

Compensation for moral and material damage caused by military actions

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Abstract. The study focused on evaluating the current legal mechanisms regulating compensation for war-inflicted damage, particularly within Ukraine. An analysis is conducted on national and international legal instruments addressing compensation for destroyed property, human rights violations, and environmental damage, alongside proposed improvements to these mechanisms. The purpose of the study was to examine the effectiveness of existing approaches and develop recommendations for their enhancement in the context of modern challenges. The findings indicated that national compensation mechanisms face limitations, especially for individuals whose property is located in temporarily occupied territories. Existing legislation allows for the submission of information regarding damaged or destroyed property but does not provide a sufficiently transparent or effective mechanism for obtaining compensation. It is also noted that individuals residing in territories under Ukrainian control have better access to compensation mechanisms; however, challenges remain due to the lack of a unified approach to damage assessment. Recommendations included the introduction of a unified damage recording mechanism, the establishment of a state fund for preliminary payments, and the adoption of international practices in collective lawsuits, particularly as implemented in the US and EU. In addition, the importance of better integration of international standards of reparation into the Ukrainian legal system was emphasised, in particular in the areas of compensation for environmental damage and human rights violations. The results highlighted the need to improve legislation to ensure fair and effective reparations for war victims, as well as the role of international law in this process

Keywords: compensation mechanisms; transparency of legal processes; damage assessment; collective lawsuits; aggressor accountability

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Introduction

The war in Ukraine, which was unleashed by Russia in 2014 and escalated into a full-scale invasion in 2022, has caused widespread destruction of residential and critical infrastructure, and numerous human casualties among the civilian population. The Russian armed forces continue to carry out indiscriminate attacks on civilian objects, including residential buildings, hospitals, schools, and other critical infrastructure, jeopardising the lives and well-being of millions of citizens. According to official data from the United Nations (UN), by mid-2024, over 33,000 civilian casualties have been recorded, including the dead and the injured (Human Rights Watch, 2024). According to the analytical team of the Kyiv School of Economics (2024a), compiled within the framework of the “Russia Will Pay” project, the damages caused by the war to Ukrainian infrastructure reached nearly USD 160 billion as of January 2024, including the damages caused by the destruction of the Kakhovka Hydroelectric Power Station in June 2023. The Kyiv School of Economics indicates that approximately 250,000 residential buildings, 212,000 light vehicles, and 16,000 units of municipal transport were damaged or completely destroyed. Nearly 4,000 educational institutions, 1,300 healthcare facilities, and 430 private and state enterprises were affected. Around USD 60 billion in damage was inflicted on Ukraine’s environment, including harm from shelling, contamination of territories, and the destruction of ecosystems. Thus, it becomes clear why the issue of compensation for damages caused to civilians as a result of military actions has become particularly urgent (Biliaiev *et al.*, 2023).

The constant destruction of infrastructure and significant economic losses make compensation for damages essential for justice and the country’s recovery. Current Ukrainian legislation contains mechanisms for compensating damages, but their implementation faces difficulties. These difficulties are described in the study by N. Mamchenko (2023), who analysed the problems of contemporary Ukrainian legislation regarding compensation mechanisms for destroyed property as a result of the Russian aggression. M. Padalka (2022) discusses the problems of protecting the civilian population in Ukraine. Most of these arise due to systematic violations of international humanitarian law by Russia, especially due to ignoring rules for the protection of civilians during wartime. The author asserts that one of the main problems is insufficiently effective international mechanisms that should punish war crimes. It is also worth mentioning the paper by B. Karnaukh (2022), which analyses the decision of the Supreme Court of Ukraine regarding the possibility for the Russian Federation to invoke state immunity in civil lawsuits filed by the victims of the war between Russia and Ukraine, and focuses on how this could affect future claims for compensation for war-related damages.

V.V. Vapniarchuk *et al.* (2019) explored how to protect property rights in court, particularly when it comes to compensation for damaged or destroyed property due to military actions. In the paper by K. Klyuchka and E. Karmannyi (2017), issues related to compensation for damages caused to civilians during military actions in eastern Ukraine are highlighted, such as the lack of effective compensation mechanisms, the emergence of legal difficulties in determining the responsible party for the damages (particularly due to the difficulty in proving the involvement of specific military formations in the destruction of civilian infrastructure),

the country’s limited resources for compensation payments, and the fact that Ukrainian legislation is not fully adapted to the conditions of martial law, particularly regarding compensation for civilian damages. This creates legal gaps that complicate the process of obtaining compensation. O. Zaitsev *et al.* (2023) analyse the legal mechanisms and approaches to compensating for non-material damage, focusing on international experience and Ukrainian practice, also addressing specific problems that arise in defining and calculating non-material damage, as well as the challenges of its compensation in the case of military actions.

These studies show that the main aspects related to compensation for damages caused by military actions have been examined. However, the authors of these papers do not propose a comprehensive approach to the issue of compensation, which would include both material and non-material damage, considering how these mechanisms work in practice during war. Furthermore, the mentioned studies lack a detailed analysis of the cooperation between international and national compensation mechanisms and examples of the practical application of existing tort law norms.

The purpose of the study is to analyse the legal mechanisms for compensating damage caused by war, with a focus on Ukraine’s experience during active warfare. The main tasks include analysing current Ukrainian legislation and exploring the potential use of international experience to ensure reliable protection for war victims.

Materials and methods

The study aimed to explore the legal aspects of compensation for damages caused by gross human rights violations during armed conflicts. This study was based on the analysis of the Ukrainian legal framework, the Constitution of Ukraine (1996), the Civil Code of Ukraine (2003), Ukrainian laws and Cabinet of Ministers resolutions, as well as international legal acts such as the Geneva Conventions for the Protection of War Victims (1949), the European Convention on Human Rights (1950), the statutes of international tribunals like the Rome Statute of the International Criminal Court (2010), etc. The primary materials for this study include Ukrainian legal regulations alongside international legal instruments governing state responsibility for human rights violations. Specifically, these include UN documents, resolutions, and reports from international organisations such as Human Rights Watch (2024) and the Kyiv School of Economics (2024b), which offered a clear depiction of the material losses sustained by Ukraine between February 2022 and January 2024, underscoring the need for further analysis and enhancement of Ukraine’s legislative framework regarding the implementation of compensation mechanisms for war-related damages. The decisions of international courts regarding compensation for damages are analysed separately, including those of the European Court of Human Rights related to conflicts in Bosnia, Kosovo, Iraq, Croatia, the former Yugoslavia, and other conflict zones. In particular, special attention is given to cases that addressed the issue of collective responsibility and the possibility for states to provide compensation to the victims.

