

Report

**following the briefing entitled “Documenting
damage during ongoing aggression: why & how,
and what next?”***

**organised by Professional Government
Association of Ukraine**

May - June 2022

** By this title we want to emphasize that aggression against Ukraine under international law is carried out not only by Russia but also by Belarus and can also be committed by other states*

Introduction

On 30 May 2022, under the auspices of the Professional Government Association of Ukraine (PGA) a briefing was organized dedicated to the topic “Documenting damage during ongoing aggression: why & how, and what next?” with participation of:

- Yael Vias Gvirsman, director and founder, International Criminal and Humanitarian Law Clinic, Harry Radzyner Law School, Reichman University (Israel)
- Maksym Nefyodov, co-founder of the “Russia Will Pay” project, reform support project lead, Kyiv School of Economics
- Serhii Zamidra, first deputy chair, All-Ukrainian Community Council; coordinator for matters of territorial defense, Coordination Centre of the Ukrainian Association of District and Regional Councils
- Artem Krykun-Trush, manager, White-Collar Crime practice, PwC Legal in Ukraine
- Andriy Andrushevych, Senior Analyst, NGO “Society & Environment”
- Andriy Bogdanovych, Deputy Head of State Ecology Inspection (CDTO)
- Yevgeniia Zasiadko, head of climate, NGO “Ecodiia”
- Nataliia Mytsai, Director, National Literature Memorial Museum of H.S. Skovoroda (Kharkiv region)
- Prof. Ana Filipa Vrdoljak, UNESCO Chair in International Law and Cultural Heritage, University of Technology Sydney (Australia)
- Markiyan Kliuchkovskiy, partner at Asters, member of the working group for the design and implementation of international law mechanisms for compensation for damages caused by the armed aggression against Ukraine
- Tetiana Boiko, coordinator of energy programmes, Non-governmental network OPORA
- Emanuela-Chiara Gillard, Senior Research Fellow, Oxford Institute for Ethics, Law and Armed Conflict; Consulting Fellow, Chatham House

Opening word was made by the PGA Board chairman Kostiantyn Lisnychyi, and the moderation of the event was made by the PGA board member Ielyzaveta Badanova.

Herein PGA publishes the outcomes of the discussion that took place (in the relevant paragraphs relevant speaker’s name is indicated) supplemented by additional comments of the moderator and information received by the moderator from other stakeholders and from open sources as well as by recommendations to the state as to better management of the process of documenting damage from ongoing aggression.

The information is current on the date of the briefing (unless indicated otherwise).

PGA recommendations following the briefing

Recommendation to the state №1: at the state level information campaign should be launched to inform citizens of the recommended course of actions when they suffer different types of damage (death or injury of a person, destruction or injury to a residential object, destruction or injury to a non-residential object of commercial and non-commercial use).

Recommendation to the state №2: to draw up non-discriminatory, objective and transparent rules of voluntary certification for security purposes (including protection of personal data) of electronic portals where information on the consequences of aggression against Ukraine is gathered, to ensure mandatory check of compliance with such rules by portals which function under the state's authority (have signs of cooperation with state authorities on their website) as well as portals which wish to undergo the voluntary certification, and to ensure centralized information provision to citizens about the portals which completed the voluntary certification (including following corrective actions identified during the check).

Citizen advice: not every electronic portal where damage information is gathered and information about which you can find over the Internet is reliable as information about such portals is not generally filtered. You should thus use only those portals which you can trust. Those could be either portals created and administered by the state or those which in a transparent and accessible manner publish information about their activities. However, in any event, before the state takes minimum steps to guarantee the quality of such portals, there remain risks of unauthorized access to the transferred data. These risks must be balanced against the benefits of submitting the relevant information.

Recommendation to the state №3: the parliament should adopt draft law №7290 which creates legislative conditions for due prosecution of crimes in Ukraine according to international rules.

Recommendation to the state №4: when investigating crimes under Article 438 of the Criminal Code of Ukraine law enforcement authorities should look into events which showcase elements of violations of international humanitarian law rather than perform the function of documenting all damage caused by the aggression. To eliminate the excessive workload of the law enforcement authorities, the state may use the mechanism of damage documentation which will not depend on the outcomes of criminal investigations but will form a database related to injuries and the actions which led to them. An important role in this process should be played by municipal authorities.

Recommendation to the state №5: special attention should be paid to the definition of damage to the environment that should include all elements which based on international practice may be compensated in the context of an armed conflict.

Recommendation to the state №6: to ensure a wholesale categorization of cultural property giving due account to the international practice and with engagement of international experts.

Recommendation to the state №7: to organize an easy and accessible mechanism to finance standard urgent repairs which would allow to set a standard of expenses for such works, gather more reliable and individualized information on the injuries as well as to then transfer the outcomes of the work of such mechanism for compensation under the international financing scheme which will be selected.

