

Can we pay it out? Civilians and the compensation of cumulative war trauma in the aftermath of the international climate change litigation

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Abstract

The legal appraisal of civilian mental harm amounting to trauma is something that has been discussed by international scholars when it comes to warfare and its aftermath, but no discussion has taken place on how such civilian war trauma can be compensated for. The question becomes even starker in cases of cumulative war trauma, where the trauma incurred appears as an externality of warfare and as a natural repercussion stemming from the latter. Along these lines and drawing from climate change litigation that has taken place before international courts and tribunals over the last few years, this article details how arguments derived from that litigation scheme can present

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prospects as well as limitations with regard to how cumulative war trauma, caused by States as well as by non-State actors, can be subject to compensation.

Keywords: civilians, cumulative war trauma, environmental harm, compensation, climate change litigation.

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Introduction

Over the last few years, a number of international law scholars¹ have emphasized how, inside a *jus in bello* framework, civilian mental harm should be a parameter affecting the legality of military operations. In most cases, given that warfare begets sentiments of fear,² these scholars have proceeded to underline how civilian mental harm should be deemed to hold legal ramifications only to the extent that it amounts to trauma, in the way that mental health sciences have explored the notion.³ Similarly, even after hostilities have ceased and inside a *jus post bellum* framework governing the legal framework of healing traumas that conflicts have incurred, the need to ascribe a legal importance to civilian war trauma is underlined by the nexus between disability rights and warfare,⁴ and the fact that civilian war trauma can

- 1 Eliav Liebllich, "Beyond Life and Limb: Exploring Incidental Mental Harm", in Derek Jinks, Jackson Maogoto and Solon Solomon (eds), *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies*, T. M. C. Asser Press, The Hague, 2014, p. 185; Emanuela-Chiara Gillard, "Joint Symposium: Chatham House Report on Proportionality in the Conduct of Hostilities – Some Key Elements", *EJIL: Talk!*, 28 January 2019, available at: www.ejiltalk.org/joint-symposium-chatham-house-report-on-proportionality-in-the-conduct-of-hostilities-some-key-elements/comment-page-1/ (all internet references were accessed in June 2026); Solon Solomon, "The Psychological Impact of Military Operations on Civilians and the UN Human Rights Committee *Japalali* Decision: Exploring Mental Anguish under a *Vida Digna*, Right to Life Prism", *Journal of Conflict and Security Law*, Vol. 26, No. 2, 2021; International Law Association Study Group on the Conduct of Hostilities in the 21st Century (ILA Study Group), "The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare", *International Law Studies*, Vol. 93, 2017; Sarah Knuckey, Alex Moorehead, Audrey McCalley and Adam Brown, "The Proportionality Rule and Mental Harm in War", in Claus Kress and Robert Lawless (eds), *Necessity and Proportionality in International Peace and Security Law*, Oxford University Press, New York, 2020, p. 367. For reservations about the role of civilian mental harm in the *jus in bello* proportionality principle see Noam Lubell and Amichai Cohen, "Strategic Proportionality: Limitations on the Use of Force in Modern Armed Conflicts", *International Law Studies*, Vol. 96, 2020, p. 174.
- 2 Solon Solomon, "Concretizing Mental Harm: Warfare's Psychological Impact on Civilians and the Return to Domestic Law for Establishing a Standards-Setting Paradigm", *Transnational Law and Contemporary Problems*, Vol. 31, 2021, p. 123.
- 3 On this, speaking in reference to post-traumatic stress disorder (PTSD), see, for example, S. Solomon, above note 1; E. Liebllich, above note 1; S. Knuckey *et al.*, above note 1. But see also, including reference to depression, Solon Solomon, "Why Should the Innocent Suffer? Mental Harm as Disability and the Establishment of a Post Bellum Duty of Care for Enemy Civilians", *Fordham International Law Journal*, Vol. 48, No. 1, 2024, p. 168.
- 4 International Committee of the Red Cross (ICRC), *How Law Protects Persons with Disabilities in Armed Conflict*, 2017, available at: www.icrc.org/sites/default/files/document/file_list/how_law_protects_persons_with_disabilities_in_war.pdf.