The analysis is conducted based on legal doctrines regulating state responsibility for serious human rights violations. The research methodology involved analysing existing legal norms and principles regarding compensation for

damages. For each of the international documents, their practical applicability in real conflicts is examined, including the legal mechanisms that could be used to protect the rights of victims. The study employed a comparative methodology to explore various approaches to compensation for damages across different legal systems. This included comparing international standards, particularly the recommendations of the UN and the European Court of Human Rights, with national compensation mechanisms. The adaptation of these standards by the US and European countries (Bosnia and Herzegovina, Croatia) is considered, especially in the context of recent armed conflicts in Ukraine, Iraq, and Syria.

The study included an examination of international decisions regarding reparations mechanisms for victims of armed conflicts. The key international examples referenced in the analysis include: decisions of the European Court of Human Rights concerning conflicts in Bosnia, Kosovo, Iraq, Croatia, and the former Yugoslavia; reparations mechanisms in Croatia (after the 1991-1995 war, Croatia introduced legislative measures to compensate for destroyed housing and property, but the prolonged court process highlighted the importance of automated payment systems, which could also be applied in Ukraine). Examples of funds for compensating damages caused by armed conflict, financed by international organisations (UN, EU, International Criminal Court), are also examined. A comparison is made between international practices regarding reparations and national mechanisms implemented in specific countries, particularly Ukraine, Bosnia and Herzegovina, where international decisions had been applied. Legal documents and reports from international organisations are analysed to assess the effectiveness of existing compensation mechanisms. The study focused on how international reparations standards could be adapted to contemporary armed conflicts, using the example of the war in Ukraine (since 2014), and what gaps exist in their implementation. Gaps in the current (2022-2024) Ukrainian legislation are also identified, followed by proposals for mechanisms to overcome these shortcomings and corresponding recommendations.

Results

In the context of war, the concept of damage encompasses a wide range of material, physical, and moral losses inflicted on civilians and infrastructure. According to Ukrainian civil law, damage can be classified as “property” and “non-property” (Hudii, 2023). “Property damage” includes direct losses caused to the property of individuals and legal entities, such as the destruction of buildings, enterprises, and damage to infrastructure (e.g., electricity networks). Documentary evidence of the damage is crucial in these cases to obtain compensation provided by national legislation and international norms. For example, the Geneva Conventions (1949) and their additional protocols establish international standards for the protection of civilians during armed conflicts, which serve as the basis for establishing the right to compensation (Best *et al.*, 2023). “Non-property damage” covers violations of rights such as the right to life, physical integrity, and mental health. Compensation for such damage is provided not only by Ukrainian law but also by international legal acts, including the European Convention on Human Rights (1950). The Constitution of Ukraine (1996) also protects the right of every citizen to life and health (Articles 3 and 27), providing grounds for legal action to seek compensation for damages caused by military actions. Notably, due to numerous violations of civil rights during the war, Ukrainian courts often invoke the immunity of the aggressor state when making decisions on compensation for victims. Furthermore, in many cases, the creation of special funds for payments with the support of international partners is planned (Maurer *et al.*, 2023).

Thus, in the context of war, damage in civil law encompasses both property and non-property losses, for which compensation mechanisms exist under both national and international laws. War damage has several distinct characteristics compared to other types of damage, such as domestic, technogenic, or environmental. Table 1 presents the main differences and features of war damage in comparison to other types of damage in civil law.

Table 1. Key differences and features of war damage in comparison to other types of damage in civil law

Criterion	War damage	Other types of damage (domestic, technogenic, environmental)
Source of damage	Military actions: use of weapons, bombings, artillery strikes, mines, etc.	Technogenic disasters, environmental disasters, natural disasters, domestic incidents
Scale of destruction	Can be both mass and individual destruction and losses. Widespread large-scale destruction of infrastructure, buildings, enterprises, often of national importance	Usually limited scale (individual buildings, enterprises), but large-scale destruction can also occur (e.g., in cases of accidents at the Chernobyl Nuclear Power Plant)
Type of victims	Individual and mass casualties among the civilian population, violations of human rights (right to life, health, etc.)	Can be both mass and individual victims
Legal regulation	International humanitarian law, in particular, the Geneva Conventions, and national legislation (Constitution, Civil Code of Ukraine, etc.), including war crimes law	National regulations (in particular, the Civil Code of Ukraine), also provisions of international law may be applied
Compensation for damages	Difficulty in determining defendants and compensation mechanisms; possibility of creating special funds, international reparations. Both national and international regulations are used	Standard compensation procedures according to civil and administrative law. Usually operates through national norms, but international compensation may be applied (e.g., in cases of technogenic disasters)
Types of losses	Property, moral, and physical damage inflicted on both individuals and society in general	Property, moral, and physical damage, depending on the scale and causes

Table 1, Continued

Criterion	War damage	Other types of damage (domestic, technogenic, environmental)
Difficulties of proof	Considerable difficulties due to the chaotic nature and scale of events; the need for documenting violations during active military operations, instability of the war situation, difficulty in collecting evidence	Relatively easier to prove in stable conditions (except for large accidents)

Source: compiled by the authors based on J. Gledhill (2022)

War damage has its own characteristics, as it arises as a result of military operations and is often accompanied by widespread violations of human rights and international humanitarian law, such as indiscriminate attacks on civilian objects (Solis, 2021). Unlike other types of damage, war damage can cover significant territories, including the destruction of infrastructure, residential buildings, and industrial facilities. Such actions have a profound impact on the country's economy and its population. War damage is regulated not only by national legislation but also by international treaties, such as the Geneva Conventions for the Protection of War Victims (1949). This creates difficulties in establishing responsibility and compensation mechanisms.