1. Why document damage

Yael Vias Gvirsman states that unlawful acts committed on the territory of Ukraine may be punished at different levels of responsibility and, respectively, using different avenues to seek reparations. The unlawfulness of these acts can be evidenced by, for instance, OSCE experts in their [report of 13 April 2022](#) where it is indicated that attacks on cultural property and extrajudicial killings are unlikely to be justified by military necessity.

The commission of international crimes leads to the responsibility of the state as well as to the individual responsibility. To realize the international responsibility of the state, different international mechanisms could be used ranging from peace treaties (e.g., the 1919 Versailles Treaty) to compensation mechanisms (e.g., Ethiopia-Eritrea Claims Commission; US-Iran Claims Tribunal). For instance, Ukraine represented by the President of Ukraine has recently [voiced](#) the idea to create a separate compensation commission for Ukraine.

Individual responsibility may be invoked in a civil or a criminal process. For instance, even the state which commits international crimes may be liable for its unlawful acts in civil proceedings. The standard of proof in a civil process is less stringent than the one used in criminal proceedings. Certain individuals may be subjected to criminal responsibility by the International Criminal Court (ICC). Ukraine recognized its jurisdiction for certain acts on its territory (statements of the Parliament of Ukraine of [25 February 2015](#) and [04 February 2015](#)), and the ICC Prosecutor [announced](#) the opening of an investigation into the situation of Ukraine.

Each international wrongful acts entails international responsibility, and victims of such violations have the right to justice, truth, reparations and non-repetition. It is often provided that the financing of victim reparations is done through special funds replenished by voluntary contributions; in the case of Ukraine, the financing through confiscated Russian assets may be considered (at the same time, many issues remain in this connection, including the identification of assets connected to Russia).

Depending on the selected avenue for responsibility, issues related to the establishment of facts, injuries and cause-and-effect links may arise. According to Yael, it is important to be aware of the risk of investigating and gathering evidence without complying to generally acceptable standards since in that case important evidence will not be admissible in a court of law, namely in criminal proceedings at the national and international level.

Documenting facts may be done with different digital means, for instance [EyeWitness App](#) developed by the International Bar Association.

To facilitate the use in ongoing investigations and the evidence-gathering process, the International Criminal and Humanitarian Law Clinic chaired by Yael developed a toolkit (see annex 1) which *“is designed to provide necessary guidelines on how to conduct investigations and gather evidence in compliance with the widest accepted standards, including at the International Criminal Court (ICC) in view of increasing the chances for efficient investigations and gathering of evidence”*.

2. How to document damage

2.1. Is there a uniform course of action?

Currently in Ukraine there is no uniform recommended course of actions for citizens and businesses to document damage caused by aggression against Ukraine.

According to Serhii Zamidra, when citizens face the need to document damage suffered by themselves, their loved ones, property or business, they are prone to appeal to all authorities which in theory deal with mitigation of consequences of the aggression as well as to all electronic portals, chat-bots which they heard of. This, on the one hand, creates additional administrative load on law enforcement authorities and rescue services and, on the other, does not guarantee that the

submitted information is sufficient to attest the legal fact and to finally receive compensation for damages.

The documenting of damage in freed communities takes place with the participation of municipal authorities, experts in construction, police etc. He cites an example of issues with the smooth running of the process of documenting damage: in the case of Borodyanka freed on 02 April 2022, sessions of the commission to examine destroyed and injured objects of social and residential infrastructure and the drawing-up of relevant acts took place in late May 2022.

Sergii says that, in his opinion, the state lacks a unified database on the inflicted damage which should be filled with information at different levels: at the top level – with the generalized data on affected territories; at the lower level – with individualized information. At the same time, other speakers, e.g. Maksym Nefyodov, does not agree with this idea which he finds utopian.

The lack of a developed and communicated state-recommended algorithm of actions can be explained by the fact that a specific standard of quality and completeness of evidence depends in the first place on the legal mechanism which will be used to seek compensation. Thus, state authorities may be cautious to recommend a course of actions which in the end would not be the right one. This, however, does not relieve the state from responsibility towards its citizens as damage must be documented at the time most proximate to when it was inflicted and before any repairs are made, citizens face issues with the lack of information and, as a result, resort to excessive actions that negatively impacts the functioning of the state system.

Recommendation to the state №1: at the state level information campaign should be launched to inform citizens of the recommended course of actions when they suffer different types of damage (death or injury of a person, destruction or injury to a residential object, destruction or injury to a non-residential object of commercial and non-commercial use).

2.2. When there is no uniform algorithm, what to do?

2.2.1. To apply to electronic portals of data collection.

a) To which portals to apply?

