are estimated at [\\$13.48 billion](#).

Pollution of the Paraopeba River has also affected water supplies and agriculture in the region.

Compensation mechanism

Following the dam failure in Brumadinho, the state government adopted a different settlement model from that used in the Mariana case, concluding a large-scale compensation agreement (Termo de Compromisso).

Under this agreement, Vale committed to allocating BRL 37.6 billion for victim compensation, infrastructure restoration, environmental recovery programmes and regional development.

Although the Brumadinho agreement represented a major compensation settlement in Brazilian history, its overall value was significantly lower than that of the agreement reached in the Mariana case, which ultimately totalled BRL 170 billion. This difference can be partly explained by the greater geographical reach and socio-environmental impact of the Mariana disaster. While the Brumadinho tailings primarily affected the Paraopeba River basin and 26 municipalities in Minas Gerais, the tailings released by the Fundão dam failure in Mariana travelled more than 600 kilometres along the Rio Doce basin, crossing into Espírito Santo and reaching the Atlantic coast, with impacts affecting at least 49 municipalities.

Implementation problems

Despite significant financial resources, the process of implementing the agreement faced a number of problems.

First, environmental restoration has been and is a long and complex process. Cleaning up river systems and restoring ecosystems takes decades.

Secondly, there were difficulties in coordinating different restoration programs, which made it difficult to implement a comprehensive environmental policy.

Third, a significant portion of funding was directed toward socio-economic programs, while ecological restoration received significantly less resources.

Key systemic issues in the context of both disasters

The analysis of the two disasters demonstrates a number of common problems characteristic of environmental damage compensation mechanisms.

Firstly, the lack of an effective and independent system for monitoring the safety of tailings facilities has led to the occurrence of disasters.

Second, compensation mechanisms were complex and lengthy, which delayed the recovery process.

Third, environmental restoration takes much longer than the payment of financial compensation.

Fourth, insufficient participation of affected communities in the decision-making process reduces trust in compensation mechanisms.

Fifth, redress mechanisms were constrained by the lack of consensus among companies, governments and affected communities on pre-disaster environmental and social baselines, impact assessments, and methodologies for evaluating damage. These disagreements complicated the comprehensive assessment of the disasters' environmental, social and psychological consequences, including their long-term impacts on human health and biodiversity.

Sixth, the lack of clear standards for payment amounts and priorities for affected groups led to inequality and a sense of injustice among the population. In addition, compensation for damage was carried out without due consideration of nature-based approaches, being largely anthropocentric.

Seventh, the payment of compensation to affected families cannot guarantee that the ecological state of the territories will not continue to deteriorate due to the lack of control over environmental restoration and ecosystem protection.

Lessons for Ukraine

Brazil's experience is important for Ukraine, particularly in the context of environmental damage compensation and restoration.

1. The need for an independent mechanism for assessing the damages and managing environmental restoration.

Damage assessments and recovery mechanisms should be managed by independent institutions, not by entities linked to the responsible parties for the harm caused.

2. Priority for environmental recovery

Restoration programs should envisage sufficient funding for environmental measures, as restoring natural ecosystems is a necessary, long-term, and complex process.

3. Systemic environmental monitoring

Long-term environmental monitoring programs, including water, soil, and biodiversity, are necessary for effective restoration.

4. Participation of affected communities

Effective compensation mechanisms should ensure active participation of communities in the planning of recovery programs.

5. Transparency and accountability

The use of compensation funds must be transparent and controlled by independent institutions.

3. Practice of compensation for environmental damage in the jurisprudence of the International Court of Justice: the case of “Costa Rica-Nicaragua”

The context of the case and its significance for international environmental law

One of the most illustrative examples of the consideration of the issue of compensation for environmental damage in international legal proceedings is the case “[Certain Activities Carried Out by Nicaragua in the Border Area \(Costa Rica v. Nicaragua\)](#)”, considered by the International Court of Justice (hereinafter referred to as the Court). It was the first case in the Court's jurisprudence when compensation was directly awarded specifically for environmental damage as a separate category of international legal liability.

On 18 November 2010, Costa Rica instituted proceedings against Nicaragua before the International Court of Justice (ICJ), alleging an incursion into and occupation of its territory, as well as the excavation of a canal and dredging activities in the border area. According to Costa Rica, these activities threatened to cause serious environmental harm, including adverse effects on wetlands and protected areas in the region. In its Judgment of 2 February 2018 on compensation, the Court subsequently awarded Costa Rica compensation for environmental damage caused by Nicaragua's unlawful activities, including the impairment or loss of environmental goods and services and costs associated with wetland restoration.

Nicaragua's activities have led to changes in the hydrological regime of the region and disruption of the functioning of ecosystems in the San Juan and Colorado rivers. Wetlands and natural habitats of wild flora and fauna species that perform important ecosystem functions have been particularly affected. In this way, the case effectively combines two sets of issues: violation of state sovereignty and environmental damage.

The International Court of Justice approach to establishing liability and assessing environmental damage

In considering the case, the Court examined the legal instruments governing the boundary between Costa Rica and Nicaragua, including the 1858 Treaty of Limits (Cañas–Jerez Treaty) and the subsequent arbitral awards interpreting its provisions. Based on its analysis of these

instruments and the evidence submitted by the parties, the Court concluded that the disputed territory fell under Costa Rica's sovereignty. It further found that Nicaragua's excavation of channels and establishment of a military presence in the territory violated Costa Rica's territorial sovereignty.

Having established the existence of an internationally wrongful act, the Court turned to the question of reparation. It recalled the principle of international law that a State responsible for an internationally wrongful act is under an obligation to make full reparation for the damage caused. The Court further noted that compensation may be an appropriate form of reparation, particularly where restitution is materially impossible or unduly burdensome. Applying these principles to the case, the Court held that environmental damage is compensable under international law. Such compensation may cover not only direct damage to natural resources but also the impairment or loss of the environment's ability to provide ecosystem goods and services, as well as the costs of restoring the damaged environment.

In its methodology, the Court effectively applied a three-stage approach to determining compensation:

1. Establishing the existence and extent of the environmental damage.
2. Determining whether there was a sufficiently direct and certain causal link between the damage and Nicaragua's unlawful activities.
3. Assessing the amount of compensation due.

The sufficiency of the evidence was considered throughout this process, informing the Court's assessment of the damage, the causal link and the appropriate amount of compensation.

At the same time, the Court did not formulate a detailed methodology for assessing environmental damage, leaving considerable freedom in determining the value of losses.

Compensation amount and approach to assessing ecosystem losses

Costa Rica claimed approximately US\$6.7 million in compensation, as well as approximately US\$0.5 million in interest for the period of non-payment. However, relying on the theory of "recovery payments" and referring to the amount of US\$309 per hectare per year — the amount Costa Rica pays to landowners and communities as an incentive to protect natural habitats under its national environmental conservation programmes — over a recovery period of 20 to 30 years, Nicaragua argued that Costa Rica was entitled to no more than US\$188,504 in compensation.

Costa Rica claimed approximately US\$6.7 million in compensation, as well as approximately US\$0.5 million in interest for the period of non-payment. However, relying on the theory of "recovery payments" and referring to the amount of US\$309 per hectare per year — the amount Costa Rica pays to landowners and communities as an incentive to protect natural habitats under its national environmental conservation programmes — over a recovery period of 20 to 30 years, Nicaragua argued that Costa Rica was entitled to no more than US\$188,504 in compensation. The Court applied the principles of damage assessment and causation, but did not simply reduce Costa Rica's claims across the board. In its Judgment of 2 February 2018, the Court awarded Costa Rica US\$378,890.59, substantially less than the amount claimed, while distinguishing between individual categories of damage and expenses. For example, it upheld Costa Rica's claim for US\$2,708.39 in wetland restoration costs in full, but rejected the claim for US\$54,925.69 for replacement soil. The Court also awarded US\$120,000 for the impairment or loss of environmental goods and services, as well as US\$236,032.16 for costs and expenses incurred as a direct consequence of Nicaragua's unlawful activities. In addition, it awarded US\$20,150.04 in pre-judgment interest on the compensable costs and expenses. These findings illustrate the

importance of substantiating each category of claimed loss and demonstrating its connection to the wrongful act.

An important aspect of the decision was that the Court emphasized the appropriateness of assessing environmental damage at the level of the ecosystem as a whole. Instead of calculating the detailed value of each natural component, the Court suggested making an overall assessment of the loss of ecosystem services until the environment is restored.

This approach effectively recognized the concept of ecosystem services as the basis for assessing environmental damage in international law.

Main issues identified in this case

1. Lack of clear international methodologies for assessing environmental damage

One of the key issues identified in this case is the lack of established international methodologies for monetary valuation of environmental damage. The court effectively made a general assessment of damages without relying on a single standardized system for the economic valuation of ecosystem losses.

2. The difficulty of establishing causation

Ecosystems are complex natural systems whose changes may result from multiple interacting factors. In international litigation, this complexity can make it difficult to establish a sufficiently direct and certain causal link between a State's wrongful conduct and specific environmental damage. The Court acknowledged that scientific uncertainty and the presence of concurrent causes may complicate this assessment, requiring a case-specific evaluation of the evidence.

3. Evidentiary challenges and flexibility in assessing damage

The case illustrates the evidentiary challenges involved in establishing environmental damage and its extent. Some of Costa Rica's claims were not accepted because the evidence did not sufficiently substantiate the alleged damage or its valuation. However, the Court clarified that the absence of adequate evidence regarding the precise extent of material damage does not necessarily preclude an award of compensation. It also recognized that the burden of proof may be applied flexibly in appropriate circumstances, although it did not shift the burden in this case.

4. Significant reduction in the amount of compensation awarded

The Court awarded US\$378,890.59, substantially less than the approximately US\$6.7 million claimed by Costa Rica for environmental damage and related costs. However, this outcome should not be understood as a uniform reduction of all claims. The Court assessed each category of damage separately, accepting some claims in full, rejecting others and determining compensation for environmental damage on the basis of the evidence and reasonable valuation methods. The case therefore highlights both the importance of robust scientific and economic evidence and the possibility of obtaining compensation even when the precise extent of environmental damage cannot be established with certainty.

Lessons for Ukraine

1. The need for systematic documentation of environmental damage

The experience of this case demonstrates that a key element of successful compensation recovery is availability of a detailed evidence base. For Ukraine, this means the need for systematic collection of scientific data on the state of the environment, including geospatial data, monitoring results and expert assessments.

2. Development of methodologies for assessing ecosystem services

It is important for Ukraine to have its own sound methodologies for the economic assessment of ecosystem losses. Such methodologies can be used in international judicial and compensation mechanisms.

3. Preparation of comprehensive scientific evidence

In compensation processes, it is necessary to ensure involvement of interdisciplinary experts - environmental scientists, economists, hydrologists, geographers - in order to substantiate the extent of damage and cause-and-effect relationships.

4. Focus on an ecosystem approach to damage assessment

The jurisprudence of the International Court of Justice confirms the importance of the ecosystem approach. For Ukraine, this means the appropriateness of assessing not only damage to individual natural resources, but also the loss of ecosystem functioning as a whole.

5. Realistic compensation calculations

Taking into account the jurisprudence of international courts, Ukraine should formulate its claims for compensation on the basis of the most substantiated and evidence-based calculations, as judicial authorities tend to critically assess inflated or insufficiently substantiated claims.