An overview of Ukrainian legislation concerning compensation for damages caused by war is particularly important in the context of the conflict with Russia. Due to the military actions, Ukrainians face substantial material and moral losses that require legal regulation. Ukrainian laws provide mechanisms for the protection of the rights of victims and compensation for damages, which are based on both national and international legal acts.

Key laws relating to compensation for war damage include the Constitution of Ukraine (1996), which protects the right to life and property. In particular, Articles 3 and 27 guarantee everyone the right to protect their life and property, which provides grounds for compensation for damages caused by war. The Civil Code of Ukraine (2003) defines mechanisms for the compensation of property and non-property damage. Articles 1166 and 1167 regulate compensation for property and moral damages, while Articles 1173-1175 require the state to compensate for damages caused by its bodies, including during wartime. The Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" (2015) establishes rules for actions during martial law, the protection of civilians and property, and also provides for compensation mechanisms for damages caused by war. It is worth mentioning the Resolution of the Cabinet of Ministers of Ukraine No. 947 "On Approval of the Procedure for Providing and Determining the Amount of Financial Assistance to Victims of Emergency Situations and the Amount of Financial Compensation to Victims Whose Residential Houses (Apartments) were Destroyed as a Result of a Military Emergency Caused by the Armed Aggression of the Russian Federation" (2013), which provides financial assistance to victims of military emergencies, including for destroyed housing. However, it does not cover internally displaced persons (IDPs) and only applies to those remaining in areas controlled by Ukraine.

In 2017, the State Programme for the Reconstruction of Eastern Ukraine was approved, which included the construction of housing for IDPs, but only for 240 houses (Resolution of the..., 2017). In 2020, a new procedure for compensation

payments was adopted, but due to the pandemic, the budget was reduced to UAH 40 million, which complicated the payments (Resolution of the..., 2020). Resolution of the Cabinet of Ministers of Ukraine 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" (2022) established the procedure for assessing the damage to the housing stock, and in 2023, the Law of Ukraine No. 2923-IX (2023) was adopted. However, this excludes compensation for damage prior to this date, which creates inequality for those affected earlier. Resolution of the Cabinet of Ministers of Ukraine No. 380 (2022) defines the procedure for submitting reports about destroyed or damaged property, including damages before 2022, but this only relates to the submission of information, not the receipt of compensation.

To this list of national laws, the Law of Ukraine No. 638-IV "On Combating Terrorism" (2003) can be added, which provides for compensation for damages to those affected by terrorist acts, which may sometimes be linked to war. The Law of Ukraine No. 1706-VII "On Ensuring the Rights and Freedoms of Internally Displaced Persons" (2015) protects the rights of IDPs, including compensation for lost housing or property due to hostilities or occupation. There are also other laws and resolutions that regulate damage compensation for various groups of victims. For example, the Law of Ukraine No. 1023-XII "On Protection of Consumer Rights" (1991) covers cases where damage is caused by the destruction of goods or services during the war. The Law of Ukraine No. 1192-XIV "On Humanitarian Aid" (1999) regulates the provision and distribution of humanitarian aid among the affected. There are also laws related to the Deposit Guarantee Fund for individuals, which guarantees compensation in case of loss of deposits due to the conflict. The Law of Ukraine No. 1207-VII "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (2014) protects the rights of citizens in occupied territories, including compensation for damage to property and life. The Law of Ukraine No. 2011-XII "On Social and Legal Protection of Servicemen and Members of Their Families" (1991) provides for compensation for military personnel who were injured or killed as a result of military actions.

International humanitarian law, including the Geneva Conventions for the Protection of War Victims (1949) and its protocols, is an integral part of Ukrainian legislation and safeguards the rights of civilians during wartime. These documents provide grounds for compensation for damages both at the national and international levels. In addition to the Geneva Conventions, Ukraine is subject to other international agreements governing the protection of civilians and the payment of reparations. The European Court of Human

Rights plays a crucial role in protecting the rights of Ukrainians. The International Covenant on Civil and Political Rights (1966), ratified by Ukraine, protects the right to life and security during wartime, and the UN Human Rights Committee considers complaints about violations, including property-related issues. In the context of war, violations of the right to life (Article 2 of the European Convention on Human Rights (1950)) may serve as grounds for legal claims in cases of war crimes or attacks on civilian objects. Ukraine is also a party to the International Covenant on Economic, Social and Cultural Rights (1966), which guarantees the right to an adequate standard of living (food, clothing, housing) and establishes rules for compensation for destroyed housing or violations of these rights caused by war. Furthermore, Ukraine has signed the Rome Statute of the International Criminal Court (2010) (ratified in August 2024), enabling investigations into war crimes, including property destruction and violence against civilians.

It is also important to mention the Convention Relating to the Status of Refugees (1951), which protects individuals forced to leave Ukraine due to the war, granting them international protection and assistance. The Convention on the Rights of the Child (1989) protects children affected by war, ensuring their right to special protection and compensation for losses related to housing or health. The International Convention for the Protection of All Persons from Enforced Disappearance (2010) provides that victims of enforced disappearances or their relatives are entitled to compensation. The Convention on the Rights of Persons with Disabilities (2006) stipulates compensation for the loss of health or property

during wartime. In addition, international documents such as the Guiding Principles on Internal Displacement (1998) ensure the protection of the rights of those forced to leave their homes due to war, including the right to compensation for lost housing. International law significantly influences Ukrainian legislation, integrating international standards and norms regarding reparations for war-induced damages.

Numerous sources document the extent of war-related damage in Ukraine. For instance, according to a report by Human Rights Watch (2024), more than 9,600 civilians were killed and 17,500 injured between 2022 and 2023, with millions forced to relocate or leave the country entirely. The destruction of the Kakhovka Hydroelectric Power Plant in the Kherson region resulted in numerous human and animal deaths, significant property losses, and environmental damage. Grain storage facilities and critical ports were shelled, leading to adverse consequences for Ukrainians and people worldwide. Due to extensive landmines, agricultural lands were lost, rendering farming activities impossible. Both cultural heritage sites and technical equipment were destroyed, damaged, looted, or stolen. Beyond material losses, the Ukrainian people have faced torture, forced displacement, sexual violence, killings, persecution, inhumane treatment, and other crimes.