We know about the existence of many online-portals, other electronic portals (e.g., chat-bots) (portals) for gathering data on the consequences of aggression against Ukraine. In most cases, such portals collect, *inter alia*, personal data. These portals vary according to the information that they collect (e.g., information on war crimes, human rights violations etc.), its scope, the declared purpose of data processing, including further direction of data use and transfer.

At the same time, as regards all initiatives to collect data which are visible in the public domain there are no independent guarantees of due treatment of personal data as well as its non-use for the benefit of the enemy. There are further risks of abuse when the state does not take immediate actions. For example, certain portals which contain national official symbols do not contain information on the authority which acts as the controller of the data gathered through the portal and would thus be responsible for safeguarding personal data and its use according to the declared purpose of processing.

Recommendation to the state №2: to draw up non-discriminatory, objective and transparent rules of voluntary certification for security purposes (including protection of personal data) of electronic portals where information on the consequences of aggression against Ukraine is gathered, to ensure mandatory check of compliance with such rules by portals which function under the state's authority (have signs of cooperation with state authorities on their website) as well as portals which wish to undergo the voluntary certification, and to ensure centralized information provision to citizens about the portals which completed the voluntary certification (including following corrective actions identified during the check).

As regards the activity of certain portals we received information from certain state bodies. For instance, from the **Ministry of Justice of Ukraine** we received a reply on the functioning of the Single National Portal (<http://humanrights.gov.ua>):

Under joint coordination of the Office of the President of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Foreign Affairs of Ukraine as well as the Representative Office of the President of Ukraine in the Autonomous Republic of Crimea, a web-platform was created for effective collection and processing of information on violations of human rights by the Russian Federation, which provides for the possibility to submit evidence using a special form on the webpage of the Single National Portal <http://humanrights.gov.ua> (hereinafter – Portal).

The Portal is created for the purpose of collecting facts and evidence on violations of human rights by Russia for the defense and representation of Ukraine in international courts, in particular in the European Court of Human Rights (hereinafter – ECtHR) where Ukraine has for 8 years been fighting the occupation power.

To document a human rights violation and/or crime committed, it is important to fill in a special form on the platform <http://humanrights.gov.ua>, to describe the fact of a violation, attach available evidence (photo, video, documents), information on witnesses, victims.

Using the Portal, all types of human rights violations are documented, including the destruction and injury of property, explosions, torture, executions and killings, property confiscation, corporal injuries, rape, kidnapping, forced disappearances etc. If the category of the information is difficult to determine, one may use the category “Miscellaneous” – this information is further analyzed to determine its category.

As regards the statistics of applications, we inform you that as of 27 May 2022 on the Portal <http://humanrights.gov.ua> around 620 messages were recorded regarding violations of human rights as a result of the fully-fledged invasion of Russia in Ukraine.

We also inform you that a chat-bot Warcrime_bot for messengers such as Viber, Telegram has been launched which allows to document crimes of Russia during the war in Ukraine. The chat-bot collects messages on human rights violations, kidnappings, murders, destruction, torture, bombardment etc.

The Chat-bot allows making a photo of the crime scene, add photo and video evidence, include a text message and contact data for the possible engagement as a witness.

The Chat-bot is run on messengers Viber and Telegram using the following links:

Viber: <http://tinyurl.com/warcrimebot>

Telegram: t.me/warcrime_bot

Duly documented and further developed by lawyers cases submitted through the Portal <http://humanrights.gov.ua> and the Chat-bot will be analysed and form the basis of the inter-state application of Ukraine against Russia in ECtHR.

Thus, the indicated information may only be used by the team of the Ministry of Justice of Ukraine for the defense of interests of Ukraine and its citizens which suffered from full-scale invasion of Russia in Ukraine.

We also receive certain information regarding the functioning of portals dokaz.gov.ua and warcrimes.gov.ua from the **Office of the Prosecutor General of Ukraine**:

We inform you that the created online-platform warcrimes.gov.ua enables all witnesses of crimes to send information regarding events which they faced or from which they suffered,

indicating the date, place, their contacts and, where available, photo, video, and other materials.

As of the date of the reply, 14,663 messages were submitted through the platform warcrimes.gov.ua, 6,306 pieces of video evidence and 55,255 pieces of photo evidence were collected.

The information which is uploaded through the online-platform is analyzed by the prosecutorial bodies. The platform has a system of double protection from access of third persons, the information is not transferred to other persons or bodies.

The online-platform dokaz.gov.ua is only a point of access to the online-platform warcrimes.gov.ua and other web-platforms.

We did not receive requested information from the **Ministry of Digital Transformation of Ukraine**.