4. Examples of compensation for damage caused by war crimes: the cases of Croatia and Bosnia

Context and need for a compensation mechanism

The experience of the Republic of Croatia (hereinafter referred to as the Republic of Croatia) and Bosnia and Herzegovina (hereinafter referred to as the Republic of Bosnia and Herzegovina) demonstrates that war crimes committed during [armed conflicts in the territory of the former Yugoslavia](#), caused significant material and non-material damage to a large number of victims. In these states, the issue of compensation was considered in the context of ensuring the rights of victims to the restoration of violated freedoms and human rights guaranteed by the [Convention for the Protection of Human Rights and Fundamental Freedoms](#).

A distinctive feature of reparation mechanisms in the former Yugoslavia was the role of state-level compensation schemes alongside the individual criminal responsibility of perpetrators of serious violations. In Croatia, the Law on the Liability of the Republic of Croatia for Damage Caused by Members of the Croatian Armed Forces and Police During the Homeland War (2003) established a legal framework for state liability for damage caused by members of the armed forces and police in the course of or in connection with their official duties. However, this liability was not unlimited: the law excluded damage classified as war-related damage, including certain damage directly connected with military operations. It also established a rebuttable presumption that damage occurring during military operations in the relevant time and territory constituted war-related damage. Thus, the Croatian framework illustrates both the potential role of state compensation and the legal limitations that may restrict victims' access to reparation.

More broadly, the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005) provide an international framework for addressing the rights of victims of gross violations of international human rights law and serious violations of international humanitarian law. They identify forms of reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In Bosnia and Herzegovina, Annex 7 to the Dayton Peace Agreement specifically recognized the rights of refugees and displaced persons to recover property of which they had been deprived during hostilities or to receive compensation where restitution was not

possible. These frameworks demonstrate that reparation may involve different legal mechanisms, ranging from domestic state liability to post-conflict property restitution and international standards for victims' rights. Thus, practically the only real source of full reparation for victims was an appeal to the state for compensation, especially in cases where individual perpetrators of crimes could not compensate for the damage due to lack of financial resources or due to the duration of criminal prosecution.

Main challenges and problems of compensation mechanisms

A. How to identify the damage and its causal link to the armed conflict

Direct war damage (e.g. as a result of shelling, troop movements, bombing) was easily identified and compensated.

Indirect war losses (e.g., environmental damage, lost income growth, mobilization of vehicles) were more difficult to assess and were often not subject to compensation.

B. Limited participation of civil courts in determining criminal liability

In the Republic of Croatia and in Bosnia and Herzegovina, if there was no relevant ruling in the case, courts of civil jurisdiction could determine the existence of a criminal offense as a preliminary issue, which accelerated victims' access to compensation.

However, this approach caused criticism due to legal uncertainty and potential violation of the defendant's rights, as the criminal process specifically regulates the procedure for establishing a person's guilt.

B. Limitation periods and victim privileges

The jurisprudence in the Republic of Croatia and in Bosnia and Herzegovina demonstrates the complexity of applying statutes of limitations regarding state liability: in some cases, the state was subject to the same statutes as the perpetrator of the crime, in other cases different rules applied. This uncertainty complicated the planning of payments and created risks of delaying the payment of compensation.

D. Limited ability of individual perpetrators to recover damages

Often, perpetrators of war crimes were physically or financially unable to redress the damages, making state compensation the only effective mechanism.

Positive aspects and lessons for Ukraine

A. Establishing real state responsibility

The state was liable for damage caused by its bodies or officials in connection with the performance of their functions, which ensured that victims had real access to compensation regardless of the financial situation of individual perpetrators.

B. Clear legislative definition of damage and its types

Legislation of the Republic of Croatia and Bosnia and Herzegovina detailed what damage can be classified as property and non-property damage, including direct and indirect consequences of hostilities, and also introduced the concept of fair monetary compensation for moral damage.

Court jurisprudence used indicative criteria to assess moral damage, which allowed for individualization of decisions regarding each specific person.

B. The possibility of receiving compensation when the criminal proceeding is not completed

In the Republic of Croatia and Bosnia and Herzegovina, victims [could get](#) compensation, even if the criminal prosecution of the perpetrators was complicated, which reduced bureaucratic and procedural barriers.

D. Recognition of different types of damage and compensation mechanisms

The legislation provided for compensation for property damage through restitution, repair, or monetary payment, and for non-property damage through moral satisfaction or fair monetary compensation.

This created a comprehensive approach to reparations and increased the effectiveness of the mechanism for victims.

5. Evidence and proof standards in international judicial institutions

General characteristics of evidence in international trials

The decisive factor in preparing claims to international judicial institutions is the formation of an adequate and convincing evidentiary base. It is the quality of evidence that largely determines the prospects for successful consideration of the case and the possibility of holding states to international legal responsibility. A prime example of the importance of evidence is the position expressed in [the judgement of the International Court of Justice of April 19, 2017](#) on Ukraine's request for the application of provisional measures in the case of Ukraine v. Russia (application of the [Convention for the Suppression of the Financing of Terrorism and Convention on the Elimination of All Forms of Racial Discrimination](#)).

In paragraph 75 of that judgment, the Court noted that Ukraine had referred to a number of serious incidents: the attack on peaceful demonstrators in Kharkiv, the shelling of Mariupol, the attacks in Volnovakha and Kramatorsk, and the downing of flight MH17. At the same time, the Court stressed that the materials provided did not contain sufficient evidence to establish the necessary elements of liability under the relevant international conventions. This position demonstrates that even in cases of obvious public danger of certain events, the lack of an adequate evidentiary base may significantly limit the court's ability to make decisions in the applicant's favor.

Specifics of proof for the International Court of Justice

International Court of Justice [applies the principle of](#) broad admissibility of evidence. This approach allows parties to present virtually any evidence they consider relevant to support their positions. Such flexibility is explained by the fundamental principles of international law – the sovereign equality of states and their procedural autonomy in judicial proceedings.

The [Statute of the Court](#) gives the parties a leading role in presenting evidence. Since the Court has no power to compel states to submit evidence, the factual evidence base of the case is formed mainly on the basis of evidence that the parties voluntarily submit for consideration.

However, the Court independently assesses the weight, reliability and probative value of each material. Although the Statute of the Court does not establish formal standards of proof, the practice of considering cases demonstrates the use of a flexible, discretionary approach to assessing evidence.

Criteria for evaluating evidence in the jurisprudence of the International Court of Justice

An analysis of case law allows us to identify several key criteria that the Court applies when assessing evidence.

First, materials prepared specifically for a particular case or obtained from a single source are assessed with caution. In the case of [Oil Platforms \(Iran v. United States\)](#), the Court [emphasized](#)

that multiple reports of a certain fact may in fact originate from a single source. In such a case, their probative value does not outweigh the weight of the primary source. In addition, the source of evidence is checked for possible signs of bias. For example, in the case of “Armed Actions in the Territory of the Congo” ([Armed Activities on the Territory of the Congo](#)) the Court has repeatedly expressed doubts about the reliability of media reports.

Secondly, the Court [prefers](#) testimony of persons who have direct information about the relevant events. Testimony that contradicts the interests of the state represented by the person acquires particular weight, since it is considered more objective.

Thirdly, the findings of international tribunals and specialized international bodies are of great importance. In the judgement on the application of the [Convention on the Prevention and Punishment of the Crime of Genocide](#) the Court [admitted](#) that the findings of the International Criminal Tribunal for the former Yugoslavia can be considered as extremely convincing evidence, unless they have been overturned or modified by an appeals court.

Standards of proof in cases of the International Court of Justice

The standard of proof in the Court's case-law is not universal and is determined taking into account the nature of the case and seriousness of the charges brought. Comments on the Statute of the Court [emphasize](#), that establishing a single standard of proof is impossible, as each case has its own circumstances. The case law demonstrates that the ICJ determines the standard of proof on an ad hoc basis and that the standard is only revealed at the end of the process, when the ICJ issues its judgement.

Specifics of proof in the International Criminal Court (hereinafter referred to as the ICC)

Regulatory framework and role of case law

The consideration of cases in the ICC is carried out on the basis of the [Rome Statute of the International Criminal Court](#), which contains a significant number of evaluative concepts. This determines the decisive role of the case law in specifying their content. In each case, the ICC actually forms approaches to the interpretation of legal categories, also taking into account the broader context - public interest, international resonance and positions of states.

Standard of proof: “beyond reasonable doubt”

The key standard of proof at the ICC is “beyond reasonable doubt”, which is used in reaching a guilty verdict. This means that the totality of the evidence must be sufficient to remove any reasonable doubt as to the guilt of the person. The main criteria for assessing evidence are its relevance, reliability and probative value.

Specifics of identifying victims

According to Rule 85 of [Rules of Procedure and Evidence](#), victims are individuals and legal entities who have suffered harm as a result of crimes falling under the jurisdiction of the ICC. It is not required that the harm directly relates to the object of the crime. This allows claims for compensation for environmental damage to be made even in cases where it is a collateral consequence of other crimes, in particular war crimes or crimes against humanity.

Expanded interpretation of the concept of “property”

The jurisprudence of the ICC demonstrates a flexible approach to the interpretation of the concept of “property”. In the case [“The Prosecutor vs. Germain Katanga”](#), the ICC has recognized that not only ownership but also actual possession or control is sufficient. A similar approach was enshrined in the case [“The Prosecutor vs. Ahmad Al-Faqi Al-Mahdi”](#), which opens up the

opportunity to participate in the proceedings of organizations that protect the environment or cultural heritage, even without formal ownership rights.

Admissibility of evidence

The ICC has discretionary powers to declare evidence admissible or inadmissible. Evidence obtained through violence, coercion, fraud or falsification, as well as testimony obtained through undue influence, is rejected. At the same time, violation of national law in the collection of evidence does not always automatically lead to its inadmissibility - the ICC assesses such circumstances comprehensively.

Quality of evidence criteria

The relevance of the evidence, its probative value and weight are fundamental criteria. [The Torture Reporting Handbook, published by the Human Rights Centre at the University of Essex](#), describes the formula for obtaining the best quality evidence: "First-hand + detailed + internally consistent + confirmed from multiple perspectives + demonstrates consistent action + novel = evidence of the highest standard."

Origin of evidence and procedural guarantees

Before recognizing evidence as credible, the ICC assesses its origin. Transparency of the source of information is a key condition for its use. Although confidentiality of individual materials is allowed, this is an exception and is applied to a limited extent. At the same time, the principle of the presumption of innocence, which places the burden of proof on the prosecution, is preserved.

Admissibility of circumstantial evidence

The ICC recognizes both direct and circumstantial evidence as admissible. This is particularly important for environmental crimes, where direct evidence is often lacking and the establishment of facts is based on a combination of indicators and analytical data.

Conclusions and lessons for Ukraine

Taking into account the approaches of the International Court of Justice and the International Criminal Court, the key priority for Ukraine should be the formation of a systematic, standardized and proactive policy for collecting evidence of international crimes, in particular regarding environmental damage. It is necessary to ensure orientation not only on the quantity of information collected, but above all on its quality: the evidence base must meet the criteria of primary importance, reliability, internal consistency and corroboration from independent sources. At the same time, the specifics of international judicial institutions should be taken into account, in particular, their lack of powers to forcibly obtain evidence, which places the main burden of forming the evidence base precisely on the applicant state. In this context, it is advisable to introduce unified methods of documenting, recording and preserving evidence, as well as actively use data from international organizations and independent institutions as additional sources of evidence.