It is also pertinent to reference the Report on Direct Damage to Infrastructure from Destruction Caused by Russia's Military Aggression Against Ukraine as of Early 2024 (Kyiv School of..., 2024b), which provides a financial assessment of the damage sustained by Ukraine during the years 2022-2024 of the war (Fig. 1).

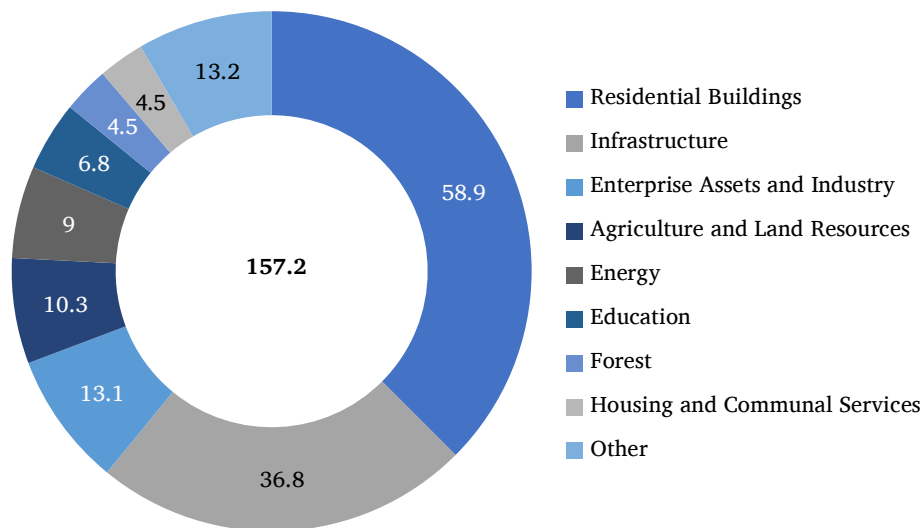


Figure 1. Direct damages from destruction and damage by sectors, USD billion

Source: Kyiv School of Economics (2024b)

The war in Ukraine, initiated by Russia, has caused enormous damage to the civilian population and the country's economy. In particular, the destruction of residential buildings, infrastructure, businesses, and the loss of life and health of millions of people, necessitates legal regulation for compensation. Compensation for harm caused by hostilities is regulated both by Ukrainian law and international agreements, which help to protect those affected.

Ukrainian legislation provides several avenues for compensation, including provisions in the Constitution, the Civil

Code, specific laws such as those on martial law and internally displaced persons, and dedicated funds. Simultaneously, international law plays a noteworthy role, including the Geneva Conventions for the Protection of War Victims (1949), the European Convention on Human Rights (1950), and other international agreements. The right to compensation is available to civilians, businesses, institutions, and military personnel, including members of Ukraine's Defence Forces. According to national and international legislation, civilians affected by the war have the right to compensation.

This right is enshrined in the Constitution of Ukraine (1996) (Article 27 – the right to life) and the Civil Code of Ukraine (2003) (Article 1166 – compensation for material damage; Article 1167 – compensation for moral damage). International law also protects civilians through the Geneva Conventions (1949) and the European Convention on Human Rights (1950), enabling individuals to appeal to the European Court of Human Rights in cases of rights violations.

Legal entities, such as businesses and institutions, also have the right to compensation for damages caused by the war. According to the Civil Code of Ukraine (2003) (Articles 1173-1175), the state is liable for harm caused by its organs, including during military actions. Businesses can claim compensation for destroyed property, losses due to halted operations, or damage to infrastructure. From 24 September 2024, a government resolution introduced a new scale for compensation expenses for military casualties or injuries, setting amounts at 750 subsistence minimums for fatalities and between 400 and 250 subsistence minimums depending on the degree of disability incurred (Convention Relating to..., 1951). Meanwhile, legislation is continually updated to simplify procedures and regulate the compensation amounts for deceased Armed Forces personnel for their families (Resolution of the..., 2022; Resolution of the..., 2024).

There is a certain legally defined procedure regarding who can be held responsible for compensating damages. Under international law, an aggressor state conducting military actions on the territory of another state may be required to compensate those affected (Chapman & Ahmed, 2021). In the case of Ukraine, Russia, as the aggressor state, may be obliged to pay reparations or compensation for the damage caused. This could be achieved through international legal proceedings or reparations agreements after the cessation of hostilities. In addition, the Ukrainian state is actively developing mechanisms to compensate its citizens for damages. For instance, there are special funds for reimbursing losses caused by military actions. These funds may be replenished through contributions from international partners or state resources, and subsequently through reparations from Russia. This model is used to compensate for destroyed housing and other infrastructure. Some international organisations, such as the UN or the EU, may provide assistance through grants, humanitarian aid, or other forms of funding to cover damages. This may include both humanitarian aid for displaced persons and funds for infrastructure restoration.

It is important to distinguish between different types of damage. Material damage includes the destruction or damage of residential buildings, infrastructure, communications, industrial facilities, and so on. The Civil Code of Ukraine (2003) (Article 1166) guarantees compensation for property losses caused by unlawful actions, including military actions. A crucial condition is the documentary evidence of damage, which is often challenging to obtain due to ongoing hostilities. Moral damage includes suffering, the loss of loved ones, and psychological trauma caused by the war. Article 1167 provides for compensation for moral damage, which is vital for affected individuals who have lost relatives or suffered severe psychological trauma due to military actions. Physical damage includes injuries, wounds, or disabilities resulting from hostilities. This type of damage is subject to compensation under special laws that regulate the protection of the rights of affected persons. For example,

legislation provides for social payments to military personnel and civilians who were injured or disabled during the war.