In general, from the information received we can conclude on aspects of the functioning of relevant portals, but this information is not sufficient to understand all critical elements of the use of personal data which is submitted. Thus, the above-mentioned voluntary certification of portals, including state-run, should help, on the one hand, to simplify the work of data controllers in handling numerous data requests and, on the other, to communicate important information to the general public.

b) Portal “Diia” (including a mobile app “Diia”).

The process of gathering data on destroyed and injured property through Portal “Diia”, including a mobile app “Diia” (hereinafter – “Diia”), is more or less regulated at the legislative level.

According to resolution of the Cabinet of Ministers of Ukraine of 26 March 2022 #380 “On collection, processing, and recording of information on injured and destroyed immovable property as a result of hostilities, terrorist acts, diversions caused by the armed aggression of Russia” information on injured and destroyed immovable property as a result of hostilities, terrorist acts, diversions caused by the armed aggression of Russia could be submitted through Diia. Importantly, under para 6 of this resolution:

... upon entry into force of the Law of Ukraine on governing relations as regards compensation for the injury and destruction of immovable property as a result of hostilities, terrorist acts, diversions caused by the armed aggression of Russia, as applications for compensation for injured and destroyed immovable property shall be treated information statements submitted by individuals according to this resolution as regards the injury and destruction of:

flats, other residential spaces in buildings, private residential houses, gardening and country houses;

building in progress (multistorey buildings, private residential houses, gardening and country houses) where load-bearing and external fencing constructions have been erected (except for translucent structures and filling of door slots) and for which the right to perform construction works was granted;

elements of objects as defined by line three of this para (flats, other residential spaces in buildings) which following their commissioning should constitute separate items of immovable property.

This means that if the relevant law is adopted, at least individuals may claim compensation as stated in the law based on information statements already provided through “Diia”.

In addition, the resolution (taking account of changes introduced by CMU resolution of 29 April 2022 #505) introduces the State register of property injured and destroyed as a result of hostilities, terrorist

acts, diversions caused by the armed aggression of Russia which is used to ensure the collection, accumulation, recording, processing, storage and protection of data on injured and destroyed property. It is stated that:

The Register of injured and destroyed property is a single ICT system designed to collect, accumulate, record, process, store and protect data (documents) on injured and destroyed immovable property, space coordinates of objects, persons whose immovable property was injured or destroyed, damage and losses caused by such injuries as well as other information according to this Procedure.

The cartographic basis of the Register of injured and destroyed property shall be the cartographic basis of the State land cadaster, data from urban-planning cadaster and cadasters of other natural resources, other maps (plans) which shall be compiled in the form and scale as per norms and rules, technical regulations.

To collect information on injured and destroyed immovable property, information products of remote sensing of the Earth, including space photography, may be used.

The holder of the Register of injured and destroyed property shall be the Ministry of Infrastructure of Ukraine while the administrator shall be the State Enterprise Diia which belongs to the sphere of management of the Ministry of Digital Transformation of Ukraine. By 26 July 2022, the Ministry of Infrastructure of Ukraine shall ensure the creation and commissioning of this register and publish information on the start of its use.

c) Data collection portal for the project «Russia Will Pay» (<https://damaged.in.ua/>).

Maksym Nefyodov mentions that his project “Russia Will Pay” (<https://damaged.in.ua/>) has united more than 10 NGOs and analytical partners for purposes of producing high-quality information on direct material damage from aggression and to support the Government, including as part of the implementation of CMU resolution of 20 March 2022 #326 “On the approval of the Procedure for determination of damages and losses caused to Ukraine by the armed aggression of Russia”. From the outset, the main task was to document multiple violations and it later transformed into the integration of data and analytics. As part of the project, information is collected from reliable media, state reports, business associations, through self-reporting of citizens and business (questionnaires, Diia) as well as from other partners. In general, the collection of information on damage caused may be done for different purposes, and apart from this project other centers exist which collect data for media purposes (e.g., [Bellingcat map “Civilian Harm in Ukraine”](#)) or for purposes of invoking criminal responsibility. At the moment, the most promising work stream is the study of satellite and drone images. Maksym finds it unlikely that each victim would be able to personally submit data about the injury. The first three villages which have been covered by this stream of work are Moshchun, Gorenka and Pushcha-Vodytsia. More information on the project can be found in the presentation provided (Annex 2).

Citizen advice: not every electronic portal where damage information is gathered and information about which you can find over the Internet is reliable as information about such portals is not generally filtered. You should thus use only those portals which you can trust. Those could be either portals created and administered by the state or those which in a transparent and accessible manner publish information about their activities. However, in any event, before the state takes minimum steps to guarantee the quality of such portals, there remain risks of unauthorized access to the transferred data. These risks must be balanced against the benefits of submitting the relevant information.