Special attention needs to be paid to adapting the national legal and institutional system to the approaches of international justice. Ukraine should clearly define the range of entities authorized to file claims for compensation for damage, including the possibility of participation of institutions and organizations that manage or protect natural objects. At the same time, it is important to ensure that evidence collection procedures comply with international standards of admissibility in order to avoid the risk of their rejection. Given the high standard of proof in criminal proceedings ("beyond reasonable doubt") and the flexibility of approaches in interstate disputes, Ukraine should build an evidentiary strategy taking into account the jurisdiction of a particular court, the nature of the violation, and the expected standard of proof. This is critically important for increasing the

effectiveness of international legal protection of the state's interests and ensuring real compensation for environmental damage.

2. International compensation mechanism for Ukraine: the path to establishment, structure and specifics of work

2.1. The path to establishing an International Compensation Mechanism for Ukraine

After the full-scale invasion of the Russian Federation into the territory of sovereign Ukraine, the international community, represented by the United Nations, almost immediately condemned the actions of the Russian Federation. On March 2, 2022, the UN General Assembly adopted the historic resolution ES-11/1 "Aggression against Ukraine"¹, which strongly condemned the full-scale invasion of the Russian Federation and demanded an immediate withdrawal of all Russian troops. This decision was supported by an unprecedented majority of the international community - 141 countries voted "in favor". This document became a clear signal of global support for the sovereignty and territorial integrity of Ukraine within its internationally recognized borders. The UN General Assembly demanded that the Russian Federation immediately cease the use of force against Ukraine and refrain from any further unlawful threat or use of force against any Member State, and also demanded that it completely and unconditionally withdraw all its military forces from the territory of Ukraine within its internationally recognized borders. However, as we saw later, this did not stop Russia and it did not abandon its criminal intentions. The UN resolution became a document that, first of all, recorded the aggression as a crime committed by Russia against Ukraine, and therefore the question arose of holding Russia accountable.

On April 27 and 28, 2022, during the Second Part of the 2022 session, PACE adopted two resolutions (2433 (2022) and 2436 (2022)) and recommendations (2228 (2022) and 2231 (2022)) on the topics: "Consequences of the the Russian Federation's continued aggression against Ukraine: role and response of the Council of Europe" and "The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes".

The key provisions of the resolutions and recommendations are: providing support to the ICC Prosecutor in investigating and prosecuting suspects in war crimes, crimes against humanity and, possibly, genocide; using the assets of Russian citizens who have been sanctioned in connection with the Russian aggression against Ukraine, after their final confiscation, to compensate for any damage to Ukraine and its citizens as a result of the aggression.²

On October 13, 2022, the Parliamentary Assembly of the Council of Europe unanimously adopted Resolution 2463 (2022) "Further escalation in the Russian Federation's aggression against Ukraine".³ In the adopted document, the Parliamentary Assembly, in particular, called on the member states of the Council of Europe to accelerate the establishment of a Special International Tribunal to punish the crime of aggression against Ukraine and a comprehensive international compensation mechanism for compensation for damage caused by aggression, including the creation of a register of damage caused. In the context of Russian aggression and the threat it poses to international peace and security, the Assembly called on the member states of the Council of Europe to hold the 4th Summit of the Council of Europe and to give priority to the issue of responsibility of the Russian Federation on its agenda. The Assembly also called on the member states of the Council of Europe to recognize the current Russian regime as a terrorist one and to provide Ukraine with the necessary air defense means.

¹ <https://digitallibrary.un.org/record/3965290?v=pdf>

² <https://mfa.gov.ua/mizhnarodni-vidnosini/rada-yevropi/ukrayina-i-parlamentska-asambleya-radi-yevropi>

³ <https://pace.coe.int/en/files/31390/html>

On November 14, 2022, the UN General Assembly adopted a resolution⁴, which recognized that Russia should be held accountable for violations of international law in Ukraine, including through the payment of reparations. The resolution recognizes, in particular, that the Russian Federation should bear legal responsibility for the consequences of all its internationally wrongful acts in or against Ukraine, including compensation for injury and any damage caused by such acts, and noting that this resolution also recognizes the need to establish an international reparation mechanism and recommends the establishment of an international register of damage in cooperation with Ukraine (hereinafter referred to as the Register).

On 24 January 2023, the Parliamentary Assembly adopted Recommendation 2245 (2023) “The Reykjavik Summit of the Council of Europe: united around values in the face of extraordinary challenges”. In accordance with the adopted recommendation, PACE supported the holding of the 4th Council of Europe Summit in Reykjavik and recommended that the Committee of Ministers of the Council of Europe prepare a Political Declaration and an Action Plan for approval by the Heads of State and Government during the Summit. In particular, the Summit participants were invited to:

- to reaffirm unwavering support for the sovereignty, independence and territorial integrity of Ukraine within its internationally recognized borders;
- to condemn the Russian aggression against Ukraine as a serious violation of international law and a threat to international peace and security;
- ensure the comprehensive responsibility of the Russian Federation for aggression against Ukraine by supporting and leading the initiative to establish a special international criminal tribunal to investigate and prosecute the crime of aggression committed by the political and military leadership of the Russian Federation, and by ensuring the leading role of the Council of Europe in its establishment and provision of specific expert and technical assistance;
- support the work of international courts competent to investigate and punish crimes of genocide, war crimes, violations of international humanitarian law and crimes against humanity;
- create a comprehensive international compensation mechanism, including a register of damage caused by the aggressor.

On 26 January 2023, the Parliamentary Assembly unanimously adopted Resolution 2482 (2023): “Legal and human rights aspects of the Russian Federation’s aggression against Ukraine”. In the resolution, the Assembly strongly supported the establishment of an ad hoc international criminal tribunal to investigate the crime of aggression against Ukraine and extension of the jurisdiction of the tribunal to the aggression launched by the Russian Federation in February 2014, as well as the role and complicity of the leaders of Belarus in the aggressive war against Ukraine. The resolution also called on all countries and international organizations to provide sufficient human and financial resources to ensure the independence and effective operational functioning of the said tribunal. Until the tribunal is established, the Assembly called on member states and the Council of Europe to support and provide concrete expert and technical assistance to the process of establishing a Temporary International Prosecutor’s Office to investigate the crime of aggression, in close cooperation with the Prosecutor General’s Office of Ukraine.

The Assembly called on all Council of Europe member states to establish an international compensation mechanism, including an international register of damage, in cooperation with the Ukrainian authorities. The resolution calls on the members of the UN Security Council to consider

4

https://rd4u.coe.int/documents/358068/372244/A_RES_ES-11_5.pdf/079afc90-b392-a0ab-43ad-41409c7e8aa4?t=1708702069853

putting to a vote and not to obstruct the adoption of a Security Council resolution on the referral of the situation in Ukraine to the ICC Prosecutor under Chapter VII of the UN Charter, and on the UN General Assembly to support and approve the establishment of an ad hoc international criminal tribunal and an international compensation mechanism. The Assembly also supports all efforts and discussions on reforming, improving the effectiveness and unblocking the situation in the UN, including a call to seek an advisory opinion from the International Court of Justice on potential restrictions on the veto.

On 12 May 2023, during the 4th Summit of Heads of State and Government of the Council of Europe in Reykjavik, the Committee of Ministers of the Council of Europe adopted a Resolution on the establishment of an Extended Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. The Resolution was adopted by the representatives in the Committee of Ministers of Albania, Austria, Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Republic of Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, the Slovak Republic, Slovenia, Spain, Sweden, Ukraine and the United Kingdom, as well as representatives of the European Union, Canada, Japan and the United States of America.

This date is the date of the launch of the establishment of the International Compensation Mechanism for Ukraine in the international legal field. The same resolution approved the Statute of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine. The establishment of the Register of Damage is an important first step in ensuring timely compensation for victims of the internationally unlawful actions of the Russian Federation against Ukraine.

On 22 June 2023, the Parliamentary Assembly of the Council of Europe adopted Resolution 2506 (2023) “Political consequences of the Russian Federation’s war of aggression against Ukraine”. The Assembly called on as many states as possible to join the Register of Damage Caused by Russian Aggression against Ukraine. The Assembly called for the creation of an international compensation mechanism, using confiscated assets of the Russian Federation to immediately compensate Ukraine for the damage caused by the war, and called for the early establishment of a Special Tribunal for the Crime of Aggression against Ukraine.

The Register was established for the initial period with an agreement to continue working in cooperation with Ukraine and relevant international organizations and bodies to create a separate international document of a future international compensation mechanism, which may include a commission for considering Claims and a compensation fund, an integral part of which should be the work of the Register, including its digital platform with all data on claims and evidence recorded in it.

The First Preparatory Meeting on the International Instrument for the Establishment of a Claims Commission for Ukraine was held in The Hague on July 9-10, 2024, and was attended by 55 delegations, including representatives of states from all continents. This is an important step in fulfilling the mission of the International Compensation Mechanism, aimed at overcoming the consequences of the war and ensuring justice and reparation for Ukraine.

Since the end of March 2025, the conclusion of the International Treaty on the Establishment of a Compensation Commission for Ukraine was negotiated by an Intergovernmental Negotiating Committee (IGNC), which was attended by over 50 states from all continents, as well as the European Union and the Council of Europe, which ensured broad interregional representation and demonstrated strong international support for the establishment of the Compensation Commission. The delegates worked out key conceptual aspects of the future Commission – such as the composition, governance and financing structure, legal, institutional and procedural principles of the functioning of the Commission, which will have the mandate to consider claims for

compensation for damage currently submitted to the Register of Damage for Ukraine, and to determine the amount of compensation in each specific case.

On December 16, 2025, a diplomatic conference with the participation of the Council of Europe and the Netherlands adopted the Convention on the Establishment of an International Compensation Commission for Ukraine.⁵ On April 30, 2026, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Ratification of the Convention on the Establishment of an International Compensation Commission for Ukraine", which entered into force on May 15, 2026.

In accordance with the Convention, the International Compensation Commission for Ukraine is established as an independent body within the institutional framework of the Council of Europe, which will decide on claims for compensation for damage, loss or injury caused by internationally wrongful acts committed by the Russian Federation in or against Ukraine, including its aggression in violation of Charter of the United Nations, as well as any violations by the Russian Federation of international humanitarian law and international human rights law. The Commission shall consider, assess and decide on the claims and determine any amount of compensation to be paid in each case. The Commission shall be endowed with international legal personality to carry out its tasks.

So far there is no official information regarding establishment of the Compensation Fund, the last component of the International Compensation Mechanism, which would complete the path of establishing an international compensation mechanism in accordance with the norms of international law, and ensure that the aggressor is held accountable, as well as restore justice for the victims of Russia's war against Ukraine. This does not mean that work in this direction is not being carried out, but this issue is one of the most difficult both in terms of making a political decision and in terms of legal support for its implementation. However, as we can see from the history of the development of the compensation mechanism described above, the world community immediately recognized that Russia must bear responsibility, including compensating for the damage caused, and indicated as a source of funds confiscated assets of the Russian Federation. However, the legal part of this issue requires complex political decisions. Therefore, it can be assumed that such negotiations are not being conducted publicly, and their results will become known when final decisions are made.