Compensation for war-related damages is an important right for citizens and businesses in Ukraine, yet its implementation faces several challenges. Due to Russia's aggression and ongoing hostilities, there are legal and practical difficulties that affect the effectiveness of compensation processes. One of the main issues is the recording and proving of damages (Ferstman & Rosenberg, 2020). Hostilities often prevent victims from promptly documenting destruction or other losses, complicating legal proceedings. The destruction of documents due to bombings or forced migration makes evidence collection even more difficult. Furthermore, instability in conflict areas does not always allow authorities responsible for documenting damages to operate effectively (Kulyk, 2022). The lack of official records or expert evaluations reduces the chances of obtaining compensation through the courts.

Another issue lies in the fact that Ukraine currently lacks an operational mechanism to obtain reparations from Russia as the aggressor state. At the international level, there are no effective mechanisms for the enforcement of reparations from an aggressor state, and this process can take years (Maurer *et al.*, 2023). For instance, after the war in Bosnia, which lasted from 1992 to 1995, victims of war crimes, including those subjected to sexual violence, waited a long time for reparations. Some received compensation only more than 20 years after the end of the war. This was due to protracted legal proceedings, financial constraints, and the complexity of proving violations (Ferstman & Rosenberg, 2020). A further example is Kuwait. Following Iraq's invasion of Kuwait, the UN established the Compensation Commission to reimburse Kuwait for its damages. However, the reparations process was prolonged: final payments were only completed in 2022, more than 30 years after the conflict. During this period, Iraq paid Kuwait approximately USD 52 billion, but the payments were slow due to economic and political challenges (Lerner & Heinrichs, 2024). Most victims are likely to receive compensation only after the war ends and international decisions are made, leaving many feeling a sense of injustice. Although Ukraine plans to create funds for such payments, these funds are insufficient to cover all needs. The experience of other countries, such as Bosnia and Herzegovina, demonstrates that the compensation process can be very complex and heavily dependent on decisions by international courts, such as the International Court of Justice.

Ukraine, currently at war, faces severe financial difficulties. State resources are focused on defence and meeting the basic needs of the population, which limits the ability to provide compensation for damages through state funds. Many victims are unable to receive full compensation, even if their rights are recognised. Olha Stupak, a judge of the Supreme Court of Ukraine, noted that without the support of international partners, Ukraine cannot independently ensure all compensation payments (Olga Stupak spoke..., 2021).

Another legal obstacle is the issue of Russia's jurisdictional immunity, which means Ukrainian courts cannot hold the aggressor state accountable for damages. While Ukrainian courts attempt to find ways to circumvent this issue, including through international litigation, this remains a challenge, as the decisions of national courts have limited authority on the international stage.

Ukraine is also dealing with a large number of IDPs who were forced to leave their homes due to hostilities. Compensation for lost property or housing for these individuals is problematic due to legal and procedural difficulties. The lack of clear procedures and delays in bureaucratic processes hinder the timely receipt of payments. Furthermore, the insufficient funding of state programmes for IDPs complicates the realisation of the right to compensation. As a result, many IDPs remain without housing and are unable to receive compensation for their lost property. This contributes to social inequality and deepens the crisis faced by displaced persons, who are unable to restore their standard of living (Stefanyshyn, 2024).

Despite the existence of various laws, such as the Constitution of Ukraine (1996), the Civil Code of Ukraine (2003), and special acts, the absence of a unified coordinating body or a single legislative mechanism for compensating damages during wartime complicates the process. Each victim is forced to resolve compensation issues independently, leading to inequality in access to justice and financial resources. The lack of a standardised procedure or centralised body to oversee the compensation process creates chaos within the system.

Notably, the Civil Code of Ukraine (2003) provides for the compensation of moral damages; however, there are no clear procedures or criteria for assessing and compensating such damages in wartime. This creates gaps in safeguarding the rights of affected individuals who have lost loved ones, sustained injuries, or suffered psychological trauma. The absence of detailed regulations regarding the compensation of moral damages complicates their receipt, as each case is considered individually and depends on the subjective assessment of the courts. This results in unequal approaches to compensation payments and can lead to situations where victims receive either insufficient compensation or none at all.

For example, following the war of 1992-1995, Bosnia and Herzegovina faced prolonged challenges in compensating affected individuals. One of the key challenges was providing compensation to victims of war crimes, including sexual violence (Begicevic, 2024). Many women who were victims of rape during the war waited years for justice. In 2016, amendments to the law allowed victims to receive free legal assistance to file claims for compensation (Compensation to war..., 2021). However, this process is extremely slow and depends on the ability of the judicial system and state authorities to effectively implement decisions. For instance, one victim was able to obtain compensation only 20 years after the crime was committed.

In the context of the Iraq war, the approach to compensation included *ex gratia* payments by the American military (van de Put, 2023). These payments were provided to civilians affected by the actions of the US armed forces. The main categories of payments were “condolence payments” for civilian deaths or injuries and “battle damage payments” for material damages caused by military actions. However, these payments were limited and did not cover all damages. Most victims did not receive compensation, particularly in regions where American forces did not conduct ground operations, which drew criticism for the perceived unfairness of these payments (McKenzie, 2020).

Following the war of 1991-1995 in Croatia, the issue of compensating damages also arose. Most destroyed homes and businesses belonged to private individuals who demanded compensation. In 2003, the Law of the Republic of

Croatia No. 117/03 (2003) was adopted, allowing victims to file claims against the state for compensation of damages. Nevertheless, as in Bosnia, the process of obtaining compensation was lengthy and complicated. Moreover, the legal framework did not always account for all types of damages, including moral damages, which resulted in uneven compensation for different groups of victims.

Thus, these countries have demonstrated different approaches to compensating war damages, yet all face similar challenges – prolonged judicial processes, limited resources, and difficulties in implementing compensation decisions. In the context of war, Ukraine faces numerous challenges regarding the compensation for damages inflicted on civilians and businesses. There is a need to improve national legislation and practices concerning the reparation of damages, and international experience can serve as a valuable source for this. Below, specific examples that could be adapted in Ukraine are examined.