2.2.2. To apply to law enforcement authorities.

Artem Krykun-Tysh states that most applications to law enforcement authorities qualify under Article 438 of the Criminal Code of Ukraine which criminalizes violations of laws and customs of war. This

article is blanket in nature and refers to the rules and customs of war, thus its application by law enforcement officers requires additional efforts. According to Artem, under the current legislation the investigative authority over cases based on this article belongs to the Security Service of Ukraine. In reality, where more than a thousand of cases are already investigated under this article, documenting of evidence is carried out by practically all law enforcement authorities, and investigations are under the radar of the Office of the Prosecutor General. Thus, statements of crime can be submitted, for instance, to the police, including at the location of the temporary residence of the victim; while doing that, it is important to be granted the victim status in such proceedings and to forward the application also to the Office of the Prosecutor General. Citizens and businesses should document the events with all available means: interviews, photo, video, acts of visual inspection (official and voluntary).

According to the said article 438, the laws and customs of war shall be provided in international treaties approved by the Parliament of Ukraine. Such treaties should include the four 1949 Geneva Conventions, other agreements concerning the conduct of hostilities. However, under international law the laws and customs of war shall also include international customs the codification of which has been a [long-standing task](#) of the International Committee of the Red Cross.

Emanuela Gillard indicates that based on the international practice, to obtain compensation it is not always necessary to establish a violation of the rules and customs of war. This happens because under international humanitarian law the destruction or injury of property, casualties and personal injuries are not always treated as violations: for instance, where under international humanitarian law these cases are justified by military necessity. Thus, according to the UN Security Council Resolution [#687](#) (1991) Iraq was recognized liable for “*any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait*”. In another case, for instance, the Ethiopia-Eritrea Claims Commission obtained the [mandate](#) to entertain claims of compensation which “*result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law*”.

It follows that documenting of damage exclusively through law enforcement authorities is sub-optimal as not all claimed crimes would be recognized as the violations of the relevant article of the Criminal Code of Ukraine, which creates uncertainty as to the victims of aggression. In addition, the establishment of facts and of the violation of the laws and customs of war may require significant resources from law enforcement officials where multiple individual applications are engaged – rather than in connection with specific military actions showing elements of an international humanitarian law violation (e.g., shelling of a particular location with prohibited weapons, rocket shelling of a protected facility, mass executions etc). In the latter case, the investigator’s task would be to establish the facts of the case and to identify the existence of all elements of the claimed violation of international humanitarian law and in parallel to grant the victim status to all who suffered from this act.

NB: in the Parliament of Ukraine the draft law submitted by the Government is pending (registration No. [7290](#)) which is designed to ensure conformity of the terminology, definitions and standards of Ukrainian criminal law with norms of international humanitarian and criminal law.

Recommendation to the state №3: the parliament should adopt draft law №7290 which creates legislative conditions for due prosecution of crimes in Ukraine according to international rules.

Recommendation to the state №4: when investigating crimes under Article 438 of the Criminal Court of Ukraine, law enforcement authorities should look into events which showcase elements of violations of international humanitarian law rather than perform the function of documenting all damage caused by the aggression. To eliminate the excessive workload of the law enforcement authorities, the state may use the mechanism of damage documentation which will not depend on the outcomes of criminal investigations but will form

a database related to injuries and the actions which led to them. An important role in this process should be played by municipal authorities.

2.2.3. To apply to municipal authorities.

Serhii Zamidra shared information on individual aspects of documenting damage to facilities. In this connection and specifically as regards issues of immediate repairs, the recent clarification by the Ministry of Community and Territory Development of Ukraine shall be cited:¹

Clarification on documenting of destructions with a view to mitigate the consequences of military activities and restore the infrastructure of localities during the state of war

27 April 2022

In response to numerous requests related to the carrying out of rescue and restoration (emergency and repair) as well as other immediate works related to restoration of objects (hereinafter – immediate restoration works), with a view to document destructions for purposes of mitigating consequences of military actions and restoration of the infrastructure of localities during the state of war the [Ministry] within its sphere of competence informs of the following.

According to the Procedure on the performance of immediate works as to mitigation of consequences of armed aggression of Russia related to injuries to buildings and constructions as approved by CMU resolution of 19 April 2022 #473, the organization and coordination of performance of immediate works shall be made by executive bodies of village or city councils and absent those – by military administrations (hereinafter – authorized bodies).

Where acts of aggression of Russia took place in a particular locality as a result of which injuries have been inflicted on objects, the authorized body shall perform preliminary visual examinations of injured objects with a view to form a list of such objects.

As regards objects which as a result of a preliminary examination were found to be destroyed and significantly injured, the authorized body shall adopt the decision to carry out an inspection according to the Procedure for inspection of commissioned construction objects as approved by CMU resolution of 12 April 2017 #257 (hereinafter – Inspection Procedure). To carry out the inspection, certified specialists with relevant qualifications as well as enterprises, institutions and organizations which have such specialists shall be engaged.