2.2. Structure of the International Compensation Mechanism

At the regulatory level, the structure of the International Compensation Mechanism was first defined by the Statute of the Register, approved by the Resolution of the Committee of Ministers of the Council of Europe CM/Res(2023)3 on the establishment of the Extended Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine of May 12, 2023. According to the Statute, the form of the future Compensation Mechanism, in addition to the Register, may include a commission for considering Claims and a compensation fund, authorized to consider Claims and make decisions and/or pay compensation for damage, losses or harm caused by internationally wrongful actions of the Russian Federation in or against Ukraine.

The Convention on the Establishment of an International Compensation Commission for Ukraine of December 16, 2025⁶ also continues the vision regarding the structure of an international compensation mechanism, and says that such a mechanism could also include, as a third component, a future compensation fund authorized to pay compensation for damages, losses or damage caused by internationally wrongful acts of the Russian Federation in or against Ukraine.

Therefore, the International Compensation Mechanism for Ukraine should consist of three elements: a Register, a commission and a fund. As of now, we have officially established the first two components of the international compensation mechanism – the International Register of

⁵ https://zakon.rada.gov.ua/laws/show/994_003-25#Text

⁶ https://zakon.rada.gov.ua/laws/show/994_003-25#Text

Damage and the International Compensation Commission. Below we will consider their main task and mandate.

II. International register of damage as the first component of an international compensation mechanism for Ukraine

The Register of damage caused by the aggression of the Russian Federation against Ukraine, established on May 12, 2023 during the 4th Summit of Heads of State and Government of the Council of Europe in Reykjavik (hereinafter referred to as the Register). The Register serves for the documentary recording of evidence and information relating to claims for compensation for damage, losses or harm caused by internationally wrongful actions of the Russian Federation, all interested individuals and legal entities, as well as the state of Ukraine, including its regional and local authorities, state or controlled institutions. The Register was created as a platform for intergovernmental cooperation and operates within the institutional framework of the Council of Europe.

The Register receives and processes information regarding claims for damage and evidence; categorizes, classifies and systematizes such claims, evaluates and determines the eligibility of claims for inclusion in the Register.

The eligibility criteria for inclusion of claims in the Register for the purpose of their future consideration and decision are set out in the rules and regulations of the Register, with the understanding that such claims must be made in respect of damage, loss or injury caused:

- a. on February 24, 2022 or later;
- b. on the territory of Ukraine within its internationally recognized borders, including territorial waters;
- c. by internationally unlawful actions of the Russian Federation in Ukraine or against Ukraine.

The Register has no jurisdictional functions to adjudicate such claims, including determining liability and awarding any payments or compensation.

The Register has the status of a legal entity under the national laws of the Kingdom of the Netherlands and Ukraine and, as such, enjoys such legal capacity as is necessary for the exercise of its functions, the performance of its mandate and the protection of its interests, in particular the capacity to enter into contracts, acquire and dispose of movable and immovable property. Any information on claims and damage received by the Register, including any evidence, shall be considered confidential.

The Register works with relevant national and international partners to facilitate and coordinate the collection of evidence of damage, loss or harm caused by internationally wrongful acts of the Russian Federation in or against Ukraine. The work of the Register, including its digital platform with all data on claims and evidence contained therein, should become the first component of a future international compensation mechanism to be established by a separate international instrument in cooperation with Ukraine.

The Register also has a support office in Ukraine for the purposes of maintaining contact with the Government of Ukraine and facilitating the dissemination of information and contacting potential applicants and the public in Ukraine at large, in particular regarding the existence and purpose of the Register and the procedure for submitting Claims for compensation for damages.

Any member or observer State of the Council of Europe and the European Union, as well as any other State that voted in favour of United Nations General Assembly Resolution A/RES/ES-11/5 of 14 November 2022 "Furtherance of remedy and reparation for aggression against Ukraine", may join the Register as a Participant or Associate Member by sending a notification to the Secretary General of the Council of Europe.

The Register is financed by annual contributions from its Members and voluntary contributions from its Associate Members. The Register may receive and use additional voluntary grants and other contributions related to its work, including contributions in kind. These contributions must be consistent with the objectives and functions of the Register.

The Register has its own structure of Register management bodies, namely: the Conference of Participants, the Register Council, the Executive Director, and the Secretariat.

The Conference of Participants shall approve the rules and regulations proposed by the Council for the management of the Register. Thus, on March 26, 2024, the Rules for the Submission, Processing and Filing of Claims (hereinafter referred to as the Rules on Claims) were approved. In accordance with the Rules on Claims, the Register, in cooperation with the Government of Ukraine, international organizations and other entities in accordance with Section II, shall make every effort to provide technical assistance to Claimants by facilitating their access to potentially relevant evidence, as the case may be, by making such evidence available to claimants through the Action or through other available mechanisms. Claims shall be submitted in respect of certain categories defined by the relevant rules. The rules for the submission of claims in each specific category and the associated evidentiary requirements shall be approved separately for each category of Claims.

On March 26, 2024, the Conference of Participants approved the Categories of claims that can be entered into the Register. Claims are grouped into 3 types of categories according to the subject of submission, namely:

Category A – the claimant is an individual.

Category B – the claimant is the State of Ukraine

Category C – the claimant is a legal entity established and registered in accordance with the legislation of Ukraine, regardless of the form of ownership.

Each category has several subcategories. Out of these, 43 claim forms have been approved (Category A – 21 forms, Category B – 11 forms, Category C – 11 forms). As of August 2026, 23 categories of Claims are open for submission (Category A – 16 forms, Category B – 4 forms, Category C – 3 forms)

On April 2, 2024, the Register began accepting claims from individuals in the category of damaged and destroyed residential immovable property. In total, as of August 2026, more than 160,000 claims have been submitted to the Register. More than 45,000 claims have been entered into the Register.

Category B3 Environmental and Natural Resource Damage, which includes two subcategories: B3.1 Environmental Damage and B3.2 Pillaging and/or appropriation of natural resources, is in the testing stage and is being prepared for opening in the near future.

The Register communicates with Claimants regarding the status of their Claims exclusively through the Diia app. No other form of interaction is provided for by the Register.

After submission of the Claim, the Secretariat shall check all files attached to it for accessibility, readability and security. If any files submitted with the Claim are found to be inaccessible, unreadable or infected with computer viruses, malware or any other form of malicious software, the Claim shall be deemed to not meet the technical requirements. The Secretariat shall check the Claims received for compliance with the Eligibility Criteria and shall prepare recommendations to the Council for inclusion of the Claims in the Register.

After the establishment of the Compensation Mechanism, the operation of the Register shall, if necessary, be transferred to such Compensation Mechanism in such a way as to ensure the uninterrupted operation of the Register until its termination and that the information on the claims and evidence contained therein shall be made available to such Compensation Mechanism. Such transfer shall include the digital platform of the Register, including all information on the claims and

evidence contained therein, other documents, including archives, its movable and immovable property, including but not limited to bank accounts, IT equipment, software and all relevant licenses, contracts and agreements of the Register, as well as any other related data. Such Compensation Mechanism shall succeed the Register upon completion of such transfer and the Register shall cease to be an Extended Partial Agreement of the Council of Europe.

The International Compensation Commission, as the second component of the international compensation mechanism for Ukraine

On December 16, 2025, a diplomatic conference with the participation of the Council of Europe and the Netherlands adopted the Convention on the Establishment of an International Compensation Commission for Ukraine.⁷The signatory countries include: Andorra, Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom, as well as the European Union.

The International Compensation Commission for Ukraine is established as an independent body within the institutional framework of the Council of Europe. The Commission is an administrative body that examines, assesses and decides on Claims and determines any amount of compensation to be awarded.payment in each case.

The Convention provides that, as soon as possible after the establishment of the Commission and the appointment of its Executive Director, liaison shall be established with the Register and/or the Council of Europe with a view to preparing for the transfer of the Register, to the extent appropriate, to the Commission in such a way as to ensure the continued operation of the Register until its termination and that the information on Claims and evidence held by the Register shall be placed at the disposal of the Commission. Such transfer shall cover the digital platform of the Register, including all information on Claims and evidence contained therein, other documentation, its archives, its movable and immovable property, including, but not limited to, bank accounts, IT equipment, software and any licences therefor, contracts and arrangements of the Register, and any related data, so that the Commission shall become the successor to the Register. The functions of the Register, including the organisation of the submission of Claims, shall continue to be performed within the Commission.

The Commission shall have international legal personality. Accordingly, the Commission shall have such legal capacity as is necessary for the exercise of its functions, the fulfillment of its mandate and the protection of its interests, including the capacity to conclude contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings. The Commission shall have an office in Ukraine and in the territory of one or more other States Parties to this Convention.

The Commission, including its office in Ukraine and any offices in other States, shall enjoy in the territory of each Member State such privileges and immunities as are necessary for the exercise of its functions and the fulfillment of its mandate. Member States shall apply in their territory the rules set out in the General Agreement on the Privileges and Immunities of the Council of Europe.

The Commission shall decide on Claims for compensation for damage, losses or harm caused by internationally wrongful acts committed by the Russian Federation in or against Ukraine, including its aggression in violation of Charter of the United Nations, as well as any violations by the Russian Federation of international humanitarian law and international human rights law:

- (a) on or after 24 February 2022;

⁷ https://zakon.rada.gov.ua/laws/show/994_003-25#Text

(b) (i) on the territory of Ukraine within its internationally recognized borders, which includes its land, airspace, internal waters and territorial sea;

(ii) in the exclusive economic zone of Ukraine and on its continental shelf, in accordance with international law and, where necessary, the national legislation of Ukraine; or

(iii) to any aircraft or vessel under the jurisdiction of Ukraine; and

(c) all interested individuals and legal entities, as well as the State of Ukraine, including its regional and local authorities, state or controlled institutions.

The Commission shall decide all administrative, financial, procedural, factual, legal and policy issues necessary to decide on the Claims and determine any amount of compensation to be paid in each case.

The Commission proceeds from the assumption that the Russian Federation, under international law, is responsible for any damage, loss or injury caused by its internationally wrongful acts in or against Ukraine in accordance with the criteria set out above.

The decisions of the Commission, including those on the amounts of compensation determined and awarded under this Convention, shall be final. Decisions on the amounts of compensation shall reflect a fair and objective assessment and determination of the value of the Application.

Subject to Article 28 of this Convention, any State, the European Union and any other Regional Integration Organization may become a Member of the Commission by becoming a Party to this Convention in accordance with the procedures set out in this Convention.

The Assembly may invite any State, Regional Integration Organization or international organization to become an Observer to the Commission under such conditions as the Assembly may determine. Any State, Regional Integration Organization or international organization may request an invitation to become an Observer.

The Members recognize that the Russian Federation must bear the legal consequences of all its internationally wrongful acts, including reparation for damage, in particular any loss or damage caused by such acts. Accordingly, the Russian Federation is expected to finance the compensation determined and awarded by the Commission in accordance with this Convention.

