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## Contents

Economic Affairs: Vol. 69, No. 01, March 2024

### RESEARCH PAPERS

- Utilization and Economics of Microfinance Under Self-help Groups:  
A Micro-Level Analysis from Tripura 411  
*Abdul Kadir, Saddam Hossen Majumder and Biswajit Mondal*
- Policy Implications of Fiscal Deficit and Its Trends in India:  
An Econometric Analysis 419  
*Bijaya Laxmi Padhy and Kabita Kumari Sahu*
- An Assessment of Price Transmission in Major Pulses Markets in Karnataka 427  
*Jainuddin S.M., Amrutha T Joshi, Manojkumar, G. and Stephan Raj*
- Determinants of Rural Financial Inclusion in India: A Short Note using the  
AIDIS 2019 437  
*Bhagirath Prakash Baria and Devanshi Himanshu Mehta*
- Structural Dynamics of Indian Commodity Derivatives Market 445  
*D. Kalaiarasi, A. Rohini, N. Venkatesa Palanichamy, K.M. Shioakumar, R. Pangayar Selvi,  
D. Murugananthi and K. Chandra Sekhar*
- Gender of the Firm Owner and Export Determinants of the Firms in India:  
an Empirical Analysis 453  
*Purujiit Arun, Roopa Patawardhan and Kshama, A.V.*

Assessing the Post-harvest Losses of Spice Crops: Findings from Ri-Bhoi and West Jaintia Hills Districts of Meghalaya	463
<i>Indina Lyngdoh Talang, Amod Sharma and Sh. Herojit Singh</i>	
Safeguarding Citizen Security and Fostering Economic Prosperity in Bangladesh through Digitization	469
<i>Md. Abdullah-Al-Faruk</i>	
MSP Effect on Price and Arrivals of Major Crops of Madhya Pradesh	479
<i>Sambu Sindhuja, Gourav Kumar Vani and Aradhana Singh Rajpoot</i>	
Water-saving and Economic Gains of Micro Irrigation Adoption Scheme "Per Drop More Crop": A Case of Sugarcane, Banana and Cotton Cultivation in Maharashtra	487
<i>Sangeeta Shroff and Varun Miglani</i>	
Economics Analysis of Production of Litchi Air Layered Plants by using Plant Growth-Promoting Rhizobacteria (PGPRs)	503
<i>Nikhil Thakur, Kiran Kour, Parshant Bakshi, Anil Bhat, Brajeshwar Singh, Deep Ji Bhat, Rakesh Kumar, Rajeev Bharat and Gurwinder Singh</i>	
Economic Analysis and Feasibility of Tractor Operated Pulse Crop Harvester	509
<i>S. Rahaman, B. Hari Babu, A. Ashok Kumar, K. Madhusudhana Reddy and V. Srinivasa Rao</i>	
Agripreneurial Feasibility of High-value Vegetable Crops for Small-holder Farmers for Supplementing Inorganic Fertilizer with Bioinoculants	517
<i>Roopa Patel and Amitava Rakshit</i>	
Dry Direct Seeded Rice Emerged as Viable Option based on Energetics and Economics- Experiences from Middle Gangatic-Plains of Bihar, India	523
<i>Sweta Kumari and Amitava Rakshit</i>	
<b>REVIEW PAPERS</b>	
Business Opportunities for Food and Beverages from Natural Fibre Plant Materials	531
<i>Deb Prasad Ray, Prateek Shrivastava, Ipsita Das and Samir Baran Roy</i>	

Modeling the Optimal Distribution of an Enterprise's Resources	541
<i>Irina Kiseleva, Olga Rudakova, Natalia Amosova, Olga Markova and Maxim Rudakov</i>	
Economic Consequences of Geopolitical Conflicts for the Development of Territorial Communities in the Context of Economic and National Security of Ukraine	551
<i>Viktoriia Nekhai, Yaroslav Melnyk, Bogdana Vyshnivska, Oleg Bilyk, Liudmyla Akimova and Oleksandr Akimov</i>	
Legal Consequences of Economic and Environmental Damage Caused to Ukraine by Russia	565
<i>Oleg Kravets, Tetyana Byrkovych, Oleksandr Byrkovych, Pavlo Gorinov, Oleg Baklan and Ivan Rybchych</i>	
Systemic Risks of Financial Management in the International Projects: Global Investments and Financial Management as a Component of National Security	579
<i>Svitlana Plotnichenko, Taras Kitsak, Dominika Rosłoń, Roman Pasichnyi, Olga Rudyk and Nataliia Oliinyk</i>	
Financial and Economic Tools of Project Management in Public Sector	593
<i>Oksana Petrenko, Igor Britchenko, Viktoriia Filippova, Oleh Serniak, Anatolii Putintsev and Iryna Serniak</i>	
Directions of Fiscal Policy Transformation in the Crisis Period of Economic Development of Ukraine	609
<i>Liubov Lysiak, Tetiana Tereshchenko, Svitlana Kachula, Oksana Hrabchuk and Hanna Lebid</i>	
The Circular Economy: Conceptual Definition and Framing for Socially Responsible Stakeholders	619
<i>Yuliia Maksymiv, Valentyna Yakubiv, Iryna Hryhoruk, Iryna Boryshkevych, Finbarr Carter and Viktoriia Vostriakova</i>	
Financial Modeling and Forecasting in Corporate Finance Management	629
<i>Olga Ievsieieva, Mykhailo Kolisnyk, Oleksandr Yatsenko, Alla Chornovol and Nadiia Bocharova</i>	
Corporate Support as a Strategic Factor for Increasing the Economic Efficiency of Enterprises	647
<i>Olena Hubarenko, Oksana Khilukha, Ljubov Gut, Yana Nikitina and Olena Ivanenko</i>	