According to the Inspection Procedure, during the state of war and within 90 days of its termination the executors of inspection works may be:

building inspection expert;

design engineer with [relevant qualifications];

building expert with [relevant qualifications];

consultant engineer with [relevant qualifications].

As a result of the inspection of the injured objects, the executor of the inspection works shall compile a report according to para 8-1 of the Inspection Procedure.

This report shall be supplemented by the inspection act which shall contain information as to the category of injury determined during the inspection.

Objects which as a result of the preliminary visual examination were found to be insignificantly injured and those which may be restored with current repairs, based on a decision of the authorized body may be inspected by a commission which shall consist of representatives of the authorized body, the owner

¹ https://www.minregion.gov.ua/napryamki-diyalnosti/building/pricing/rozvitok-budivelnoyi-diyalnosti/rozyasnennya-shhodo-fiksacziyi-rujnuvan-dlya-likvidacziyi-naslidkiv-bojovyh-dij-ta-vidnovlennya-infrastruktury-naselenyh-punktiv-v-umovah-voyennogo-stanu/?_cfchlrttk=bZ6JQo5FmgGnnfIGjXIHUVbPAwGcYi9TpX8PcZyFFUg-1651222065-0-gaNycGzNCL0&fbclid=IwAR0U4Xjy5URZtJPSrW_Zd8qaGk_VsnUGcQkW6ER9_I8Ba-wrsM5-KcuZme8

(balance sheet holder of the object (where available) and shall include specialists in building. As a result of the inspection, the commission shall draw up an inspection act.

It is also important to note that following changes to the Procedure on the approval of building projects and their expertise as approved by CMU resolution of 19 April 2022 #470 projects of refurbishment (regardless of the class of consequences (liability) of objects injured as a result of military actions are allowed to be realized as part of the defect act which shall define the physical works, explanatory notes in which conditions for performance of works must be identified as well as the cost estimate.

This project shall be drawn up based on the inspection report developed according to the Inspection Procedure. Such a report shall include a conclusion on the technical state of the object, data on the injured (destroyed) elements, engineering systems (with indication of the degree and amount of injuries, their technical state) as well as recommended measures of restoration of the exploitation ability of the object.

The decision as to the volume of the project documentation (as to the possibility to develop the construction project in the form of a defect act, explanatory note and cost estimate) shall be adopted by the chief architect of the project and/or chief engineer of the project with the agreement with the employer identified on the project assignment.

The defect act form is part of annex 29 of Cost estimate norms of Ukraine “Guidelines on the determination of costs of construction” as approved by the order of the [Ministry] of 01 November 2021 #281 (hereinafter – Guidelines).

The cost estimate as part of the refurbishment project shall be developed according to the Guidelines.

In case of immediate restoration works made as current repairs (which according to the current legislation do not qualify as construction), the scope of works shall be determined based on the inspection act drawn up by the authorized body as a result of the commission’s object examination and may be presented as a defect act. The cost of current repairs shall be determined based on justified labor and material resources as well as their costs calculated based on the current price level. To determine the cost of such works, based on the employer’s decision the Guidelines may be applied.

3. Why and how to document damage to the environment

Andriy Andrusevych briefly presented a [study](#) of the Resource and Analytical Centre “Society and Environment” as to the international practice of compensation for damage caused to the environment by occupation or military actions.

According to him, there are two formats to receive compensation for damage to the environment – under a peace treaty or under a decision of the third party, not necessarily the International Court of Justice (e.g., there is massive practice of the UN Compensation Commission created following Iraq’s invasion of Kuwait).

In his opinion, damage to the environment has its specificity as it is inflicted upon the people of Ukraine and the state of Ukraine, and the compensation for damage shall be handled by the state as such rather than an individual or a legal entity. The format of reparations applied after World War II when compensation was awarded as a global sum does not seem an effective mechanism from the point of view of the damage caused to the environment. This is so because the value of the environment and its monetary calculation has developed in the eyes of the society and states; in 1945, one could not even think of damage to the environment in the form of the loss or depletion of ecosystem services or biodiversity services (rather than the loss of fossils and natural resources); at the moment, the value of the environment is calculated, inter alia, taking into account the value of ecosystem services that are provided (e.g., recreation services, purification services etc). Under a peace agreement, they managed to find only one example of compensation for damage caused to the environment.

At the same time, ample international practice on compensation for environmental damage exists, including two recent judgements of the International Court of Justice ([Costa Rica v Nicaragua](#), [DRC](#)

[v Uganda](#)) as well as case-law of the UN Compensation Commission which only recently wrapped up its activities.