The Russian Federation may become a Member of the Commission at any time by expressing its consent to be bound by this Convention in accordance with Articles 31 of this Convention and subject to a declaration, which shall be annexed to the instrument of accession to this Convention, stating that:

(a) it recognizes its responsibility under international law for damage, loss and injury caused by its internationally wrongful acts in or against Ukraine, including aggression in violation of the Charter of the United Nations, as well as violations of international humanitarian law and international human rights law:

i. on the territory of Ukraine within its internationally recognized borders, which includes its land, airspace, internal waters and territorial sea;

ii. in the exclusive economic zone of Ukraine and on its continental shelf in accordance with international law and, where necessary, the national legislation of Ukraine;

iii. to any aircraft or vessels under the jurisdiction of Ukraine;

iv. to all interested individuals and legal entities, as well as the state of Ukraine, including its regional and local authorities and state or controlled institutions;

(b) it agrees to comply with the Commission's decision on compensation and to provide the necessary means to pay the compensation awarded or such other amount as may be agreed by Ukraine; and

(c) it agrees to reimburse Members and, where applicable, Observers for their contributions to the expenses of the Commission.

This Convention shall be open for signature by all member States of the Council of Europe, any other States and the European Union which participated in the Diplomatic Conference for the adoption of this Convention, and any other States which voted in favour of United Nations General Assembly resolution ES-11/5 of 14 November 2022 entitled "Furtherance of remedy and reparation for aggression against Ukraine". The Convention shall be subject to ratification, acceptance or approval.

The Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which both of the following conditions are met:

(a) twenty-five signatories have expressed their consent to be bound by this Convention in accordance with the provisions of paragraph 2 of this Article; and

(b) the aggregate individual contributions of these signatories to the 2025 budget of the Register shall amount to at least 50% of the total 2025 budget of the Register, which shall be EUR 3,692,150.

On May 15, 2026, the Law of Ukraine "On Ratification of the Convention on the Establishment of an International Compensation Commission for Ukraine", adopted on April 30, 2026, entered into force.

As of August 2026, the Convention on the Establishment of an International Compensation Commission for Ukraine has been ratified by 8 states: Ukraine, Latvia, Lithuania, Estonia, Iceland, Ireland, Sweden and the European Union.⁸ Another 17 ratifications are required for the Convention to enter into force and the Commission to begin its work.

The Convention is promising in nature as it regulates both existing procedures and lays the foundation for the further development of the international compensation mechanism. In particular, the creation of the third component - the Compensation Fund.

Although this Convention applies to internationally wrongful acts committed by the Russian Federation in or against Ukraine on or after 24 February 2022, the preamble to the Convention clearly states that this does not relieve the Russian Federation of any responsibility for its internationally wrongful acts committed in or against Ukraine on or after 20 February 2014, nor does it preclude the possibility of future amendments to this Convention to allow for an extension of its scope covering the period back to 20 February 2014.

2.3. Specifics of the work of the International Compensation Mechanism

The establishment and launch of the process of International Compensation Mechanism for Ukraine are quite long and are performed gradually. The first component of the mechanism – the Register of Damage, has started its work and is constantly opening new categories for submission, but the process of its full launch is still ongoing. Currently, the Register is open for most categories, the claimants of which are individuals, and has begun to open categories for submission for legal entities and the state of Ukraine. However, the category B 3.1. Environmental damage where the claimant is the state, is currently in the process of preparation for opening.

⁸ <https://www.coe.int/en/web/conventions/full-list/?module=signatures-by-treaty&treatynum=229>

In parallel, the international community, in cooperation with Ukraine, is working on the establishment and launch of the second component of the compensation mechanism - the Compensation Commission. The Convention on the Commission has been adopted, but in order for it to enter into force and start the work of the Commission, it must be ratified by at least 17 more countries.

In the future, these components are planned to be merged. The Register's Statute stipulates that the operation of the Register shall, if necessary, be transferred to a Compensation Mechanism in such a way as to ensure the smooth operation of the Register until its termination and that information on the Claims and evidence contained therein shall be made available to such Compensation Mechanism. Such Compensation Mechanism shall succeed the Register upon completion of such transfer and the Register shall cease to be an Extended Partial Agreement of the Council of Europe.

The Compensation Commission Convention provides for the Commission to establish relations with the Register and/or the Council of Europe as soon as possible with a view to preparing for the transfer of the Register, to the extent appropriate, to the Commission in such a way as to ensure the continued operation of the Register until its termination and that information on Claims and evidence held by the Register is made available to the Commission. The functions of the Register, including the organisation of the submission of Claims, will continue to be carried out within the Commission.

For the effective organization of the work of the International Compensation Commission, the Convention provides for a complex structure of its executive bodies. The organizational structure of the International Compensation Commission includes the Assembly, the Finance Committee, the Council, Commissioners, Panels, the Secretariat, and the Executive Director.

The Assembly, which is composed of all Members of the Commission, has overall responsibility for the implementation of the Commission's mandate. It also supervises the work of the Commission's bodies, adopts the Rules and Regulations governing the work of the Commission, establishes a Finance Committee as a subsidiary body of the Assembly; determines the members of the Council; approves the list of candidates for the posts of Commissioners and updates this list at least once a year; at its first meeting and, if necessary, thereafter, elects the Executive Director of the Commission, who is appointed by the Secretary General of the Council of Europe. It is the Assembly that empowers the Executive Director to carry out the transfer of the Register to the Commission.

It is important to note that the Convention outlines a framework for the consideration of Claims, under which the Council, on the advice of the Secretariat and taking into account considerations of efficiency, flexibility and workload, will determine the number of Panels to be established and the terms of reference of each Panel. Each Panel will consist of three Commissioners appointed to that Panel by the Council. It is the Panels that consider Claims, determine their merits, determine the amount of compensation to be paid in respect of each Claim and provide recommendations to the Council for decision-making in accordance with the applicable Rules and Regulations. The Panels may request the Secretariat to engage experts to assist them in cases where specialized knowledge, expertise or experience is required. The Secretariat provides administrative, technical, legal and other assistance to the Panels in the performance of their functions, but does not participate in the final decision-making of the Panels.

The Council shall consider the recommendations of the Panels on Claims as soon as possible after their transmission to the Council. After full consideration by the Council, the recommendation shall be deemed to have been approved by the Council, unless the Council, for reasons provided for in the Rules and Regulations, decides to refer the recommendation back to the Panel, giving reasons for its decision together with any additional guidance which shall form an integral part of the

Council's decision. The Panel shall consider the guidance of the Council and, if necessary, shall issue a new recommendation. In exceptional cases provided for in the Rules and Regulations, the Council may refer the recommendation of the Panel to an ad hoc review panel established by the Council for that purpose. The ad hoc review panel shall consist of three Chairs of the Panels. After full consideration by the Council, the recommendation of the ad hoc review panel shall be deemed to have been approved by the Council, unless the Council refers the matter to the Assembly, which shall take the final decision in place of the Council. A recommendation made under this Article shall be the final decision of the Commission on any Application under consideration and shall not be subject to further appeal or review.

The Council shall meet regularly to consider the recommendations of the Panels for decisions on the Claims. The Council shall submit reports to the Assembly twice a year. Such reports shall include information on the number of Claims considered by the Council and the total amount of compensation determined for each category, as well as a summary of any other significant factual or legal issues relevant to the work of the Commission.

More detailed Rules and Regulations governing the work of the Commission shall be adopted by the Council and approved by the Assembly, in particular they shall concern the definition of:

- i. the rules and procedures for the appointment of Commissioners to the Panels and their removal from the Panels;
- ii. the rules and procedures for the submission, consideration, assessment and decision-making of Claims, as well as the determination of the amount of compensation to be paid in each case;
- iii. standards and requirements for evidence;
- iv. rules for assessing damages, losses or harm;
- v. standards and approaches to compensation;
- vi. dispute resolution procedures;
- vii. the order of consideration, assessment and decision-making regarding Claims;
- viii. rules and procedures necessary for the continued operation of the Register within the Commission; and other matters falling within the competence of the Council.

The Council shall endeavour to take decisions by consensus. Except as otherwise provided in this Convention, if efforts to reach consensus fail, the Council shall take decisions by a two-thirds majority, each member of the Council having one vote. Subject to paragraph 5 of this Article, the presence of a majority of its members shall be required for any decision of the Council.

The Convention on the Commission also laid the groundwork for the completion of the International Compensation Mechanism – the Compensation Fund, noting that the Assembly may consider the mechanisms for the payment of the awarded compensation once funding becomes available, including by making payments from any compensation fund that may be established or designated for this purpose at a time that the Assembly deems appropriate. The members of the Convention expect the Russian Federation to finance the compensation determined and designated by the Commission in accordance with this Convention. However, it does not explicitly state that such compensation should be voluntary, thus leaving open the possibility of filling the future Compensation Fund with seized assets of the Russian Federation in the event of Russia's refusal to bear responsibility for unprovoked aggression.

3. The procedure for compensating Ukraine for environmental damage and the prospects for its improvement, taking into account international experience and Ukrainian realities

3.1. The procedure for compensating Ukraine for environmental damage in category B 3.1. Environmental damage

The Register has not yet started accepting claims in category B 3.1. Environmental damage, however, the regulatory framework in this part has been developed and approved. On February 28, 2025, the Conference of Participants of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine approved the Form and Rules for submitting claims in this category. The document contains special rules applicable to this category, a description of the information and Evidence that Claimants must provide, as well as additional information and Evidence that may be provided in support of the Claim. In accordance with Article 10 of the Rules on Claims, this Claim Form must be available electronically in the Diia app.

"Environmental damage" means any harmful effect on fauna, flora, soil, water, air, the ecosystems formed by these elements, as well as on landscape features and natural resources, or on the interaction between these factors. This definition covers natural elements that are or may be the result of human intervention, including, but not limited to food, agricultural land, drinking water and domestic animals.

This category may include losses or expenses related to environmental damage that may arise from:

- a. reasonable and proportionate measures to prevent and remedy environmental damage;
- b. reasonable and proportionate measures to monitor and assess environmental damage with a view to identifying and remedying it;
- c. reasonable and proportionate measures aimed at cleaning up, restoring and rehabilitating the environment;
- d. environmental degradation, including non-commercial environmental goods and services, or the loss of their inherent environmental value.

Category B3.1 covers Claims relating to damage to the environment as such. Claims relating to damage to persons or property that may arise from or be a consequence of damage to the environment, as well as Claims relating to related humanitarian costs or demining and clearance of unexploded ordnance, are submitted in other relevant categories. Claims relating to the theft of natural resources, i.e. the exploitation of natural resources for commercial gain, are submitted in category B3.2 - Pillaging and/or Appropriation of Natural Resources.

Claims in category B3.1 may be submitted by the State of Ukraine (including its regional and local authorities, as well as legal entities and institutions owned or controlled by the State) in respect of environmental damage caused by internationally wrongful acts of the Russian Federation on the territory of Ukraine within its internationally recognized borders, including its territorial waters, on or after 24 February 2022. For the purposes of the Claim Form for B3.2, in the case of legal entities and institutions owned or controlled by Ukraine (including its regional or local authorities), the term "the State of Ukraine (including its regional and local authorities, legal entities and institutions owned or controlled by the State)" also means legal entities that, in accordance with the legislation of Ukraine, carry out their activities on the basis of economic management law, operational management law or usufruct law.

The decision on whether a Claim may be entered in the Register shall be taken by the Register Board. The consideration of the Claim on its merits and the award of any compensation shall be carried out by a future compensation mechanism (within the meaning of the Register Statute) which has yet to be established.