Assessing the Socio-economic Impact of Lightning Strikes in Bangladesh: Challenges and Solutions	667
<i>Anima Barma, Prosannajid Sarkar, Md. Khairul Islam and Mst. Mahmuda Begum</i>	
Knowledge Economy and Higher Education Institutions: A Review	675
<i>Md Sarwar Alam and N. Biswas</i>	
The Effect of Cash Conversion Cycle on Company Earnings and Profitability	685
<i>Kavyashree, K., Fathima Safira and Amith Donald Menezes</i>	
Issues and Difficulties Encountered by Unorganized Sectors: An Indian Perspective	693
<i>Udaya Sankar Patro, Tapaswini Panda and Saumendra Das</i>	
Macroeconomic Trend of India	701
<i>Shripathi Kalluraya and Aswani, T.D.</i>	
Analysis of the Impact of Cybersecurity on the Stability of Financial Institutions	707
<i>Volodymyr Polishchuk, Nataliia Fedirko, Dymytrii Grytsyshen, Kyrylo Ohdanskyi and Volodymyr Kotkovskyy</i>	
Statistical Analysis of Inflationary Processes' Impact on Economic Development: Trends, Mechanisms and Models	715
<i>Tetiana Trubnik, Yaroslava Popliuiko, Olga Galitsyna, Olena Ivanenko and Marharyta Mazur</i>	
The Role of Defense Forces in Ensuring National Military Potential: A Comparative Analysis of Countries	725
<i>Olha Dzhyhora, Vitalii Kuchmenko, Ihor Salamakha, Nataliia Serohina and Vladyslav Savitskyi</i>	
The Role of Modern Information Technologies in Financial Analysis and Market Forecasting	735
<i>Tetiana Portovaras, Viktor Kyrychenko, Tetiana Tsepka, Oleg Sokulskyi and Ihor Krysovaty</i>	
The Impact of Martial Law on Law Enforcement and Law Enforcement Authorities: The Study of National and International Experience	743
<i>Olha Odynokova, Mykhailo Velychko, Tetiana Batrachenko, Hryhorii Bukanov and Stanislav Sokha</i>	

## **CASE STUDY**

Impact of Tamil Nadu Irrigated Agriculture Modernization Project Melur Farmer  
Producer Organization Company Ltd.,- A Socio-economic Analysis 751

*Muthulakshmi, K., Ponmarasi, T. and Gangadharan, S.*

Sustainable Economic Impact of Seed Replacement Rate on Production of  
Mustard Seed: A Case Study on Murshidabad District of West Bengal, India 755

*Sk Tibul Hoque and Nigamananda Biswas*

## **EXPLORATORY**

Economic Empowerment of Tribal Women through Non-Timber Forest Products 769

*Peisinlu Gangmei and Arambam Sophia*

Contribution of NTFPs towards Tribal Income and Employment Generation-  
A Study in Eastern Himalayan Region 777

*Limasunep Ozukum, Sanjoy Das, Amod Sharma, R. Nakhro, N.K. Patra and Manoj Dutta*

REVIEW PAPER

# Legal Consequences of Economic and Environmental Damage Caused to Ukraine by Russia

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## ABSTRACT

The article discusses the issues of holding the Russian Federation accountable for violating international humanitarian law in the context of economic and environmental damage caused to Ukraine during the military invasion. The authors trace historical parallels, from Germany's payment of reparations after World War II to compensation for damages after Iraq's invasion of Kuwait. It is emphasized that due to the specifics of modern international law, its norms, for example, the norms of the UN Charter, the charters of other international organizations, the norms of international customs, do not contain specific instructions on the scope and forms of responsibility, but provide for the right to coercion, regulating the conditions and procedure for the application of international law legal sanctions. In other words, in public international law, the concept of "sanctions of a legal norm" is associated not with forms of responsibility, but with coercive measures themselves. The attribution of sanctions to forms of responsibility can be used by the state-offender to justify the refusal to fulfill the obligations arising from its responsibility, citing the fact that it has already incurred responsibility, since sanctioned coercive measures were applied against it. Recognizing that international legal sanctions are the quality of coercive measures themselves, and not forms of responsibility, deprives the offending state of the opportunity to invoke the principle of *non bis in idem* and clearly assumes that, in addition to the deprivations caused by these measures, the Russian Federation, as an offending state, must bear responsibility in volume, types, and forms commensurate with the nature of the offense and its harmful consequences.

## HIGHLIGHTS

- The article is devoted to conceptual analysis of legal consequences to Russian Federation due to the damage caused to Ukrainian economy and ecology by its military intervention.
- The obtained results demonstrated expediency of using the experience of case of Iraqi payment of compensation for the illegal military invasion and occupation of Kuwait in 1990-1991.
- The practical significance of the study lies in outlining the possibilities of constructing a legal basis for claiming compensation from the Russian Federation for damage caused by the military invasion.

**Keywords:** International humanitarian law, UN, economical, conflict, Russian-Ukrainian war, Reparations, Sanctions

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The war waged by the Russian Federation against Ukraine is destroying the country and causing terrible damage. Ukraine is suffering colossal losses due to Russia's full-scale invasion of Ukraine. According to Prime Minister of Ukraine Denis Shmygal, the damage caused to the Ukrainian economy as a result of the war exceeds \$700 billion (Boyarchuk and Dabrowski, 2023; Chaliuk *et al.* 2023; Tiesheva and Smyrnov, 2023).

According to data from the Operational Headquarters for recording environmental crimes of the Russian Federation, more than 1.35 trillion hryvnia of damage was made to the environment of Ukraine. As a result of the actions of a terrorist country, hazardous substances are released into the air every day due to forest fires, burning of petroleum products and fires at industrial facilities. Since the beginning of the great war, the amount of such emissions has exceeded 67 million tons, compared to 2.2 million tons in 2021 and 2020. It is noted that 3 million hectares of forests have already been damaged, which is almost a third of the state's forest fund (Stein and Birnbaum, 2023). Some of them are lost forever. According to the State Environmental Inspection, during the war more than 280,000 sq. m of soil was contaminated with dangerous substances. More than 59,000 hectares of forests and other plantations were burned by rockets and shells. In general, the approximate calculations of losses established by the State Environmental Inspection in accordance with the approved methods amount to UAH 2 trillion 065 billion. About a third of the territory of Ukraine will require demining, which will take at least 10 years (Littlejohn *et al.* 2023).