Implementation of a unified compensation mechanism (the experience of Bosnia and Herzegovina). In Bosnia and Herzegovina, which endured a conflict in the 1990s, victims receive assistance through specific laws providing for compensation for moral and physical damages (Greenstein, 2023). An important component of this mechanism is the provision of free legal assistance to victims. An amendment to the law on free legal aid, adopted in 2016, ensures access for victims to legal consultations and support in obtaining compensation. This reduces barriers to justice for affected individuals. Ukraine could adapt this approach by creating special state programmes to provide free legal aid, which would facilitate the filing of claims and improve the effectiveness of protecting victims’ rights.

Ex gratia payment programmes (the experience of Iraq). In the years following the Iraq conflict, the US government introduced an *ex gratia* payment programme aimed at compensating damages to civilians. These payments were divided into three main categories: for death, material damages, and the loss of individuals who supported coalition forces. While this programme had shortcomings, its experience could be adapted for Ukraine to provide quick compensation to those affected by military actions without the need for lengthy judicial proceedings. Ukraine could implement a similar national-level programme to enable prompt compensation payments to victims for destroyed property and the loss of loved ones.

Reparative mechanisms (the experience of Croatia). After the 1991-1995 war, Croatia adopted a series of laws that allowed victims to file claims against the state for damage compensation. The legislation provided for compensation for destroyed housing and property, although these processes were often protracted and required lengthy judicial proceedings. One possible solution to improve the Ukrainian system would be the establishment of special reparation funds, which could cover part of the damages even before court proceedings conclude. For Ukraine, automation of payment processes through state funds could serve as a useful model, helping to avoid delays and ensuring equitable access to compensation.

Infrastructure reconstruction programmes (experience of Afghanistan and Iraq). During post-conflict reconstruction in Afghanistan and Iraq, the Commander’s Emergency Response Program was implemented, providing for the rapid allocation of funds to restore vital infrastructure destroyed

during hostilities (Silverman, 2020; Lawson & Morgenstern, 2020). This programme enabled the swift restoration of schools, hospitals, and other facilities, contributing to the stabilisation of regions. For Ukraine, such an approach could be applied to expedite the repair of damaged facilities, ensuring the basic needs of the population in critical social sectors. The establishment of a similar programme for the reconstruction of destroyed infrastructure could attract international investments and reduce the burden on the national budget.

Introduction of international justice standards (experience of international tribunals). Ukraine could also draw on the international experience of tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY), which addressed cases of war crimes (Stahn *et al.*, 2020). Judicial decisions made by international tribunals could be utilised to improve Ukraine's national legislation and ensure fair justice for victims. Moreover, international standards for victim protection used in such tribunals could be implemented at the national level to ensure all victims have access to justice. For instance, international justice standards introduced in the ICTY can be applied nationally to uphold fairness in the context of victim and witness protection. The ICTY established a comprehensive system for protecting witnesses and victims, particularly in cases involving sexual violence during the war. Witnesses were allowed to testify anonymously, and the tribunal provided psychological support to victims. This enabled many victims to participate in judicial processes and secure justice without fear of reprisals. Furthermore, the ICTY determined that war crimes could be prosecuted on an individual basis, regardless of rank, enabling accountability not only for direct perpetrators but also for commanders and political leaders. This created a legal precedent that Ukraine could adopt to hold individuals accountable at all levels of command. The ICTY also introduced procedures that allowed victims of war crimes to claim compensation, even within the framework of criminal proceedings. Ukraine could apply this experience to introduce mechanisms enabling victims to seek compensation through national courts without enduring lengthy civil procedures.

A centralised system for recording and documenting damages has already been established. The assessment of direct physical damage within the framework of the National Recovery Council of Ukraine is conducted by an analytical team from the Kyiv School of Economics in collaboration with several ministries: the Ministry for Communities and Territories Development, the Ministry of Infrastructure, the Ministry of Health, under the coordination of the Ministry of Reintegration of Temporarily Occupied Territories, with the involvement of the National Bank and other relevant institutions (Draft Recovery Plan..., 2022). The working group "Audit of War Damage" regularly publishes reports for public access. This group is tasked with creating a foundation to ensure fair compensation for affected individuals, providing a clear mechanism for documenting destruction and losses, and enabling the government and international partners to better monitor the utilisation of resources for reparations. Nevertheless, the application is rather complex and not always comprehensible to ordinary citizens. It also fails to account for moral damages and losses to property located in occupied territories, which represents a significant drawback and requires substantial revision.

It would also be appropriate to introduce a mechanism for preliminary payments (advances). For the prompt

support of affected persons, particularly IDPs, a system of preliminary payments should be implemented. This would provide temporary financial assistance while the primary compensation application is under consideration. For example, such payments could cover urgent expenses for housing or medical treatment. The mechanism could be based on the experience of *ex gratia* payments used in other countries. In addition, it is necessary to reform the compensation system for IDPs to make it more transparent and accessible. This could include simplifying the application procedures, introducing digital platforms to track the status of claims, and expanding opportunities to obtain temporary housing or other forms of assistance.

Another important area could involve drafting legislation on class action lawsuits (Fowler, 2023). Ukraine should develop laws that allow for the filing of class action lawsuits by groups of affected individuals. This would enable a large number of citizens to approach the court collectively, thereby reducing the financial burden on each individual and expediting the compensation process. Such an approach is used in the United States and other countries to address complex cases involving large groups of victims.

The war causes severe damage not only to human lives and infrastructure but also to Ukraine's natural environment, as noted by numerous researchers, economists, ecologists, and medical professionals (Pereira *et al.*, 2022; Rawtani *et al.*, 2022; Saxena, 2024). Hostilities can lead to soil, water, and air pollution, as well as the destruction of ecosystems. For instance, explosions, the use of chemical weapons, or fuel significantly increase harmful emissions into the atmosphere, contributing to climate change (Zibtsev *et al.*, 2024). Such actions affect the health of people living in conflict zones, disrupt their access to clean water and resources, and may result in long-term changes to ecosystems. This creates grounds for filing claims for damages not only on behalf of the state but also by private individuals directly affected by these environmental catastrophes (Hartmane *et al.*, 2024).