The approved Claim form in this category is quite general. First of all, the Claimant and his/her representative must undergo identification to confirm the authority to submit the Claim. After successful identification, information on the environmental damage is entered, namely the type and location of the environment that was damaged; a detailed description of the environment and its contribution to the event that caused the damage. Next, the event that caused the damage is described and this description includes information on type, date and detailed description of the event that caused the damage to the environment. The next block is the type and extent of the damage. In addition to the description, evidence of the damage should be provided. Interestingly, in other categories it is not obligatory to submit evidence but there is a recommendation (invitation) to describe the place and event. The Claim also pays special attention to information on measures to assess, prevent damage and measures to restore the environment, which includes measures taken to eliminate the damage, in particular to reduce, prevent, assess, clean up, restore or bring the environment back to its previous state. This block, like the previous one, requires evidence of the measures taken. After that, Claimants must indicate the amount of the claim and justify it, describing in detail the amount of the claim, indicating the calculation methodology and providing relevant evidence. There is also an opportunity to indicate information about relevant court cases or law enforcement investigations (if any).

At the national level, this issue is regulated by the Resolution of the Cabinet of Ministers of Ukraine dated March 29, 2024 No. 365, which, in particular, approved the Procedure for submitting claims by legal entities and the state of Ukraine to the Register of Damage for compensation of damage, losses or harm caused by the aggression of the Russian Federation against Ukraine, through the Unified State Web Portal of Electronic Services.

It is worth noting that national legislation is adjusted to the Rules and procedures adopted by the Register, and therefore the CMU Resolution actually duplicates the above-mentioned provisions of the Register regarding the Form and Rules for submitting a Claim in category B 3.1. Environmental damage. However, the Resolution does not clearly define which body or bodies may be Claimants for this category.

At the same time, at the national level, we have a number of regulatory legal acts that regulate the procedure for documenting facts and collecting evidence of environmental damage. The key among them is the Resolution of the Cabinet of Ministers of Ukraine dated March 20, 2022 No. 326 "On Approval of the Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation". In accordance with the above Procedure, the determination of damage and loss is carried out separately in the following areas:

- damage caused to land resources;
- loss of subsoil;
- damage caused to water resources;
- damage caused to atmospheric air;
- forest loss;
- damages caused to the nature reserve fund.

The procedure determines the bodies responsible for determining damage and losses, that is, for conducting calculations and determining the amount of damages in monetary equivalent, but does not determine the bodies responsible for documenting the fact of causing harm.

According to the Procedure, the following bodies are responsible for determining damage and losses:

- regarding forests - the State Forestry Agency,
- regarding minerals and subsoils – the State Geological Service of Ukraine,
- ambient air, water resources, as well as protected areas - the State Environmental Inspectorate. The State Environmental Inspectorate also calculates the cost of damage caused to soils and land plots as a result of their pollution and littering.
- costs for the reclamation of lands that were disturbed as a result of hostilities, costs for the conservation of land plots contaminated with chemicals as a result of armed aggression and hostilities during martial law, as well as for the reclamation of land plots on which military engineering and technical and/or fortification structures are located; and losses caused to owners (land users) of agricultural land plots, including costs for the restoration of land reclamation systems, are calculated by regional, Kyiv city state administrations (during martial law - military administrations).

Calculations are carried out in accordance with specially approved seven methodologies enlisted below:

q The methodology for determining damage and losses caused to the land fund of Ukraine as a result of the armed aggression of the Russian Federation, approved by the Order of the Ministry of Agrarian Policy No. 295 dated May 18, 2022.

q The methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law, approved by the Order of the Ministry of Environment No. 167 dated 04.04.2022.

q The methodology for determining the amount of compensation for losses caused to the state as a result of unauthorized use of subsoil resources approved by the Order of the Ministry of Environment No. 366 dated September 15, 2022.

q The methodology for determining damage caused by water pollution and/or clogging, unauthorized use of water resources, approved by the Order of the Ministry of Environment No. 252 dated July 21, 2022.

q The Methodology for calculating unorganized emissions of pollutants or mixtures of such substances into the ambient air as a result of emergency situations and/or during martial law and determining the extent of damage caused, approved by the Order of the Ministry of Environment No. 175 dated April 13, 2022.

q The Methodology for determining damage and losses caused to the forest fund as a result of the armed aggression of the Russian Federation, approved by the Order of the Ministry of Environment No. 414 dated 05.10.2022.

q The Methodology for determining damage and losses caused to territories and objects of the nature reserve fund as a result of the armed aggression of the Russian Federation, approved by the Order of the Ministry of Environment No. 424 dated October 13, 2022.

In addition to the formulas for calculating damages, these methodologies determine the body responsible for documenting, as well as briefly describe the methods of such documenting and gathering evidence of damage.

For example, the Methodology for Documenting Damage to Land and Soils states that the facts of soil contamination and/or land littering, as well as their extent, can be established by authorized persons who, within the powers provided for by law, exercise state supervision (control) over compliance with the requirements of environmental protection legislation, in particular, but not

exclusively, by inspecting land plots, remote sensing data, studying soil samples obtained, processing the conclusions of any examinations, explanations, certificates, documents, materials, information obtained, in particular, from any sources, operational reports from individuals and legal entities, etc. A similar provision is contained in the methodology for damage to atmospheric air, and similar norms are also found in the methodologies for water and protected areas.

According to the methodologies, the documenting of damage caused to the forest and territories of nature reserve fund is carried out by commissions established at district or regional state administrations. The documenting of damage caused to other components of the environment is performed by authorized bodies, mainly the State Environmental Inspectorate.

The legislation does not provide for a detailed procedure for documenting such damage, with the exception of the Resolution of the Cabinet of Ministers of Ukraine dated July 28, 2023 No. 783 "Some issues of the functioning of "EcoThreat" service for documenting facts of causing damage to the environment as a result of emergency situations, events, and armed aggression of the Russian Federation that approved the following documents:

- Regulations on some issues of functioning of "EcoThreat" service for documenting facts of harm to the environment as a result of emergency situations, events, and armed aggression of the Russian Federation.
- The procedure for documenting facts of damage to the environment as a result of emergency situations, events, and armed aggression of the Russian Federation;
- The Procedure for organizing and conducting an inspection (survey) of the site of damage to the natural environment as a result of emergency situations, events, and armed aggression of the Russian Federation.

The Resolution of the Cabinet of Ministers of Ukraine No. 783 of July 28, 2023 was adopted on the basis of paragraph "e" of part one of Article 9 of the Law of Ukraine "On Environmental Protection", which guarantees everyone free access to information on the state of the environment (environmental information) and free receipt, use, dissemination and storage of such information, except for restrictions established by law. The "EcoThreat" service established by this Resolution has the main task, among other things, of ensuring the ability of citizens to promptly notify about the facts of harm to the environment as a result of emergency situations, events, armed aggression of the Russian Federation, as well as ensuring free access to such information.

According to its definition, EcoThreat is a functional module of the Unified Environmental Platform "EcoSystem", which organizationally and functionally consists of the EcoThreat website and mobile app (hereinafter referred to as EcoThreat tools), online user account, a database, a geoinformation portal, an analytical platform, and provides for submission of online appeals regarding identified facts of damage to the environment as a result of emergency situations, events, and armed aggression of the Russian Federation.

Such an online submission can be submitted by any individual who has personal online account. Such a submission serves as a basis for conducting an inspection of the territory. For this purpose, the Resolution gives the State Environmental Inspectorate the authority to ensure that an inspection (survey) of the site of environmental damage as a result of emergency situations, events, and armed aggression of the Russian Federation is carried out in compliance with the necessary safety measures in order to preserve lives and health of responsible employees. If to speak about the date of adoption of this resolution, it was adopted a year and a half after launch of the full-scale invasion. Before its adoption, the State Environmental Inspectorate (SEI) was not authorized to conduct an inspection of the site of environmental damage as a result of military

operations. It is also interesting that the SEI still does not have the authority to document damage caused to the environment as a result of military operations.

The very idea behind creating EcoThreat service is to enable any individual, using EcoThreat tools, to enter information about the fact of environmental damage documented by him/her as a result of emergency situations, events, armed aggression of the Russian Federation and make an official online submission so that the SEI bodies could check the availability and reliability of the information provided. The basis for conducting an inspection (survey) is the online submission made through EcoThreat tools. The Resolution states that individual submission through EcoThreat system is the only ground for the SEI to verify facts of causing harm to the environment. Based on the results of the inspection (survey) of the place of causing harm to the environment as a result of emergency situations, events, armed aggression of the Russian Federation, the SEI draws up an act, the template of which is approved by the same Resolution. However, this is often not possible, so for security reasons, the SEI does not visit places of environmental damage and does not inspect such areas, especially in areas where active hostilities are taking place, or de-occupied areas that have not undergone demining, or border areas that are also often mined or access to which is prohibited for security and strategic reasons. Therefore, many facts remain undocumented. If the inspection has taken place, then after confirming (verifying) the fact of causing harm to the environment as a result of emergency situations, events, armed aggression of the Russian Federation in the personal account, considering information on the identified facts of causing harm to the environment as a result of emergency situations, events, armed aggression of the Russian Federation received from the State Emergency Service, the National Police, executive bodies of village, settlement, city councils, and in their absence - military administrations, the responsible person of the State Environmental Inspectorate (its territorial body) within one calendar month calculates the costs of environmental damage and losses in accordance with the approved methodologies, informs the responsible person about the need to take measures to eliminate negative consequences and impact on the environment.

Having analyzed the current legislation, we can say that in Ukraine there is no clear procedure for documenting environmental damage resulting from military actions, and there is no database with information on documented facts of such damage and calculations of damages. The legislation does not specify which bodies can act as Claimants on behalf of the state of Ukraine in the category of cases B 3.1. Environmental damage after its opening. Documentation acts and other information, in particular evidence of environmental damage, are stored in various bodies. Therefore, even if this category is opened for submission in the near future, there is a high probability that our state will not be ready to make high quality submissions to the Register of Damage claiming environmental damage.

3.2. Prospects for improving the procedure for compensating Ukraine for environmental damage, taking into account international experience and Ukrainian realities

According to the Register of Damage, preparations for the opening of claims for Category B 3.1 Environmental Damage are in the final stages and will likely be opened by the end of 2026. However, it is equally important to create the appropriate technical and legal possibilities for submitting claims in this category, taking into account international experience and Ukrainian realities. Given the above analysis, we propose to improve the existing procedures in order to increase the chances of Ukraine's receiving compensation for environmental damage caused by military actions.

3.2.1. Changes at the international level

Amendments to the Form and Rules for submitting claims in category B3.1, were approved on February 28, 2025 by the Conference of Participants of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

Regarding the definition of the concept of "damage caused to the natural environment" and the losses that can be claimed in this category.

For the purposes of paragraph 3.3 of the Rules for Submission of Claims under Category B 3.1, "Environmental damage" means any harmful effect on fauna, flora, soil, water, air, the ecosystems formed by these elements, as well as on landscape features and natural resources or on the interaction between these factors. This definition covers natural elements that are, or may be, the result of human intervention, including, but not limited to, food, agricultural land, drinking water and domestic animals.

As noted above, this category also includes natural elements that are or may be the result of human intervention, including food, agricultural land, drinking water and livestock. This clarification is somewhat unusual for this category and raises a number of questions, including: why is food and livestock included in this category; why is drinking water considered a separate category; how is agricultural land to be distinguished as nature and as an asset; and it is unclear how it will be distinguished from other claim categories such as A3.7 and C3.4 Other economic losses, B1.1 Damage or destruction of critical infrastructure; C3.1 Damage, destruction or loss of assets.