A particularly severe environmental and humanitarian disaster was destroying of the Kakhovka hydroelectric power station dam. According to Kiev, on the territory under its control on the right bank of the Dnieper in the Kherson region, more than 20 people died during the flood after the destruction of the Kakhovska hydroelectric power station dam, five of them died due to shelling by the Russian military, dozens of people were injured. Hundreds of residents died in settlements in Russian-occupied territory on the left bank of the Dnieper, activists say. About 20 thousand buildings were damaged, at least 150 tons of motor oil and oil entered the Dnieper River,

over 50 thousand hectares of forest were flooded, where about 20 thousand wild animals lived, the Kakhovka reservoir became shallow and covered with dead fish these are the official data after the destruction of the dam, which are constantly updated. Kyiv estimated environmental damage alone at \$1.5 billion (Wengle, 2023).

It is impossible to compensate for the loss of human lives, but in international law there are instruments for compensation for financial losses reparations. Fortunately, international practice over the past 70 years has not seen many examples of military conflicts. However, practices and norms exist.

The international legal responsibility of states is one of the fundamental and oldest institutions of international law. One of the guiding principles in modern international law is the principle of sovereign equality. Following this principle, states participate in mutual relations and in multilateral international communication, possessing sovereignty as a political and legal property that expresses the supremacy of each of them within the country and its independence in external affairs (Chaliuk *et al.* 2021a). At the same time, this principle is not a sign of a lack of interaction and interdependence of states, since no state can exist and develop in isolation from the entire world community. This principle allows the state to carry out any actions that do not contradict the established principles and norms of international law. If a state does not fulfill or violates its obligations arising from the norms of international law, the question of its responsibility to individual states or the world community as a whole naturally arises.

When forming the general principles of international legal responsibility, the UN International Law Commission defined the international responsibility of states as all types of new legal relations arising within the framework of international law as a result of the internationally wrongful act of a state, regardless of whether they are limited to legal relations between the state that committed the wrongful act and the state directly affected, or extend also to other subjects of international law, and regardless of whether they focus on the obligation of the guilty state to restore the rights of the injured state and recover the damage caused to it, or whether they also cover the right of the injured state itself or other subjects of international



law to impose on the guilty state any sanction permitted by international law (Arivazhagan *et al.* 2023). The content of international responsibility is defined as the consequences of the act in terms of compensation for damage and retaliatory sanctions.

Hostilities between the Russian and Ukrainian armed forces constitute an international armed conflict, which is regulated by both the written norms of international humanitarian law (mainly the Geneva Conventions of 1949, the Additional Protocol to them relating to the protection of victims of international armed conflicts (Protocol I, 1977), the Hague Convention on the Laws and Customs of Land War of 1907) and international customs. Both Ukraine and Russia are parties to the 1949 Geneva Conventions and Protocol I thereto.

International human rights norms remain applicable even in situations of armed conflict or occupation, where the laws and customs of war also apply (Chaliuk *et al.* 2021b).

The laws and customs of war permit attacks only on “legitimate military objectives”. These are personnel and objects that make an effective contribution to military operations, and the destruction, capture or neutralization of which provides a specific military advantage (Gaman *et al.* 2022). This includes enemy combatants, weapons and ammunition, and objects used for military purposes such as buildings and vehicles. Humanitarian law recognizes the inevitability of some civilian casualties during armed conflict, but it obliges parties to distinguish between combatants and civilians at all times and to attack only combatants and other military targets. Civilians lose immunity while they are “directly participating in hostilities”, such as assisting combatants in combat (Ambach *et al.* 2015).

The laws and customs of war also protect “civilian objects”, which are defined as anything that is not a military objective. Deliberate attacks on civilian objects (houses, apartments, businesses, places of worship, hospitals, schools, cultural monuments) are prohibited unless they are used for military purposes and thereby become a legitimate military target (Gavkalova *et al.* 2022). This situation may arise in the case of the deployment of armed forces on purely civilian targets. If there is doubt about the nature of the object, it should be considered civilian.

Deliberate attacks against civilians and civilian objects, as stated above, are prohibited, as well as indiscriminate attacks, that is, those that indiscriminately target military targets and civilians and civilian objects (Avedyan *et al.* 2023). Examples of the latter include attacks that are not strictly directed against a specific military target or that involve indiscriminate weapons.

Thus, the scale of violations of international humanitarian law by the Russian Federation is obvious.

However, there is actual inaction on the part of the UN, which gives rise to doubts about the effectiveness of international humanitarian law today. The Russian invasion and the UN’s inaction have set a dangerous precedent. To prevent the emergence or escalation of military conflicts in the world, a mechanism is needed for the process of punishing the aggressor, conceptually similar to the Nuremberg process, as well as a mechanism for compensating economic and environmental damage.

## LITERATURE REVIEW

At the present time, the question regarding the types and forms of international legal responsibility remains relevant in the doctrine of international law. Many authors identify these terms as if they defined the same concepts. There is a direct dependence of the types and forms of international legal responsibility on the degree of social danger of the offense and the nature of the damage caused. According to experts, it is advisable to talk about two types of international legal responsibility of states: political and material (Melzer, 2016). However, it should be noted that in the doctrine of international law this classification is not the only one. First of all, this is due to a difference of opinion on the question of what terms to characterize the concept of political responsibility of the offending state.

In practice, the political and material types of international legal responsibility of the offending state are closely interrelated, since often the damage caused by an international offense is both material and political in nature, but this does not mean denying the advisability of distinguishing certain types of international legal responsibility

of the state (Gaievska *et al.* 2023). This division into types of international legal responsibility, as well as the identification of the corresponding forms of its implementation, makes it possible to more objectively assess the consequences of international offenses that are different in nature, and thereby facilitates the task of establishing the scope of responsibility of the offending state.