constitute a form of disability under the United Nations Convention on the Rights of Persons with Disabilities (CRPD).⁵ Equally, international instruments often include psychological care as a rehabilitation measure to be undertaken for the healing of wounds in the aftermath of hostilities.⁶

Nevertheless, none of these instruments include any provision relating to any compensation owed to civilians of a former warring party for the mental harm that they have sustained. This is despite the fact that the award of compensation is cardinal for the healing of past wounds created by warfare and is utterly connected to any rehabilitation pleas.⁷ For instance, following the war between Eritrea and Ethiopia, the Eritrea-Ethiopia Claims Commission underlined how monetary compensation should in principle be the appropriate remedy for any valid claims between the parties.⁸

Equally, any reference to civilian war trauma in the realm of the due diligence owed to affected persons and any compensation that may be owed to them has taken place only in the context of isolated military operations⁹ or recurrent attacks,¹⁰ and nothing has been written so far on how cumulative civilian war trauma is to be compensated.¹¹ Along these lines, the current article aims to explore the question of how cumulative war trauma can be compensated when it comes to civilians of a former warring party. In doing so, it will draw from the dynamic developed in the arguments posed and discussed by litigants and international courts in the realm of climate change litigation (still ongoing in some cases¹²), which have resulted in a

5 S. Solomon, “Why Should the Innocent Suffer?”, above note 3.

6 Convention on Cluster Munitions, 2688 UNTS 39, 30 May 2008 (entered into force 1 August 2010), Art. 5(2)(h); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 2056 UNTS 211, 18 September 1997 (entered into force 1 March 1999), Art. 6; and see the article by Emily Camins in this issue of the *Review*: Emily Camins, “Supporting Mental Health In Post-Conflict Situations: Examining the Intersection of Human Rights Obligations and Victim Assistance Frameworks”, *International Review of the Red Cross*, Vol. 108, No. 932, 2026. See also *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UNGA Res. 60/147, 16 December 2005, para. 21.

7 Mira Naseer, “Realizing the Right to Reparation by Reforming Domestic Crime Victims’ Funds”, *Harvard Human Rights Journal Online*, 13 March 2024, available at: <https://journals.law.harvard.edu/hrj/2024/03/naseer-reparation/>; Lisa Laplante, “Bringing Effective Remedies Home: The Inter-American Human Rights Systems, Reparations and the Duty of Prevention”, *Netherlands Quarterly of Human Rights*, Vol. 22, No. 3, 2004, p. 352. See also Convention on International Liability for Damage caused by Space Objects, 961 UNTS 187, 29 March 1972, Art. XII (stating that the relevant compensation will aim to provide such reparation in respect to the damage as will restore the person to the condition which would have existed if the damage had not occurred).

8 Eritrea-Ethiopia Claims Commission, Decision No. 1 of August 2001, *Reports of International Arbitral Awards*, Vol. 26, 2001, p. 7.

9 E. Lieblich, above note 1, p. 188.

10 Solon Solomon, “Bringing Psychological Civilian Harm to the Forefront: Incidental Civilian Fear as Trauma in the case of Recurrent Attacks”, *EJIL: Talk!*, 25 April 2018, available at: www.ejiltalk.org/bringing-psychological-civilian-harm-to-the-forefront-incidental-civilian-fear-as-trauma-in-the-case-of-recurrent-attacks/.

11 For more on how cumulative trauma is to be understood, see the section below on “Cumulative Civilian War Trauma and Its Compensation”.

12 On this account, a request by the Pan African Lawyers Union for an advisory opinion on climate change has been filed and is pending (at the time of writing, June 2026) before the African Court on Human and

number of important rulings by international courts and tribunals.¹³ The relevance of these rulings to the discussion on cumulative war trauma is further underlined by the fact that climate change impacts upon mental health¹⁴ and that environmental harm can also have cumulative aspects, as has been expressed by judges in the realm of climate change litigation.¹⁵ Furthermore, echoing environmental harm,¹⁶ war trauma cannot always be attributed to a single cause and impacts upon a large, undisclosed number of people whose exact compensation is often a difficult and arduous task.