We propose the following wording for paragraph 3.3: "Damage caused to the natural environment" means any direct and indirect harmful impact on flora and fauna, soils, geological structure, waters, air, landscapes formed by these components, as well as on natural processes in landscapes and natural resources. This definition also covers the impact on anthropogenic elements that are or may be the result of human intervention in natural complexes, in particular, but not limited to, reserve lands, artificially created parks and green areas in settlements, artificial water bodies, etc.

Regarding the distinction between category B 3.1. and other related categories

According to paragraph 3.5 of the Rules for submitting claims under category B 3.1 "Environmental damage", Claims for damage to persons or property that may accompany or result from damage to the environment, as well as Claims for related humanitarian expenditures, or the demining and clearance of unexploded ordnance, shall be submitted in other relevant categories. but it is not specified in which ones. Therefore, we propose to specify in which ones. This proposal also applies to paragraph (6) of the Rules Governing the Submission, Processing and Recording of Claims under category B3.1, which contains a similar provision.

In addition, we believe that such wording only confirms our view on the need to exclude food products, agricultural land, drinking water and domestic animals from the concept and, accordingly, from category B 3.1 "Environmental damage" because this kind of damage may be just a consequence of environmental damage and should be presented in other categories.

Regarding the evidence to be attached to the Claim

In accordance with paragraph 3.7. of the Rules, Claimants should submit all the relevant supporting Evidence.

We believe that the Claim form should provide for the possibility of attaching various types of evidence, especially documents contained in state registers, which can be automatically retrieved through interaction of the Claim form with such registers. This includes data on the owners and users of land plots where damage was caused, urban planning documents, data on restrictions, encumbrances, etc.

Regarding the Claim form, we propose the following changes.

In section IV. Information about the Affected Environment, we propose to create technical conditions so that the Claimant can describe the damaged area in as much detail as possible. In particular, it is important to indicate: the type of damaged area (protected area, park, forest, steppe area, meadow area, agricultural land, water body, industrial or infrastructure facility, waste storage site, hazardous chemical storage site, etc.), geographical coordinates, area. It is also important to indicate whether the damaged area belongs to protected areas, whether there are Red Book species of plants or animals in the damaged area, whether the damaged area belongs to the Emerald Network sites, whether the damaged area is classified as a wetland of international importance, or whether the damaged area is located within the coastal protection zones of water bodies. The above information should be supported with relevant evidence.

In this section, we also suggest indicating whether the Claimant is the owner of the land plot, the form of ownership, cadastral number, area, intended purpose, date of origin of the ownership right, whether the ownership right to the land plot is registered in the State Register of Property Rights to Real Property in Ukraine, indicate information about co-owners (users) if any, restrictions or encumbrances imposed on the plot. To confirm this information, it is suggested to attach the following documents: an extract from the State Land Cadastre, an extract from the State Register of Property Rights to Real Property in Ukraine, a state act on the right of ownership / the right of permanent use of the land plot, other documents confirming the right of ownership / the right of use of the land plot.

In addition, we consider it appropriate in this section to create an opportunity for a Claimant to indicate whether there is approved urban planning documentation for the damaged territory, and if so, to provide copies of the relevant documents, namely: a copy of an extract from the planning scheme of the region/district, an extract from the comprehensive spatial development plans of the territories of communities covering the damaged territory, an extract from the General Plan of the settlement covering the damaged territory, an extract from the Detailed Plan of the territory for the damaged territory, etc.

In our opinion, in section V. Event(s) that Caused the Damage to the Environment, information about the event that caused the damage should be indicated, which is very important in terms of proof, since it is one of the criteria for the Claim to comply with the requirements of the Register. It is this information that should prove the causal relationship, namely that the damage was caused precisely as a result of the military actions of the Russian Federation, and not by other factors. In this section, EPL suggests paying special attention to proving that the event was caused precisely as a result of military actions, and not by any other, in particular environmental emergencies or natural disasters.

Section VI. Damage to the Environment is the main part of substantiating the damage caused, therefore we propose to divide it by components of the environment, namely to suggest that Claimants indicate what damage was caused to land and soil, water resources, ambient air, forest fund, fauna and flora, objects of the nature reserve fund, subsoil (including the lithogenic base and terrain relief). For each component of the environment, it is useful to indicate a description of the damage or destruction, an act of recording the damage and other evidence of damage or destruction.

Section IX. Other Legal Proceedings. We propose to rename Section IX to "Other Evidence and Legal Proceedings" so that in this section the Claimant has the opportunity to attach any other evidence that he/she considers important for this category, regardless of which section it relates to.

Changes to the Categories of Claims that may be entered into the Register, approved by the Conference of Participants of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine on March 26, 2024

EPL proposes to expand the subject of claims submission in this category so that not only the state of Ukraine can make a submission but also a non-governmental organization.

In accordance with paragraph 3.1 of the Rules, Claims in category B3.1 can be submitted by the State of Ukraine (including its regional and local authorities and State-owned or controlled entities) in relation to environmental damage caused by the Russian Federation's internationally wrongful acts in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, on or after 24 February 2022.

Since the beginning of the full-scale invasion, EPL experts have carried out 40 expeditions to the de-occupied and frontline territories of Ukraine in order to record the damage caused to the environment. In addition, EPL is the first organization in Ukraine that began to form a judicial practice in cases of compensation for damage caused to the environment as a result of military actions. Therefore, our organization has a valuable evidentiary base that could be useful when considering claims for compensation for environmental damage.

In addition, a significant evidence base is also possessed by owners and users of land plots, including those in whose name an environmental protection obligation has been issued, who could also be Claimants for compensation for environmental damage.

Therefore, we propose to expand the rules for submitting claims beyond the state of Ukraine and give this right also to non-governmental environmental organizations by creating a separate category C5 Environmental damage. A Claim in such a category could be submitted by legal entities that have the right to own or use a land plot that was damaged as a result of the aggression of the Russian Federation against Ukraine, including the owner and user in whose name an environmental obligation has been issued, as well as public, charitable environmental organizations, including international ones.

3.2.2. Changes at the national level

In order to implement these proposals at the national level, it is advisable to make appropriate amendments to the regulatory legal acts that duplicate provisions of the Register, in order to harmonize international and national legislation. In addition, the Rules of the Register on environmental damage are quite general and leave many issues for consideration of the State itself. Therefore, the national legislation on compensation for damage should be more detailed, compared to the norms of the Register. It is not enough to simply transfer these norms to one or another resolution, it is necessary to empower the authorities with responsibilities and powers to record damage to the environment, collect evidence, prepare an evidence base, update damage calculation methodologies, etc. Accordingly, we propose a number of regulatory amendments to the national legislation.

EPL's proposals for amendments to the Procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 326, dated March 20, 2022.

Regarding the body responsible for recording the fact of environmental damage

The Procedure determines the bodies responsible for determining damage and losses, i.e. for carrying out calculations and determining the amount of damage in monetary equivalent, but does not determine the bodies responsible for recording the fact of causing damage. Such bodies are determined in some Methodologies, which also briefly describe the methods of such recording and data that may be evidence of causing damage. However, such issues should not be subject to regulation by the Methodologies for calculating the cost of damage.

Therefore, we consider it appropriate to determine in the Procedure the body responsible for recording the fact of causing damage, and to determine in a separate document the recording procedure itself and the list of evidence, depending on which the body will carry out the recording (SEI, State Forestry Agency, Commission under regional military administration, etc.).

Proposals for amendments to the Resolution of the Cabinet of Ministers of Ukraine No. 783 dated July 28, 2023. Some issues of the functioning of EcoThreat service for recording facts of damage to the environment as a result of emergency situations, events, and armed aggression of the Russian Federation.

There is a grounded need to develop and approve the Procedure for recording environmental damage at the level of the Cabinet of Ministers of Ukraine, in particular by expanding the tasks of EcoThreat service and the grounds for conducting inspections by SEI. In particular, such a ground may be an appeal not only from any individual, but also from any official (local self-governance bodies, State Emergency Service, administrations of protected areas, etc.). Also, the development of Standard for Proving Environmental Damage as a Result of Armed Aggression will create new practical tools, including using evidence collected by remote methods, which will significantly facilitate the work and increase the efficiency of recording the facts of causing such damage.

In addition, all data on the recording of damage, the initial situation, and calculation of damages should be stored by one responsible body, or better yet, in an online database, which can also be created on the basis of EcoThreat service and will actually constitute a digital evidentiary package suitable for Ukrainian and international proceedings. Currently, such recording is not digitized, the information is usually created in paper form and processed manually.

Proposals for amendments to the Methodology for determining damage and losses caused to territories and objects of the nature reserve fund as a result of the armed aggression of the Russian Federation, approved by the Order of the Ministry of Environment No. 424 dated October 13, 2022.

Regarding fixing the baseline.

The methodology uses the concept of "baseline data" and directly includes information about the baseline state, which corresponds to the "gold standard of proof", within which it is important to prove not only the fact of causing damage, but also the causal relationship between the event that caused the damage and its size. To do this, it is necessary to collect baseline data on the state of the environment before the damage. This approach requires very detailed field data, which are often missing after hostilities. Baseline data on typical biogeocenoses are taken from the documents on organization of territories of protected areas and nature chronicles. However, not all protected area have an equally complete and up-to-date nature chronicles/ documents on organization of territories, and for some types of protected areas such documents as documents on organization of territory or chronicles are not required by law at all.

In view of the above, we believe that in order to solve this problem, it is necessary to allow application of such methods as statistical/model estimation of the number of damaged organisms based on remote sensing data, sample studies, application of control plots and scientific modelling. The Methodology should provide for alternative tools for determining and documenting the state of the environment before damage (baseline level). These tools may include nature chronicles, documents of organization of territories of protected areas, state monitoring data, scientific data, archival remote sensing data, control plot data, expert opinions, other official data.

On recording facts of causing damage, including in inaccessible areas

On the one hand, the methodology is quite progressive, as it directly recognizes remote sensing data, space and aerial photographs, as well as documents, expert opinions and official data as

sources of information. But at the same time, it is built around surveys of the territory performed by Commissions. According to paragraph 4 of the Methodology, the facts of causing damage and losses to protected areas, as well as their scale, are established by Commissions established by local state administrations. The results of the Commission's work are formalized in an act and signed by all members of the Commission. The results of the photofixation of the object, indicating the nature and extent of the destruction, are necessarily attached to the commission survey act.

As follows from the above norm, physical inspection by the Commission of the damaged territory remains the main method of recording damage. However, for occupied/mined territories, full application of such a method is practically impossible. The methodology recognizes remote sensing data, but does not establish a sufficiently detailed standard of their evidentiary quality: image date, spatial/spectral resolution, source, metadata, processing method. Therefore, it is advisable to separate the possibility of remote recording of damage using remote sensing data of the earth and field verification methods. To do this, it is necessary to establish minimum requirements for remote sensing data as evidence and the procedure for its verification. The lack of possibility to conduct inspections should not block the recording of damage and calculation of damage costs. Therefore, we consider it advisable to transform remote sensing data, space and aerial photographs from an auxiliary source of information into a full-fledged independent method of primary recording of damage.