Unlike the types of responsibility of the offending State, its forms represent the specific ways in which that State fulfills the obligations arising from its responsibility and thereby incurs appropriate punishment. The International Law Commission, on behalf of the UN General Assembly, is codifying the norms of this institution.

Based on the analysis of international legal doctrine in development, three main trends in the interpretation of international legal sanctions in connection with the problem of international responsibility can be identified.

The first trend is due to the fact that for a long time, in the sphere of interstate communication there was no institutional apparatus of coercion, and “crime” and “punishment” in the form in which they exist in national law were unknown to international law (Deyneha *et al.* 2016). Representatives of the doctrine, based on civil law concepts, believed that compensation or satisfaction is the only possible sanction against the offending state (Buxbaum, 2005). Supporters of the civil law nature of state responsibility were A. Geffer, F. Martens, H. Tripel, and others.

The second trend developed in connection with the assignment of coercive functions to international organizations, primarily the League of Nations and the UN, and the formation of the concept of “international crimes of states” (Byrkovych *et al.* 2023). Based on criminological concepts, a number of international lawyers began to defend the idea of criminal liability of the state for international offenses and, accordingly, consider coercive measures of international organizations as a form of punishment for the offender state, i.e., as a special form of its responsibility, since such measures go beyond simple compensation and are applied centrally. Thus, Birkenhead associated the concept of international legal sanctions with the idea of punishing an offending state based on the decisions

of an international court, if one was created (Gillard, 2011). In its expanded form, the concept of criminal liability of the state is defended in the works of V. Pell, G. Donedier de Vabre, G. Lauterpacht, and others.

The third trend is a synthesis of the first two, as a result of which the concept of “international legal sanctions” receives an unusually broad interpretation, because as such they began to consider the whole range of negative consequences for the offending state, including both forms of responsibility and forms of sanctions coercion (Gowlland-Debbas and Garcia, 2001).

In general, international legal responsibility is one of the oldest institutions of international law, formed on the basis of customary legal norms. But that institution classical international law is different from the institution that has emerged in the modern world. In the past, liability was mainly limited to the obligation of the state to compensate for damage caused to the person or property of foreigners (Gupta *et al.* 2021). The application of norms of international legal responsibility leads to the emergence of a new international legal relationship, which gives rise, on the one hand, to the obligation of the offending state to stop unlawful actions, to restore the violated right of the injured state, to compensate for the damage caused or to be subject to sanctions, and on the other hand, to the right of the injured party to require the offending State to fulfill these obligations and receive appropriate redress and satisfaction.

In the recent past, the institution of responsibility, along with custom, also included articles in individual treaties, and in addition, attempts were made to codify general rules of responsibility in international law (Kalyayev *et al.* 2019). The process of codifying the rules of responsibility in modern international law has come a long, difficult way and is currently still incomplete, which in practice determines the use of a precedent approach.

## METHODS

The methodological basis of the study was the provisions of the general scientific method of cognition. The research is based on the general philosophical, theoretical, empirical method (dialectics, systemic method, analysis, synthesis, analogy, deduction), as well as on the traditional

legal research method (formal-logical, comparative law).

The theoretical and methodological basis of the study was the historical-dialectical approach. This approach implies an objective historical analysis of specific historical factors that determined the nature and specificity of the problem being studied, and a systematic processing of historical sources and literature available to the researcher (Karpa *et al.* 2021). On this basis, general patterns and specific manifestations of the subject of research are analyzed.

## RESULTS

As it is known, indemnity is payments imposed on the state that lost the war in favor of the victorious state. In other words, it is something like a tribute collected from the loser at the request of the winner usually by virtue of a peace treaty between them concluded following the war (Kulikov *et al.* 2022). The indemnity could be used to cover the winner's military expenses, but usually included significant amounts in addition (otherwise, why fight?).

Historically, indemnity was considered a completely normal phenomenon, a kind of civilized alternative to the chaotic plunder of a defeated country. Thus, Napoleon ended all his conquests with a peace treaty with the condition of paying indemnity, thus collecting more than 500 million francs. However, after the victory over him, the allies in the anti-French coalition, in turn, imposed an indemnity of 700 million francs on France (Gillard, 2011).

However, in the 20th century, approaches changed somewhat. When, as a result of the First World War, the Treaty of Versailles was concluded with defeated Germany, the victorious countries, under the pressure of public opinion (and, incidentally, with the active support of Soviet diplomacy) formally abandoned indemnities, replacing them with reparations.

The most striking example of the application of norms of international legal responsibility is the Treaty of Versailles of 1919, within the framework of which Germany was held accountable for the harm caused to European countries by military operations during the First World War. In addition to establishing severe restrictions on the German military-industrial complex, territorial concessions,

and the abandonment of colonial administrations in Asia and Africa, one of the key measures of international legal responsibility was the imposition of an obligation to pay reparations in the amount of 289 million gold marks. Interestingly, the debt for these reparations was repaid by Germany only on October 3, 2010, when the last tranche of 70 million euros was paid (Gomes, 2010).

Reparation represents a form of financial responsibility of the offending country to the victim country. If, for example, one country attacked another country, caused damage to it, and then lost the war, then it must pay the injured country money, but not because it lost – rather as financial responsibility for the damage caused (Khomiuik *et al.* 2020). Reparation is not a tribute to the winner, but compensation to the victim of a crime. For example, reparations were imposed on Germany after World War II. The USSR exported from Germany 400 thousand wagons of various equipment, machine tools, livestock, food, etc. Technical documentation was also taken, such as drawings of the latest rocket technology (along with captured specialists). Everything was taken out, even animals from the zoo (Roth, 2020). Formally speaking, all this was conceived not as punishment for Germany, but as compensation for the damage caused to the USSR (Shamne *et al.* 2019). The collection of reparations from the GDR was stopped by the 1954 treaty.