The question of compensating for any harm rests on two main pillars. The first refers to the question of whether any compensation is due in the first place – this question is linked to the question of attribution of the harm incurred due to a specific act or acts, which necessitates a causation link between the undertaken act or acts and the specific result.¹⁷ Assuming that such a causation link does exist, the second pillar refers to how compensation is to be given, meaning whether it is going to be given in full, covering all the harm sustained, or whether it will be more symbolic, detached from the level of the harm caused.

Regarding the first question, international law requires the establishment of a causation link between a certain act or acts and the harm incurred.¹⁸ The International Law Commission's (ILC) Articles on Responsibility of States for Internationally Wrongful Acts hold that an internationally wrongful act entails the liability of the State and constitutes, *inter alia*, a breach of an international obligation of the State which can be attributable to the latter.¹⁹ Yet international law also acknowledges that actions can have negative consequences and can incur liability even if they are undertaken inside the ambit of the law and are totally lawful. Drawing inspiration from environmental law but seen as covering questions of harm

People's Rights. See African Court on Human and People's Rights, *Request for Advisory Opinion No. 1 of 2025*, 2 May 2025.

- 13 International Court of Justice (ICJ), *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025 (ICJ Advisory Opinion); International Tribunal for the Law of the Sea (ITLOS), *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024 (ITLOS Advisory Opinion); Inter-American Court of Human Rights (IACtHR), *Climate Emergency and Human Rights*, Advisory Opinion AO-32/35, 29 May 2025 (IACtHR Advisory Opinion); European Court of Human Rights (ECtHR), *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*, Appl. No. 53600/20, Judgment (Grand Chamber), 9 April 2024; ECtHR, *Careme v. France*, Appl. No. 7129/21, Judgment (Grand Chamber), 9 April 2024; ECtHR, *Duarte Agostinho et al. v. Portugal*, Appl. No. 39371/20, Judgment (Grand Chamber), 9 April 2024.
- 14 Sabin Center for Climate Change Law, Columbia Law School, *Amicus Brief Submitted to the Inter-American Court of Human Rights on the Request for an Advisory Opinion on the Climate Emergency and Human Rights*, 2 November 2023, p. 12.
- 15 ICJ Advisory Opinion, above note 13, para. 429 and Separate Opinion of Judge Yusuf, para. 11; Sabin Center for Climate Change Law, above note 14.
- 16 ICJ Advisory Opinion, above note 13, para. 421.
- 17 On the fact that the ICJ has clarified that the existence of concurrent causes does not mean that a State is exempt from making reparations, see *ibid.*, para. 435.
- 18 Neil Craik, Tara Davenport and Ruth Mackenzie, *Liability for Environmental Harm to the Global Commons*, Cambridge University Press, Cambridge, 2023, p. 31.
- 19 ILC, *Articles on Responsibility of States for Internationally Wrongful Acts*, in *Yearbook of the International Law Commission*, Vol. 2, Part 2, 2001.

in international law more broadly,²⁰ the question is addressed by two documents drafted by the ILC: the first is the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities,²¹ and the second is the Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities (ILC Principles).²² Quite importantly, when it comes to the ILC Principles, these establish strict liability not for States but for private entities operating inside a State,²³ and this can be indicative of efforts in environmental law for accountability to be expanded also to non-State actors, such as companies.²⁴

The question of liability for private operators that the ILC Principles present – independently of any liability that the State may hold – is of cardinal importance for warfare. The last few years have seen non-State actors playing a major role in warfare;²⁵ the question is thus whether non-State actors can be held accountable and called to compensate civilians for harm incurred even when these actors lie outside the umbrella of a given State. Moreover, to the extent that non-State actors operate in both non-international and international armed conflicts, the ILC Principles' reference to transboundary harm makes any discussion on them relevant only in cases of international armed conflicts where the harm incurred to a party originates from an entity that lies outside a given State's borders.²⁶