Andriy is of the view that documenting damage to the environment should be the number one priority as the nature tends to self-recover. It is a secondary task to perform appraisal of the damage suffered since this process will depend on the compensation mechanism which will be selected or available. For instance, at least the International Court of Justice in the two above-mentioned cases is skeptical about methods of damage assessment which are specifically devised for a specific case.

Andriy states that the definition of environmental damage is also of paramount important. For instance, following Iraq's invasion of Kuwait the main sum of compensation was allocated for restoration of the environment and for expenses to document the damage. Thus, state programs should be developed in respect of these processes the cost of which will be subject to assessment. In addition, environmental damage should include damage to public health.

Recommendation to the state №5: special attention should be paid to the definition of damage to the environment that should include all elements which based on international practice may be compensated in the context of an armed conflict.

Andriy Bogdanovych recounts the work of the State Ecological Inspection (hereinafter – SEI) in the direction of damage documentation. He indicates that after 24 February 2022 under the SEI's auspices [an operational task force](#) was created which includes representatives of committees of the Parliament of Ukraine, the Ministry of Environmental Protection and Natural Resources (hereinafter – the Ministry of Nature), the Ministry of Defense, the National Security and Defense Council, the Security Service of Ukraine, the National Police, civil society etc. The task force is assigned with documenting and assessing damage to the environment. The task force received circa 250 notifications on dangerous and emergency situations following the full-scale Russian invasion. The task force's website contains, inter alia, a [detailed list of recorded events](#). Information on the events is collected both by the task force's staff and through the developed communication channels, including [Telegram-bot](#) and a mobile app "Ecoshkoda".

According to his data, the Ministry of Nature already approved the Methodology for the determination of the amount of damage caused to the land and soil by emergency situations and/or armed aggression and military actions during the state of war ([order of 4 April 2022 #167](#)) and the Methodology for the calculation of non-organized emissions of pollutants or their mixture into the atmosphere as a result of emergency situations and/or during the state of war and the determination of amounts of the damage caused ([order of 13 April 2022 #175](#)). As of 24 May 2022, the preliminary volume of damage is calculated at UAH 3.2 bln.

Yevgeniia Zasiadko presented the [interactive map of potential damage to the environment](#) which is available on the website of NGO "Ekodiia". This NGO carries out the activity of data gathering (there is also an email to which notifications of crimes related to the environment can be submitted) and ranges information according to different categories: "livestock waste", "damage to industrial objects" etc. This information is also shared with the Ministry of Nature.

In addition, we received information from the State Agency on Water Resources on the damage to water resources:

As a result of the armed aggression, entities of the [Agency] suffered damage, in particular to water management infrastructure, in the form of injuries to hydrotechnical and water management facilities. Such facilities include damaged bases of operational sites, including administrative buildings, production units, boxes, warehouses, destroyed and injured buildings of pump stations, transformer sub-stations, canals, dams, bridges, gateway-regulators, stolen equipment and appliances, terminated electric supply.

According to operational data received from water management organizations under the [Agency's] control, from 24 February to 20 May 2022 from immovable property 136 objects were occupied, 35 objects were destroyed, 127 objects were injured, from moveable property 90 objects were occupied, 18 destroyed and 21 injured. The preliminary amount of damage caused to the [Agency] as a result of destruction or injury of state property is assessed at the level of UAH 342 mln, including of injured property UAH 318 mln (moveable – UAH 2.4 mln, immovable – UAH 316 mln) and of destroyed property UAH 23 mln (moveable – UAH 2 mln, immovable – UAH 21 mln).

At the moment, it is impossible to assess the damage on territories with active hostilities as well as on occupied territories. Final data on the caused damage will be provided following the end of hostilities and de-occupation.

Information on the damage to water resources is provided to the [SEI].

4. Why and how to document damage to cultural property

Nataliia Mytsai shared her experience in reacting to the destruction of the monument of national importance, i.e. National Literature and Memorial Museum of Hryhoriy Skovoroda, which was hit on 07 May 2022. After the missile stroke the building where the most famous Ukrainian philosopher had lived his last days, the fire set, and at the moment the building is in an emergency state, the roof, walls, windows, doors, and wooden partitions were completely lost. Following the attack, an inspection was carried out with the involvement of architects, restoration engineers and scientists. There are two options for restoration: the performance of restoration works or the performance of first-hand emergency and conversion works. As of now negotiations are on track with patrons and a fundraising campaign is on.

According to Nataliia, in general a special commission which visits the sites and documents damage to cultural property has been established with the Kharkiv military and civil administration and the culture department of the Kharkiv regional council as many cultural heritage objects are located in this region. After the attack, it was possible to document the damage, in particular make photos, drone imaging, and relevant applications were submitted to law enforcement authorities. In addition, [ICCROM](#) helped with documenting damage, having provided easy to use questionnaires for injury assessment. The museum cooperates with the Yale University as to avenues of appeal to courts as well as with the [Heritage Emergency Response Initiative](#), [the Revolution of Dignity Museum](#) and other volunteers.