The authorities of the USA, England, and France carried out significant taking out of coal and coke from the western zones of Germany they occupied. They also carried out felling of forests and taking out of wood. According to press reports, only in 1945-1947 the forced export of coal and timber from West Germany was as follows: coal was exported for 500 million marks, or 200 million dollars (at the same time, per ton of coal at prices on world markets of 25-30 dollars the Germans were paid only 10.5-11 dollars), forests 1 billion marks, or 400 million dollars (Cairncross, 1986). These operations were not recorded as reparations, although in essence they were largely so. According to unofficial German data, in the western zones of Germany, the financing of hidden reparations, carried out through the use of tax and other revenues, reached approximately 4.5 billion marks, or 1.8 billion dollars, including to pay for the supply of coal and timber – 1.5 billion marks, or 600 million dollars (Neiberg, 2015).

It is interesting to note an important direction of the Soviet reparation policy in Germany, which became the main one since 1946 – there was supplies from current production. It should be noted that the dismantling of industrial enterprises to pay for reparation supplies was painful for German workers who lost their jobs. In order to mitigate these difficulties, the leadership of SVAG already at the beginning of 1947 decided to stop further dismantling of industrial enterprises and, on the basis of 119 large enterprises intended for dismantling, to create Soviet joint-stock companies, which would remain on the territory of East Germany. Thirty-one Soviet joint-stock companies were created with a total authorized capital of 4,200 billion marks (Herf, 1997). The supply range has been adjusted over time. Thus, while before 1947 the main share of supplies was made up of consumer goods, later the supplies began to be dominated by products from the mechanical engineering, electrical, and chemical industries (Hinrichsen, 2023).

The main international legal basis for the implementation of reparations is an international treaty concluded between the states parties to the armed conflict. Namely in this agreement, the volumes and forms of reparations are determined. Basically, such an agreement is concluded after the end of the armed conflict (Kubiniy *et al.* 2021). The states that have concluded such an agreement themselves ensure its implementation. However, this does not deny the possibility of guaranteeing the implementation of such a treaty by a third state (states) or an international organization.

The most famous example of reparations is the compensation for damages by Germany after World War II, which was carried out on the basis of the Potsdam Treaty, concluded in 1945. The treaty did not include a specific amount; first of all, they were supposed to prevent any possibility of Germany preparing for a new war (Neiberg, 2015). The victorious countries had to satisfy their reparation requests at German expense in territory according to the occupation zones (which the victorious countries occupied after the end of the war) unilaterally. Most of this was done at the expense of property in Germany.

Currently, forms of compensation for harm in the international legal sphere have been

significantly modernized in order to comply with current international legal trends, as well as to ensure compensation for harm caused. In public international law, the following forms of compensation are distinguished: (1) Restitution; (2) Compensation; (3) Satisfaction. From the point of view of the enforcement of these forms of compensation for harm, it should be noted that restitution and compensation are used most often, while satisfaction is rather of an auxiliary nature and is used in situations where it is most preferable.

An interesting example of reparations was compensation for damages resulting from the Gulf War in 1991. The decision to pay reparations to Kuwait (the state, as well as individuals and legal entities from Kuwait) was made by the UN Security Council. Iraq agreed to comply with this decision and a UN Compensation Commission was created, which examined applications for compensation and decided on their satisfaction. The source of funds for payment of compensation was the UN Oil for Food program.

The problems of restitution of property exported to the USSR during the Second World War are still one of the most controversial to this day, due to the lack of consensus between the subjects of controversial legal relations, as well as the lack of a unified mechanism for resolving such disputes.

A subtype of restitution is substitution, which is used in resolving issues about the necessity to compensate for damages for the export of cultural property (Kryshtanovych *et al.* 2022). Since substitution is a replacement for unlawfully seized or destroyed property, the concept of using this form of compensation for harm seems to be the most justified and effective to the opposing subjects. In particular, the question is often raised about the use of compensatory restitution, which is a type of substitution and involves the replacement of illegally seized property with objects of the same kind and with similar characteristics (Klymenko *et al.* 2016). Compensation involves compensation for harm caused in monetary or other value equivalent, which is often used as a form of international legal liability.

Despite the fact that compensation is an independent form of compensation for harm, it is often used in conjunction with restitution, since restitution, by



itself, is not always capable of fully and adequately compensating the injured party for the damage caused.

By way of compensation, in addition to the direct damage caused, compensation for lost profits is also possible. However, based on international judicial and arbitration practice, recovery of lost profits by way of compensation is a less common situation (Tsagourias and Morrison, 2023).

According to the general principle of public international law, any wrongful act, i.e., a breach of an obligation under international law entails a duty to compensate (Melzer, 2016). The purpose of compensation is to eliminate the consequences of the wrongful act to the greatest possible extent and restore the situation that would have existed if the wrongful act had not been committed. It can take various forms, such as above mentioned restitution, compensation or satisfaction (Kostiukevych *et al.* 2020). For a specific offense, such means can be used separately or in combination with each other.

Recognition of the obligation to compensate for damage can often be found in agreements between belligerents concluded after the end of hostilities (Kussainov *et al.* 2023). However, this duty often is connected with violations of the prohibition on the use of force rather than directly with violations of international humanitarian law, or international treaties refer only to “legal claims resulting from war” in even more vague terms.

One relatively recent notable exception in this regard was the peace treaty concluded in December 2000 between Ethiopia and Eritrea. In particular, the treaty established a neutral mixed Claims Commission, which was tasked with settling, through binding arbitration, all claims of the two governments, as well as private organizations, against each other for damage or harm arising out of the conflict and resulting from it violations of international humanitarian law and other provisions of international law. This commission was an exception as it was explicitly charged with the task of awarding reparations for violations of international humanitarian law (Tsagourias and Morrison, 2023). However, the mandate of the Eritrea-Ethiopia Claims Commission (EECC) was terminated without actual payment of reparations by the parties. The source of funding for the payments

was not identified, and meeting the requirements depended on the capacity of governments (Levytska *et al.* 2022). The commission also determined that, if compensation was not paid immediately, the two governments could agree to an acceptable set-off or compromise, or either party could enforce the judgment by seizure or suit in the state where the other has assets. Ten years after the end of the EECC’ functioning, and despite the clear commitment of the parties in the Algiers Agreement to implement the decisions of the Eritrea-Ethiopia Claims Commission, none of them have implemented them or attempted to pay compensation.