So far, the classical view in international law has necessitated that the actions of non-State actors be attributed to a State in order for international liability of the latter to emerge. It is along these lines that the International Court of Justice (ICJ) proceeded in the *Nicaragua* case to lay out criteria under which such attribution could take place,²⁷ and in the aftermath of the 9/11 attacks, there was a tendency to associate Al-Qaeda with the Taliban in order for Afghanistan to be held accountable.²⁸ The ICJ has similarly followed this line of thought in the case of climate change, holding that States can be held accountable for the pollutive actions of

20 ILC, *Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities*, in *Report of the International Law Commission on the Work of Its Fifty-Eighth Session*, UN Doc A/61/10, 2006 (ILC Principles), Preamble; Alan Boyle, "Liability for Injurious Consequences of Acts Not Prohibited by International Law", in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility*, Oxford University Press, Oxford, 2010, p. 96.

21 ILC, *Prevention of Transboundary Harm from Hazardous Activities*, in *Yearbook of the International Law Commission*, Vol. 2, Part 2, 2001.

22 ILC Principles, above note 20.

23 ICJ Advisory Opinion, above note 13, Declaration of Judge Nolte, para. 16.

24 IACtHR Advisory Opinion, above note 13, para. 176. See also Sabin Center for Climate Change Law, above note 14, p. 49 n. 227 (with further references therein).

25 See the section below on "Cumulative Civilian War Trauma and Its Compensation".

26 Ivon Mingashang and Christian Tshiamala Banungana, "The International Responsibility of a Belligerent State in the Event of Transboundary Environmental Damage", *International Review of the Red Cross*, Vol. 106, No. 925, 2024.

27 ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Judgment (Merits), *ICJ Reports* 1986, paras 103–104, 115–116.

28 Ben Smith and Arabella Thorp, *The Legal Basis for the Invasion of Afghanistan*, UK House of Commons Library, research briefing, SN/IA/5340, 26 February 2010, p. 3.

non-State actors situated inside State territory if they do not exercise due diligence in the supervision of the emissions that these non-State actors generate.²⁹

Yet importantly, and beyond the question of how the actions of non-State actors can ultimately bear legal repercussions, the discussion of the ILC Principles in the realm of ICJ advisory proceedings – even if, in the end, their application is to be rejected³⁰ – puts on the table the possibility for any liability quests against non-State actors to be filed independently of any State connection. On this account, the fact that the ILC Principles introduce strict liability is also important *per se*. Strict liability is a form of liability that still lies inside the ambit of restorative justice and needs a causation link for the harm to be established.³¹ Nevertheless, the fact that there is no need for the affected victim to prove that the polluter had any intent to cause the harm incurred, or was guilty of any negligence that caused it, makes compensation claims easier to be brought and, in a manner relevant to cases of cumulative war trauma, opens up the circle of beneficiaries in the same way that distributive justice does. The latter sits on the opposite side of the spectrum to restorative justice.

Whereas for restorative justice compensation has to be full, meaning that it has to reflect the exact harm that a given individual has sustained,³² distributive justice underlines the need for resources to be allocated to the widest number of recipients possible, in a fair and equitable way.³³ Interestingly, in instances like the one examined in this article, when the number of affected individuals from climate change or from warfare is large and if each individual is to be fully compensated, the State or the compensating body in question – if it is a non-State actor – will not have resources to provide compensation for all of those affected. In such instances, the payment of a lump sum as compensation,³⁴ as this article advocates, constitutes a point where corrective justice, meaning the addressing of a past wrong such as pollution or war trauma,³⁵ meets distributive justice as strict egalitarianism, to the extent that such addressing takes place in a way that monetarily ends being equal for all affected individuals.³⁶ The emphasis is thus not so much on compensating for the exact amount of harm that someone has sustained, but rather on the fact that,

29 ICJ Advisory Opinion, above note 13, para. 428; Caroline Foster, “The 2025 International Court of Justice Advisory Opinion on Obligations of States in Respect of Climate Change”, *International and Comparative Law Quarterly*, Vol. 74, No. 4, 2025, p. 777.