Lack of Rules for the Commissions Functioning

As stated in paragraph 4 of the Methodology, the Commissions are created under local state administrations. At the same time, there is no formal procedure for their work. Therefore, a number of questions arise: who is obliged to notify the Commission about the case of damage to a protected area; who provides logistical support for the Commission's functioning; what are the terms and procedure for responding to a report on the case of damage to a protected area; what evidence and documents should the Commission collect; are field trips mandatory or are online meetings of the Commission possible; what is the decision-making procedure; what is the typical form of the Commission's act, etc. In addition, the composition of the Commission is quite cumbersome and there is no guarantee that such experts as environmental scientist, biologist, landscape ecologist or remote sensing specialist are involved. On average, the Commissions have 15-20 members, but for example, the Kherson regional commission has 36 members, Khmelnytskyi Commission - 68 members. The Methodology does not establish any restrictions on the quantitative composition, nor does it provide for the possibility of involving narrow specialists. Therefore, it is more expedient to reduce the number of members of the Commission to 15-20 people and to provide for the mandatory involvement of narrow specialists depending on the nature of damage. It is also necessary to give other entities the opportunity to collect primary standardized evidentiary material according to a certain predetermined and approved algorithm. Such entities may be administrations of protected areas, the State Environmental Inspectorate, local self-government bodies or the State Emergency Service. The Commissions should be given the right to work remotely, and not only by inspecting the site of the incident. In this case, it is the remotely collected evidence and its hierarchy that can become the data that the commission considers and on the basis of which the act of fixing the damage is drawn up, and its calculation is subsequently carried out.

Regarding the consideration of ecosystem services and special conservation value of territories

The methodology counts the "resource", but does not sufficiently count the "ecosystem". The actual calculation largely proceeds to the calculation of the number of destroyed, damaged plants and animals, multiplied by their value in accordance with the approved rates. Therefore, there is a risk of losing the complex ecosystem effect. That is, the ecosystem as a system of functions is lost in the process of monetization. Therefore, it is advisable to move away from calculating the number

of damaged (destroyed) plants or animals and introduce an assessment of the loss of ecosystem functions, ecosystem services as an independent element of damage.

When determining the extent of damage, it is necessary to take into account not only the physical damage to individual natural components, but also the loss or deterioration of the functions that the relevant ecosystem performed for the environment and society. In particular, this concerns the regulation of the water regime, water and air purification, carbon absorption and storage, prevention of soil erosion, maintenance of biodiversity, provision of habitat for species and other ecosystem services.

In addition, the damage assessment methodology should duly take into account the special conservation value of the damaged area. For air, land and water pollution, separate methodologies are used with a coefficient of 10 due to the special conservation value of territories of nature protection fund. However, the size of this coefficient is not justified. Damage caused to a territory of the nature reserve fund, an Emerald Network site, a wetland of international importance, a habitat of species listed in the Red Book of Ukraine, or another territory with a special conservation status cannot be assessed solely by the area of damage or the cost of lost material resources, or using unjustified coefficients. The corresponding conservation value should be a separate criterion when determining the larger scale of damage and the necessary restoration measures. It is unacceptable to apply the same value indicators to especially valuable conservation areas or objects and to territories and natural components that do not have such status.

The Methodology provides a formula for calculating the total economic losses of an object belonging to nature conservation fund from the consequences of the armed aggression of the Russian Federation, which consists of the sum of the costs of restoring the natural state of the object of nature conservation fund and losses incurred by an object of nature conservation fund from the lack of receipt of revenues as a result of the armed aggression of the Russian Federation. However, the Methodology does not establish a clear methodology for choosing a restoration scenario. We consider it appropriate to provide for the justification of the restoration scenario and its cost based on the environmental restoration plan.

Similar proposals for changes are also relevant for other Methodologies, which should regulate the method of calculating the amount of damage and be part of the complete evidentiary cycle, rather than regulating the entire cycle and closing legislative gaps regarding the procedure for recording environmental damage and collecting evidence.

Proposals for amendments to the Resolution of the Cabinet of Ministers of Ukraine dated March 29, 2024 No. 365 "Issues of submitting claims for compensation for damage, losses or injuries caused by the aggression of the Russian Federation against Ukraine to the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, through the means of the Unified State Web Portal of Online Services".

On determining the body responsible for submitting claims to the Register.

This Resolution approved the Procedure for submitting claims by legal entities and the state of Ukraine for compensation for damage, losses or injuries caused by the aggression of the Russian Federation against Ukraine to the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, using the Unified State Web Portal of Online Services, which duplicates the rules of the Register for category B.3.1. However, it is not clearly defined which body or bodies can be Claimants for this category. Therefore, it is worth clarifying who will be the Claimant from the state of Ukraine in category B 3.1. Environmental damage. This, in turn, will allow such a body to prepare for exercising the new authority by the time the Register opens this category for submission of claims.

Proposals for funding damage documentation and assessment activities

A separate problem is the need to ensure financing for the measures necessary for proper documentation and assessment of environmental damage. A significant part of such measures requires expeditions, laboratory studies, remote monitoring, involvement of specialists and purchase of appropriate equipment, which creates a significant financial burden on organizations and territorial communities that carry out damage documentation.

In this regard, it is advisable to provide for a mechanism for pre-financing or grant support for activities to monitor, document and assess environmental damage, including those carried out by non-governmental environmental organizations. At the same time, justified and proportionate costs for such activities should be recognized as a component of the damage or costs associated with its identification and elimination, which can be claimed for compensation within the relevant category of the Register.

Proposals for the targeted use of compensated environmental damage

We also believe it is necessary to ensure the targeted use of funds received as a result of compensation for damage caused to the environment. Such funds should be directed to measures to restore damaged ecosystems, eliminate the consequences of pollution, restore biodiversity, conduct long-term environmental monitoring, and prevent further spread of damage.

It is advisable to create a mechanism for separate accounting of such funds, ensuring the publicity of information on their receipt and use, as well as monitoring the actual results of the implementation of restoration measures. Such an approach will ensure that the received compensation corresponds to its intended purpose and will contribute to the restoration of the environment of Ukraine, and not only financial compensation for the costs incurred by the state.

Conclusions

The analysis of international experience regarding compensation for environmental damage helps identify the key principles and institutional prerequisites for establishing an effective system for compensating environmental damage in Ukraine. International experience demonstrates that ensuring effective redress for environmental damage is a complex, multi-layered process. It requires a combination of international legal mechanisms, appropriate national regulatory frameworks, scientifically sound methodologies for assessing damage, robust evidentiary procedures, and the integration of long-term programs for the restoration of natural ecosystems.

Environmental losses cannot be reduced solely to the value of destroyed or polluted environmental components or the costs associated with remediation. They must also encompass long-term consequences, such as the degradation of natural ecosystems, loss of biodiversity, disruption of ecosystem services, deterioration in the quality of natural resources, and long-term risks to public health. Consequently, a compensation system must account for both the immediate impacts of environmental offenses and their delayed or enduring effects on the environment and society. International practice highlights the need to develop comprehensive methodologies for assessing environmental damage—methodologies that consider not only direct material losses but also the economic value of lost ecosystem services, the costs of restoring natural assets, the duration of their degradation, and the potential for natural recovery. The jurisprudence of the International Court of Justice (ICJ) in the case of **Costa Rica v. Nicaragua** is of particular significance regarding the feasibility of assigning a monetary value to environmental damage and accounting for the loss of ecosystem services. For Ukraine, this underscores the need to refine national methodologies for assessing damages inflicted upon land, water, and forest resources, the nature reserve fund, marine ecosystems, and other environmental components. Such methodologies must be scientifically sound, transparent, verifiable, and aligned with the requirements of relevant

international standards. Furthermore, the amount of compensation claimed must be supported by robust evidence and realistic calculations; this minimizes the risk that claims might be rejected due to a lack of sufficient substantiation.

A crucial prerequisite for successfully securing compensation for environmental damage is the establishment of a proper, systematic, and scientifically grounded evidentiary basis. The experience of the UN Compensation Commission and the practice of the International Court of Justice demonstrate that proving the occurrence of damage, its scale, the causal link, and the validity of the claimed compensation amount requires comprehensive and reliable data. In this context, it is of particular importance for Ukraine to conduct systematic environmental monitoring, document the pre-war state of the environment using available data, record changes resulting from military operations, apply geospatial technologies and remote sensing, and engage independent experts. Research into an international compensation mechanism for Ukraine suggests that establishing an appropriate international institutional framework is a crucial step toward ensuring the international legal responsibility of the aggressor state and restoring the violated rights of Ukraine, its citizens, and its legal entities. At the same time, it must be noted that establishment of a Register of Damage and operations of the International Compensation Commission do not automatically resolve all issues related to holding the aggressor state accountable. A key challenge remains securing adequate funding for compensation payments and defining the legal mechanisms for utilizing assets of the Russian Federation to redress the damage caused. Addressing this issue requires reconciling the international legal obligations of states, the principles of state immunity, property protection guarantees, and other norms of international law. Consequently, the establishment of a compensation fund must be accompanied by the development of a model for financing that is legally sound, politically agreed upon, and practically effective, ensuring the actual implementation of the Commission's decisions.

Furthermore, international experience indicates that the success of redressing environmental damage depends not so much on the mere establishment of a compensation mechanism, but rather on its capacity to ensure the legally sound establishment of liability, an accurate assessment of the scale of damage, timely and fair compensation, and actual restoration of the environment. Ukraine must take into account the procedural requirements of the international compensation mechanism, the relevance and admissibility of evidence, the rules for establishing a causal link, and the requirements for substantiating the quantum of damage. To achieve this, it is necessary to ensure coordination among state bodies, scientific institutions, law enforcement agencies, civil society organizations, and international partners, as well as to define the clear mandates of the entities responsible for collecting evidence and submitting claims for compensation.

At the same time, an analysis of the national regulatory and organizational framework for documenting environmental damage reveals significant issues that could complicate the preparation and submission of relevant claims. Specifically, the lack of a cohesive system for recording environmental damage, the fragmentation of evidence across various state agencies, a lack of consistency in approaches to damage assessment, and ambiguity regarding which entities are authorized to file claims on behalf of the state create risks such as a loss of evidence, duplication of information, and a lack of sufficient substantiation for compensation claims. Under these circumstances, even the existence of an internationally recognized mechanism does not guarantee that Ukraine's interests will be properly represented unless a systematic preparation of the evidentiary basis is ensured at the national level.

Given this, one of Ukraine's primary tasks should be the establishment of a unified system for documenting, recording, and assessing environmental damage caused by the war. Such a system must include standardized procedures for recording environmental offenses, uniform templates for official records and reports, consistent methodological approaches to calculating damages, and a

centralized repository of information that can be verified and used within international compensation proceedings.

Consequently, the findings of this study suggest that Ukraine already possesses significant international legal and institutional prerequisites for securing compensation for environmental damage caused by Russian aggression; however, the effective exercise of this right requires further systematic effort. Priority tasks include finalizing the establishment of the international compensation mechanism and ensuring its financial viability, creating a national system for the collection and processing of evidence, identifying authorized claimants, refining methodologies for assessing environmental damage, and strengthening interagency coordination. It is particularly important to ensure that Ukraine is prepared to submit well-substantiated claims under category B3.1, "Environmental Damage," in order to avoid wasting time and to guarantee the proper representation of state interests. Compensation should be viewed not merely as a means of financial reimbursement for damages already incurred, but also as a tool for ensuring environmental security, restoring natural systems, and preventing further adverse consequences.