This case clearly demonstrates that in order to ensure effective and fair compensation, one should not rely purely on the “good will” of states, but detailed compensation obligations should be prescribed more carefully (Lopushynskiy *et al.* 2021). The compensation mechanism for Ukraine should clearly foresee how compensation decisions will be implemented and from which funding sources. It is important to regulate these two issues in detail to avoid inefficiencies and disbursement problems, as happened in the case of Eritrea and Ethiopia.

## DISCUSSION

In the United States of America, there is a long-running debate about the confiscation of Russian assets frozen in connection with the war in Ukraine. But the first draft laws were recognized as unconstitutional, as they did not provide for a proper legal procedure.

On June 15, 2023, the draft law “On restoring economic prosperity and opportunities for Ukrainians” was submitted to the Senate for consideration, which proposed to confiscate Russian sovereign assets and transfer them to Ukraine (Litvinova *et al.* 2020). Among the main provisions of the draft law, there is the thesis that the confiscation of Russian sovereign assets should be considered a countermeasure in accordance with international law.

The category of sovereign assets is proposed to include:

- ♦ Funds and property of the Central Bank of the Russian Federation, the Russian Direct Investment Fund and the Ministry of Finance of the Russian Federation;

- ♦ Any sovereign assets of the Russian Federation that are found in financial institutions fully or partially controlled by the Russian government;
- ♦ Any other funds or property directly or indirectly controlled by the government of the Russian Federation.

The bill also provides additional authority to the State Department's Office of Sanctions Coordination to work with partners and allies abroad to achieve the goal of confiscating additional Russian sovereign assets in other countries for the benefit of Ukraine.

The question arises, what to do with these assets. Experts talk about two possible scenarios:

The first one is reinvestment in Ukraine. It implies that the frozen assets will be used to compensate Ukraine for war damages (Lola *et al.* 2022). Such reparations may include rebuilding infrastructure, providing humanitarian aid, and supporting the economy.

The second one talks about the introduction of a special tax. That is, the frozen assets will be sold, and the proceeds will be used for other purposes, such as supporting Ukraine's military efforts and capabilities or helping other countries affected by the war.

The Belgian government has already resorted to the second scenario. In June 2023, it transferred 92 million euros of tax revenues collected from the frozen assets of the Russian Federation to help Ukraine. The country allocated half of this amount to military aid to Ukraine.

It should be noted that according to the general rule provided for in Art. 79 of the Law of Ukraine "On International Private Law", in order to file a claim in a Ukrainian court against any foreign state, it is necessary to obtain appropriate consent from the competent authorities of such state.

However, the legal position was published on the website of the Supreme Court of Ukraine, set out in the Resolution of April 14, 2022 in case 308/9708/1911, issued in the case of a claim by a citizen of Ukraine against the Russian Federation for compensation for moral damage caused to her and her children in connection with the death of her husband as a result of armed aggression of the Russian Federation on the territory of Ukraine.

In particular, the Supreme Court came to the conclusion that "after the outbreak of war in

Ukraine in 2014, the court of Ukraine, when considering a case where the Russian Federation is identified as the defendant, has the right to ignore the immunity of this country and consider cases of compensation for damage caused to an individual as a result of the armed aggression of the Russian Federation, according to a claim filed specifically in this foreign country".

Thus, the Supreme Court in this case made an exception to the above general rule provided for in Art. 79 of the Law of Ukraine "On International Private Law", in particular, came to the conclusion that it is possible to consider claims for compensation for damage caused by military aggression of the Russian Federation in Ukrainian courts, without the need to obtain the consent of the competent authorities of the Russian Federation and, in principle, without the need to send any procedural messages to such authorities.

However, even if in the future procedural practice follows the path defined in the above Supreme Court Resolution, namely, if Ukrainian courts accept for consideration and satisfy claims of individuals and legal entities against the Russian Federation for compensation for damage caused by military aggression, this is not yet will automatically mean that such plaintiffs will be able to obtain actual compensation.

After all, the Russian Federation is unlikely to voluntarily comply with such court decisions, so there will be a need to enforce them through the collection of property and other assets belonging to the Russian Federation.

In 2022, Iraq completed payment of more than \$50 billion in damages for the illegal military invasion and occupation of Kuwait in 1990-1991.

The Compensation Commission was established by UN Security Council resolutions in the spring of 1991 to administer the Fund for the compensation of direct losses, damages or harm caused to citizens, companies, governments, and international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait.

The UNSC initially determined that Iraq has to contribute 30% of oil and petroleum products exports to the Fund, then this share was reduced to 25%, and later was reduced to 5% (Cordesman, 2019). The Commission reviewed more than 2.686

million claims with a total value of \$352.5 billion. Of these, over 1.5 million claims were resolved with a value of approximately \$52.4 billion (Odlé, 2012). Let us recall that Iraqi military engineers immediately after the invasion began to mine Kuwait's oil industry facilities and develop plans for its liquidation. On January 19, 1991, in response to a coalition air raid, the valves of the oil terminal at the Ahmadi port were opened and a huge amount of oil entered the Persian Gulf. Oil wells began to be set on fire, Iraqi artillery fired at oil tanks in the Al-Jafra area, and from January 21, soldiers began to set fire to oil refining centers in the ports of Shueiba and Port Abdullah. By the end of February 1991, when the withdrawal of Iraqi troops became a matter of time, the Iraqis were blowing up a hundred oil wells a day.

To compensate for the damages after Iraq's invasion of Kuwait, the UN Security Council created a compensation fund and a commission at once. The commission, as a subsidiary body of the Security Council, consisted of a governing board, groups of commissioners, and a secretariat.

In 1991, a Security Council resolution placed responsibility on Iraq for direct damages, including environmental damage, caused to foreign governments, citizens and corporations as a result of Iraq's illegal invasion of Kuwait.