Collaboration with international courts and tribunals and the involvement of international experts in legislative development should not be overlooked. Ukraine must engage more actively with the International Criminal Court and other tribunals to hold the aggressor state accountable. This also entails establishing national legal mechanisms to simplify the process of filing claims with international courts and providing legal assistance to affected individuals for submitting such claims. Ukraine can also benefit from the support of international experts in developing new legislative initiatives. This may involve inviting specialists from countries with experience in post-conflict reparations (e.g., Bosnia and Herzegovina, Croatia, Iraq) to create effective legal mechanisms in Ukraine. Moreover, attention should be given to precedents for aligning Ukraine's legal framework with EU standards, which are necessary for the country's full integration into the global legal space. As a precedent, Serbia's example, as described and analysed in the paper by M. Kostić and S. Orlović (2020), could be utilised.

It is also important to note that consideration must be given not only to the damage that is evident and documented during the period of active hostilities. Ukraine's climate and other natural conditions (e.g., changes to landscapes, flora, and fauna due to the destruction of the Kakhovka Dam) are significantly altered due to the war and the material damage caused. These changes may have far-reaching

and long-lasting negative consequences in all spheres of the country's existence, particularly for its citizens, including mental and physical losses. The study by E. Calliari *et al.* (2020) emphasised the challenges of defining what constitutes loss and damage in such cases. It also explored why the political and economic interests of countries may hinder consensus on compensation mechanisms and what solutions could be proposed to address this issue. These aspects must also be considered.

The application of international experience, the development of new compensation mechanisms, and the engagement of international assistance could significantly enhance the efficiency of Ukraine's compensation system. This would not only facilitate a more rapid response to the needs of those affected but also ensure fair compensation for all categories of citizens impacted by the war.

Discussion

This study repeatedly discussed the issue of compensation for non-material damage, particularly the psychological trauma inflicted by war. One of the primary issues here is that Ukrainian legislation is more focused on material compensation, such as for destroyed property, and is much less equipped to address the psychological consequences of war. Non-material damage, including psychological trauma, may encompass post-traumatic stress disorder, depression, anxiety disorders, and other serious mental health consequences experienced by war victims. International standards for compensating non-material damage, particularly the provisions of the European Convention on Human Rights (1950), require states to ensure full compensation, including for moral damage (Spytska, 2024). However, in practice, compensation mechanisms are often limited and fail to encompass all victims.

This study highlights that, although legislation includes mechanisms for compensation for moral damages, the process of filing claims and receiving redress remains complex and insufficiently transparent. The study specifically examines international experience in compensating non-material damages, particularly through collective lawsuits. Such an approach could also be applied in Ukraine to assist individuals suffering from mental disorders as a result of the war. Collective lawsuits enable a large number of victims to submit joint claims, reducing financial costs and expediting the compensation process. In the United States and the European Union, collective lawsuits are frequently used to claim compensation for moral damages in cases of mass human rights violations (Baturin & Moroz, 2024).

Thus, to improve compensation for non-material damage in Ukraine, it is necessary to enhance legal mechanisms and adopt international experience, particularly concerning compensation for psychological trauma. This conclusion is supported by the findings of S. Solomon and Y. Bayer (2023), who investigated how military actions affect the mental health of civilian populations and why it is crucial to differentiate psychological damage based on socio-economic factors. The paper emphasised the importance of legal regulation and compensation for psychological trauma caused by war, considering diverse conditions and inequalities among the population. The primary focus is on how the legal system can provide fair compensation to various groups of victims, considering socio-economic factors that influence their vulnerability to trauma. Currently, Ukraine lacks effective

mechanisms for assessing the severity of psychological injuries and determining appropriate compensation.

The study also addressed the issue of shared responsibility, where multiple states or other international actors may be held accountable for damage caused by joint actions or omissions. This approach is particularly important in the context of modern armed conflicts, where responsibility for war crimes or human rights violations may rest not only with a single state but also with several parties to the conflict or international coalitions. The study underscored that shared responsibility involves not only the individual obligations of states but also the collective responsibility of international organisations and coalitions for compensating damage caused by their joint actions. This may include states participating in military operations and international organisations providing support during conflicts. For example, in cases of joint military actions or coordinated assistance, responsibility for violations of international law may be distributed among all participants involved.

An important aspect is the potential creation of international funds to compensate for damages caused by military actions. Such funds could be financed by individual states as well as international organisations such as the United Nations, the European Union, or the International Criminal Court. The study explores the possibility of integrating these funds into the compensation system for victims, which would ensure effective redress for war-related damages. In addition, the study analyses judicial precedents and international rulings where shared responsibility plays a key role. Notably, such mechanisms are already applied in international law, particularly in cases of genocide and mass human rights violations, where multiple states jointly bear responsibility for the consequences of their actions or inactions. Thus, this study suggests considering shared responsibility as an important mechanism in dealing with the compensation for damage, which can provide greater justice and effectiveness in restoring the rights of victims of military operations. These conclusions align with observations described by A. Nollkaemper *et al.* (2020), who examined shared responsibility in international law, focusing on situations where the actions of multiple subjects of international law lead to violations of international obligations, and how this impacts accountability. The paper addressed issues related to the distribution of responsibility among states, international organisations, and other actors, formulating a mechanism closer to what is recommended in this study than to the practices currently existing in Ukraine. It is also worth noting that A. Nollkaemper *et al.* (2020) defined another phenomenon that is entirely absent from Ukrainian legislation (though its application could yield quite effective results), namely "responsibility for inaction", examples of which already exist in the precedents of the current Russo-Ukrainian war.

This study also pays attention to the difficulties associated with holding Russia, as the aggressor state, accountable for the damage caused by the war. One of the primary legal obstacles is jurisdictional immunity, often invoked by the Russian Federation, which precludes holding a state accountable for war crimes or claiming compensation by citing the principle of state sovereignty immunity in national courts (Semenenko *et al.*, 2023). This approach complicates compensating civilian victims, as national courts have limited influence at the international level. This is further complicated

by the complex nature of international law and the need for recognition of national court decisions by other states. The likelihood of Russia acknowledging any such decisions is minimal, further impeding efforts to hold it accountable.