Prof. Ana Filipa Vrdoljak indicates that documenting damage to cultural heritage plays an important role in proving, inter alia, the acts of genocide as well as human rights violations and crime of persecution (as part of the crime against humanity) both from the standpoint of state responsibility and the criminal responsibility of individuals. According to her, damage to cultural property may take the form not only of destruction or injury to material objects such as monuments but also of attacks at private collections, destruction of non-material heritage, including its representatives, as well as of damage to libraries and archives. In general, for documenting damage to cultural property it is important to keep appropriate inventory during the peaceful time. To document the damage different digital tools can be used, in particular the IBA EyeWitness app.

Recommendation to the state №6: to ensure a wholesale categorization of cultural heritage property with due account of the international practice and with engagement of international experts.

5. What next?

One may think of two general avenues for a particular person to receive monies which in nature constitute compensation for damage caused to this person or his/her property by aggression against

Ukraine. This is what we can call the avenue of individual recourse as well as the avenue of allocation of centralized compensation.

It should be underscored that we do not speak of financial assistance to Ukraine from other states or organizations which target post-war recovery since from a legal standpoint this is not compensation but rather aid. However, due to the voluntary nature of such contributions, their disbursement may be linked to certain conditions, for instance to the conditions that compensation should be waived in an individual case or on an all-state level.

5.1. Individual recourse.

This avenue deals with the receipt of funds following consideration of an individual case with the use of evidence standards acceptable by the respective decision-making body. The proposal to realize this avenue has been recently voiced by the President of Ukraine when he offered to create a special compensation commission for Ukraine. This idea was further elaborated on by Markiyan Kliuchkovskiy. He explained that currently there is no optimal avenue to receive individual compensation, and thus the assignment has been to jump-start this avenue from ground zero. At the same time, a major obstacle to this idea is posed by the fact that previous compensation commissions were established either upon the agreement of the state which had to provide compensation or under a resolution of the UN Security Council. The current concept envisages that the compensation commission will be created under a multilateral treaty, and the issue remains as to how the payment to victims will be funded. At this stage, there are no concrete proposals as to the standard of evidence to be required, but it is envisaged that it should be adequate. In particular, it is suggested to separate claims into several categories and for less significant categories to apply less stringent rules of procedure, for instance, when to prove the destruction of residential property the person should simply confirm ownership to the property. More information on this idea could be found here: [Launching an International Claims Commission for Ukraine – EJIL: Talk! \(ejiltalk.org\)](https://ejiltalk.org/launching-an-international-claims-commission-for-ukraine/).

5.2. Allocation of centralized compensation.

This avenue deals with the receipt of funds from the state of Ukraine which, in turn, will receive reparations for the international wrongful acts. Since the immediate recipient of funds would in this case be the state, the question arises as to the principles and mechanisms for the allocation of received or expected funds among victims, including as regards the acceptable means of documenting damage. Another question is whether the receipt of centralized funds by the state would preclude the use of the above-mentioned individual avenue by individual claimants.

In general, as Emanuela Gillard indicates, reparations under international law may take the form of restitution, compensation or satisfaction, and each of these forms may be calculated in monetary terms.

In Ukraine, a draft law is registered and voted in the first reading as to the compensation for destroyed immovable property ([registration No.7198](#)). We did not manage to get a comment on this draft from its initiators.

However, according to Tetiana Boiko, there is a need to consider an alternative approach to the centralized process of money distribution. Since the draft law indicates that alongside the compensation the recipient concludes the contract for the transfer of rights of claim to the state as regards compensation for damages for destroyed or injured property, this concept shall become prominent in the law. Non-governmental network OPORA produced a separate piece with comments to the law: [“Компенсації” чи репарації? Про що має бути закон про відшкодування шкоди, завданої житлу та іншій нерухомості | ПроОСББ \(proosbb.info\)](#). In particular, it is important that the new law defines the authority of local commissions to assess damage in monetary terms. She separately highlights the need to organize mechanisms for fast-track financing of immediate repairs (e.g., window installation etc).

Emanuela Gillard agrees that the draft law covers the damage that may have been suffered only partially since it can take other forms such as casualties, destruction of moveable property and business, etc. It is of particular importance that where any international compensation mechanism is realized, interests of victims should be taken into account and victims should receive adequate compensation. She cites the case of settlement between Ethiopia and Eritrea when the states performed a mutual offset of claims thus leaving out the victims.

Recommendation to the state №7: to organize an easy and accessible mechanism to finance standard urgent repairs which would allow to set a standard of expenses for such works, gather more reliable and individualized information on the injuries as well as then transfer the outcomes of the work of such mechanism for compensation under the international financing scheme which will be selected.