The UN Compensation Commission was not a court or arbitration, but acted as a political body. It performed a fact-finding function: verified claims and their validity, assessed damages and resolved disputed issues.

The processing of applications and the payment of compensation had many features that are worth noting, as this may be relevant for Ukrainian applicants.

The Board of Managers delegated responsibility for handling claims to groups of commissioners appointed by the General Secretary and the Board. There were a total of 19 groups of commissioners, which included internationally recognized experts in law, finance, accounting, insurance, engineering and environmental damage assessment from more than 30 countries. The commissioners had to check the admissibility of the applications and carry out a three-stage check, to determine whether the damages alleged by the plaintiffs fall under the commission's

jurisdiction, that is, whether the damages were a direct result of the invasion (Maksymenko *et al.* 2020). They could also check whether the applicant really received the damages indicated by him, to determine whether the damages were caused in the declared volumes (if not to determine the appropriate amount of damages based on the evidence provided to the group).

Applicants could not apply to the commission themselves, claims were submitted through the mediation of governments or international organizations (Mishchuk *et al.* 2020). Communication was carried out through the state, including assistance to applicants in filling out claim forms.

Claims were filed in the following categories: persons who were forced to leave Kuwait or Iraq; persons or their families who have suffered bodily harm or death; individual claims for damages up to USD 100,000 and over USD 100,000; private and public corporations; governments and international organizations.

After that, the secretariat accepted, registered, and grouped applications. Further, the claims were checked for compliance with the technical requirements (Novak *et al.* 2022). If any deficiencies were found, the applicant was offered to make corrections.

Then the claims were transferred to the relevant commission of commissioners. A written report on the claims received and the amount of compensation recommended by the commissioners, as well as brief explanations of the reasons, was submitted to the board of directors.

The recommended amounts were subject to approval by the board of directors, which could increase or decrease them (Troschinsky *et al.* 2020). Decisions made by the board regarding compensation were final and not subject to appeal or review.

The UN Security Council created a compensation fund, which was filled with funds from the Iraqi government and interest from export sales of Iraqi oil.

The commission sent the awarded compensation to the governments and international organizations through which the applicants submitted applications (Yermachenko *et al.* 2023). In their turn, governments and international organizations had to distribute the funds among the applicants.

Until the recent events in Ukraine, this was the largest precedent for the resolution of international claims. The work of the UN commission lasted more than 30 years, and almost 2.7 million claims were considered (Cordesman, 2019).

The UN carries out a lot of work on environmental protection at the interstate level. Although the UN Charter does not directly state its environmental competence, it follows from the universal legal personality of the UN. The resolution of the UN Compensation Commission (CC) became part of the process of resolving the conflict in the Persian Gulf in 1990-1991. The UNCC was created in 1991 as a subsidiary body of the UN Security Council based on UN Security Council Resolution No. 687. According to the provisions of the resolution, the UNCC and the UNCC Fund were established to pay compensation in connection with Iraq's war with Kuwait. The fund is a special account of the UN.

In accordance with UN Security Council Resolution No. 692, it was decided that the Fund would receive money from the export of all Iraqi oil and petroleum products after April 3, 1991, and if Iraq ceases to comply with the decisions of the Board of Governors, the UN Security Council would re-introduce a prohibition on oil imports and Iraqi petroleum products and related financial transactions (Zilinska *et al.* 2022). As noted above, at first it was decided to transfer 30% of the exports of all Iraqi oil and petroleum products to the Fund, then on the basis of another resolution 25%, and subsequently on the basis of a resolution adopted in 2003 5%.

The legal fact that Iraq must pay compensation was an official decision of the world community represented by the UN Security Council: Iraq is responsible under international law for any direct loss, damage, including damage to the environment and depletion of natural resources, or harm caused to foreign governments, individuals and legal entities as a result of Iraq's illegal invasion and occupation of Kuwait (clause 16 of UN Security Council Resolution No. 687).

Thus, a specific international compensation mechanism was created, the practical work of which, however, began on March 12, 1997.

According to the opinion of International Court of Justice, Iraq violated the principles of international

law, the norms of international treaties and international customs, and the obligations *erga omnes* ('against all' lat.) were violated. Such obligations, by their very nature, "affect all states" and "in view of the importance of the rights involved, all states can be considered to have a legal interest in their protection" (Odle, 2012).

It is obvious, in particular, that the damage caused by the military actions of the Russian Federation to the ecology of Ukraine directly affects Europe (this concerns the pollution of rivers and the Black Sea, etc.). From an environmental point of view, there is no local war.

Let us recall that 12 states participating in the anti-Iraq coalition filed claims for compensation for environmental damage in the amount of \$84.9 billion, although Iraq was able to pay only 5.3 billion. Great damage as a result of the war was caused to the environment of Kuwait and neighboring countries: the Iraqi army set fire oil drilling wells, which were extinguished for several months, and also organized the leakage of about 8 million barrels of oil into the Gulf. Reclamation of contaminated areas has been ongoing for almost 30 years (Cordesman, 2019).

The economic damage for Europe and the United States is all the more obvious these are the costs associated with accepting refugees from Ukraine, and a sharp increase in the defense budget, and other related expenses.

Thus, there are facts of violation of *erga omnes* obligations, which means that a detailed consideration of the "Iraqi case" and the possibilities of its application in developing a mechanism for assessing the legal consequences of the Russian military actions against Ukraine seems appropriate.

In addition to oil, unlike Iraq, the Russian Federation also has other valuable resources that it exports (diamonds, etc.). Revenues from the export of these resources can become the basis of a compensation fund.

Ukraine's current efforts should be aimed at assessing losses, supported by an updated evidence base, creating a coalition of interested affected countries, as well as creating legal principles for compensation payments.

About 280 billion dollars of frozen Russian state assets are located in the "Big Seven" countries.



Ukraine expects that they will become the main source of funds for post-war reconstruction.