Thus, the most crucial issue in the context of examining mechanisms for compensating damages caused by war (in other words, by Russia as the aggressor state) is the pursuit of achieving these reparations and compensations. Meanwhile, as M. Paparinskis (2020) emphasised, the establishment and implementation of compensation mechanisms must necessarily consider the so-called “punitive compensation”, which involves the obligation to determine what level of compensation would become unacceptable and harmful for the state violating international law. M. Paparinskis (2020) criticised the idea of compensation that could severely undermine the economic stability of the offending state and proposed alternative approaches to addressing state liability. The author focused on how international law should ensure a balance between compensation for violations and the ability of the offending state to continue its existence without excessive financial pressure, which, in the case of the Russian-Ukrainian war initiated by the aggressor, appears to condone violators of international law and should in no way fall on Ukraine or its citizens as plaintiffs in cases seeking compensation for inflicted harm. It can be unequivocally concluded that in the current process of improving mechanisms for compensating damages caused by warfare, Ukraine should in no way accept the proposals expressed by M. Paparinskis (2020) and proponents of his concept. This and the aforementioned studies are fundamentally at odds.

O.O. Táíwò (2022) examined the issue of reparations from an innovative perspective and suggests viewing them not only as compensation for past wrongs but also as a means of addressing modern global problems. O.O. Táíwò (2022) also incorporates the concept of collective responsibility as an effective mechanism for both compensating inflicted harm and resolving many contemporary crises (including preventing repeated aggression after the end of a military conflict), a perspective that cannot be disagreed with. F. Lambrecht (2024) argues that when determining reparations and compensation for damage caused during military actions, it is essential to focus not only on accounting for existing negative consequences but also on calculating future obligations to victims and their descendants (since certain inflicted damages may have long-term or hidden consequences that will manifest only over time). Moreover, the study by N.S. Syl-la *et al.* (2024) covered contemporary opportunities to mitigate the limitations imposed on the reparations system by the capitalist and “pro-humanist” structure of the world.

Thus, the study underscored the importance of revising approaches to compensating non-material damage, particularly psychological trauma caused by war. One of the key conclusions is that the Ukrainian legal system requires improvement in its mechanisms for compensation, including borrowing international experience in the field of class actions. This would simplify access to compensation for a large number of victims and reduce the financial burden on

individuals. The study also highlighted the role of international organisations and coalitions in the distributed responsibility for the consequences of armed conflicts, which would allow for more effective protection of victims’ rights.

Conclusions

This study provided an in-depth examination of the issues related to compensating damage caused by military actions, specifically material and non-material damage resulting from armed conflict. The limitations of national compensation mechanisms in Ukraine were analysed, including the lack of a unified and systematic approach to recording and assessing damage. The primary difficulties arise from challenges in documenting losses and from the aggressor state, Russia, invoking sovereign immunity, which complicates filing claims in national courts. It was noted that this hinders the compensation for victims, leaving them without adequate redress. In this context, the study emphasised the need for improvement in both national and international legal mechanisms.

At the international level, the role of courts such as the European Court of Human Rights (ECHR) and the International Criminal Court (ICC) was examined as tools for ensuring justice in war-related cases. Using the example of the ECHR, the study analysed how international tribunals contribute to the protection of victims’ rights and holding states accountable. However, it was emphasised that holding states like Russia accountable is extraordinarily lengthy and fraught with political and legal complexities. Even when using international mechanisms, victims are forced to wait years or even decades for compensation, as evidenced by the cases of war crimes in the Balkans.

Furthermore, the study highlighted the necessity of simplifying the process of filing class actions, as this would expedite consideration and reduce the financial burden on affected individuals. In particular, class actions can serve as an effective tool in cases of widespread rights violations, allowing victims to unite and strengthen their claims. In addition, the study explored the potential for integrating international funds to provide financial coverage for compensation in cases where the aggressor state refuses to take responsibility for the harm caused. Such a model holds substantial potential, as it would not only facilitate access to compensation but also expedite the restitution process, which is especially critical for affected communities.

Thus, the study demonstrates that the existing compensation mechanisms are insufficient to address war-related damages. Implementing international justice standards at the national level could improve the situation, ensuring victims receive fair and timely payments. The problematic aspects of such implementation represent a promising area for further exploration.

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Conflict of interest

None.

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Відшкодування моральної та матеріальної шкоди, завданої воєнними діями

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Анотація. В дослідженні було оцінено поточний стан правових механізмів, які регулюють відшкодування шкоди, завданої війною, зокрема на території України. Здійснено аналіз національних та міжнародних правових інструментів, що стосуються компенсації за зруйноване майно, порушення прав людини та екологічні збитки, а також запропоновані шляхи вдосконалення цих механізмів. Основна мета роботи полягала у вивченні ефективності наявних підходів і розробка рекомендацій щодо їх поліпшення у контексті сучасних викликів. Результати дослідження показали, що національні механізми компенсації мають значні обмеження, особливо для тих осіб, чиє майно знаходиться на тимчасово окупованих територіях. Чинне законодавство передбачає можливість подання інформації про пошкоджене або зруйноване майно, але не забезпечує достатньо прозорого та ефективного механізму для отримання компенсацій. Також зафіксовано, що постраждалі особи, які проживають на контрольованих Україною територіях, мають кращий доступ до компенсаційних механізмів, проте й тут виникають труднощі через відсутність єдиного підходу до оцінки збитків. Рекомендовано запровадити єдиний механізм фіксації збитків, створення державного фонду для попередніх виплат та впровадження міжнародного досвіду колективних позовів, зокрема, як це реалізовано в США та ЄС. Крім того, наголошено на важливості кращої інтеграції міжнародних стандартів відшкодування в українську правову систему, зокрема в питаннях компенсацій за екологічні збитки та порушення прав людини. Результати вказали на необхідність удосконалення законодавства для забезпечення справедливого та ефективного відшкодування шкоди постраждалим від війни, а також на роль міжнародного права у цьому процесі

Ключові слова: механізми компенсації завданої шкоди; прозорість правових механізмів; оцінка збитків; колективні позови; відповідальність агресора