But at the G7 meeting in October of 2023, Ukraine saw a “yellow card” for itself representatives of the countries did not decide on the transfer of these assets to Ukraine, but undertook to keep the assets of the Russian Federation frozen until the aggressor state agrees to pay reparations to Ukraine (Izarova *et al.* 2023).

In November 2022, a specially created working group on the development and implementation of international legal mechanisms for compensation for damage caused to Ukraine as a result of the armed aggression of the Russian Federation developed the concept of creating an International Compensation Mechanism. It is divided into three step-by-step components and involves the creation of the following (Yakoviyk and Turenko, 2023):

- ♦ The International Register of Damages, which will be a comprehensive platform, a database of victims on the territory of Ukraine from the actions of the Russian Federation as of February 24, 2022. Such persons are both natural and legal persons, as well as the state of Ukraine itself.
- ♦ The International Compensation Commission, which will actually later consider the applications entered in the register of losses and award the amount of compensation before payments.
- ♦ Compensation fund sources of payments and compensations, awarded compensation amounts. Namely this fund should be filled primarily with frozen Russian assets.

In mid-February 2023, the Dutch government agreed in principle to Ukraine’s proposal to establish an office of an international organization in The Hague to maintain an international register of damages caused to Ukraine by Russian aggression.

It is planned to create a comprehensive mechanism (Albakjaji, 2022; Moffett, 2022a; Moffett, 2022b). At the first stage, it will include the fixing of claims for losses, at the second the creation of a compensation commission and a fund, which will be filled, among other things, by the confiscation of Russian assets.

In 2022, the UN General Assembly adopted a resolution on the need to create an international

register of damages and a compensation mechanism for the payment of reparations by Russia in connection with aggression against Ukraine.

The NATO Parliamentary Assembly and the European Parliament called for the creation of a reparations mechanism and a tribunal to hold the top political and military leadership of Russia and Belarus accountable for crimes against Ukraine. A number of countries recognized the Russian regime as terrorist (Burnard and Naseer, 2023).

That is, the international register of losses is a preliminary stage before the creation of an international compensation commission to compensate for losses caused by Russian aggression. The Ukrainian register of immovable property damaged and destroyed as a result of hostilities will be integrated into the international register. At the same time, there is still no document that would determine the order of work and filling in the register.

International legal responsibility is a necessary and direct consequence of international offenses, while international legal sanctions are only a possible and indirect consequence of them. If to keep in mind the relationship between these institutions of international law, one can say that responsibility is primary, and international legal sanctions are secondary (Ortina *et al.* 2023). At the same time, the latter act only as coercive means ensuring the process of protecting the rights of injured subjects, restoring international legal order and implementing the responsibility of the offender in forms predetermined by the characteristics of the offense committed and the nature of its harmful consequences.

International legal sanctions taken in response to international offenses involving the use of armed force are of a similar nature, despite the fact that in such cases there may be immediate armed reprisal of illegal acts (Panasiuk *et al.* 2020). When repelling aggression, the moments of emergence of international legal responsibility and the application of international legal sanctions may practically coincide. But even in this case, sanctions themselves do not act as forms of responsibility. They are the means by which the aggressor state is repulsed and by which it is forced to bear responsibility. The fact that international legal sanctions can be

very intense does not serve as a basis for qualifying them as punitive forms of responsibility of the offending state (Omarov *et al.* 2022). The intensity of international legal sanctions does not change their legal nature and institutional affiliation. These properties always depend on the characteristics of the offense, and are not determined by the desire to give them a punitive nature. The predominantly coordination nature of interstate relations as relations of sovereign-equal subjects does not provide grounds for considering international legal sanctions as a punitive measure by analogy with domestic law.

From a practical and theoretical point of view, it is erroneous to interpret coercive sanctions measures as forms of responsibility of subjects of international law on the basis that both are undesirable for the offender, externally forced and cause it certain deprivations (Panasiuk *et al.* 2021). However, the deprivations caused to the offending state by international legal sanctions are of a completely different nature than the deprivations in which its responsibility is expressed. The deprivations caused to the offender state by international legal sanctions are a direct result of the exercise of the powers of the injured subjects of international law, and not a consequence of the implementation of the obligations of the offender state (Oliinyk *et al.* 2021). Moreover, other states also suffer significant deprivations from international legal sanctions in the form of sanctions costs, being forced to apply sanctions by the behavior of the offender.

International legal responsibility is always expressed in the obligations of the offender, which have special forms determined by the nature of the offense, namely: restoration, satisfaction, restitution, reparation, etc.

The need to remain within the legal framework, without putting “political expediency” in front, is obvious.

In matters of confiscation, there are two key factors these are legal mechanisms that will allow seizing and confiscating assets not against, but thanks to international law and the political will of the subject countries where these assets are directly located, and Ukraine must take these aspects into account.

## CONCLUSION

International sanctions are always a manifestation of the powers of subjects of international law and are expressed in forms inherent to these powers and determined by the nature of coercive measures, namely in the form of political, economic, and military sanctions. The application of international legal sanctions always occurs independently and contrary to the will of the offender and represents an external reaction caused by a volitional act of subjects of international law and designed to force the offender to fulfill the obligations generated by its responsibility. This is the exercise of the rights of subjects of international law, aimed at ensuring the forced implementation of protective international legal relations through sanctioned international legal relations.

It should be remembered that despite the close relationship, international legal sanctions and international legal responsibility, by their legal nature and functions, represent institutionally different legal phenomena, each of which has its own forms. The need to distinguish between forms of liability and international legal sanctions is due not only to theoretical, but also to important practical considerations. A clear line between the forms of responsibility and the forms of international legal sanctions eliminates the possibility of unjustified substitution of forms of responsibility for forms of sanctions and, accordingly, prevents the abuse of the *non bis in idem* principle.

The demands of post-war justice need to be formalized in the form of an integral system of principles or a system of responsibilities. The international community must also recognize the need to create a doctrine of post-war justice and document it in relevant moral declarations and normative documents. Otherwise, the lack of a moral basis and a legal basis will turn the actions of the subjects of the post-war settlement into dangerous and arbitrary ones.

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