30 See the section below on “Cumulative Environmental Harm in the Realm of Climate Change Litigation”.

31 On this, see Judge Jesus noting that “even where a State has taken all measures of due diligence that are required by the books to avoid the occurrence of environmental damage to another State, but damage has nonetheless occurred, the responsibility of the former State may be engaged on the basis of strict responsibility for the environmental damage caused, if causation is established”. ITLOS Advisory Opinion, above note 13, Declaration of Judge Jesus, para. 15.

32 N. Craik, T. Davenport and R. Mackenzie, above note 18.

33 Ernest Weinrib, *The Idea of Private Law*, Oxford University Press, Oxford, 2012, p. 61.

34 On the fact that the payment of lump sums as a mode of compensation has a long history in international law, see Roland Bank and Friederike Foltz, “Lump Sum Agreements”, *Max Planck Encyclopedia of International Law*, August 2013.

35 Ernest Weinrib, “Corrective Justice in a Nutshell”, *University of Toronto Law Journal*, Vol. 52, No. 4, 2002; Jules Coleman, “The Practice of Corrective Justice”, *Arizona Law Review*, Vol. 37, No. 1, 1995, p. 18.

36 On the fact that strict egalitarianism, advocating that every person should have the same level of material goods and services, constitutes a form of distributive justice, see Kok-Chor Tan, “The Boundary of

based on fairness and equitable grounds (the latter being more largely associated in this context with the notion of equity³⁷), such compensation will holistically come to address the harm that a person, and by extension a society, has sustained.³⁸

In international courts and tribunals, climate change cases have been heard and pronounced inside a restorative justice model.³⁹ Yet, the relevant discussion before these bodies has also encompassed elements which have signalled deviation from the strict restorative justice model, both on the issue of causation and on the allocation of compensation once the causation link between harm and act has been established. Along these lines, in the current article I do not argue for a *mutatis mutandis* application of the climate change *dicta* to the case of cumulative civilian war trauma. My argument is more refined and encompasses the fact that on a *de lege ferenda* basis, the whole argumentative arsenal displayed in the context of climate change litigation regarding attribution of harm and the allocation of compensation can be useful for a future discussion around the compensation for this trauma.

Moreover, the international climate change litigation has taken place inside a State-to-State framework in which States have been called to compensate other States. By examining in this article the possibility for non-State actors to be held equally liable and called to compensate affected civilians, I recognize that I am broadening the climate change litigation's scope on the matter. Nevertheless, I argue that this is being done not *contra legem* but *infra legem*, given the fact that the ICJ has proceeded to see climate change obligations as obligations *erga omnes* that States have when it comes to their relationships with other States.⁴⁰ Although the whole concept of obligations *erga omnes* pertains to inter-State relations per the jurisprudence of the ICJ,⁴¹ scholars have argued how such *erga omnes* obligations should be seen as obligations standing also against non-State entities.⁴² In that sense, if the climate change litigation can provide a guiding path for the compensation of cumulative civilian war trauma, as argued in this article, there is nothing to preclude the application of such a compensation scheme also against non-State actors. Equally, the beneficiaries of such a scheme can be the affected civilians, given that *erga omnes* obligations are owed to the international community and not specifically to States.⁴³

Justice and the Justice of Boundaries: Defending Global Egalitarianism", *Canadian Journal of Law and Jurisprudence*, Vol. 19, No. 2, 2006.

37 ICJ Advisory Opinion, above note 13, para. 154; Johan Olsthoorn, *Hobbes on Justice*, Oxford University Press, Oxford, 2024, p. 89.

38 Samuel Freeman, "Rawls on Distributive Justice and the Difference Principle", in Serena Olsaretti (ed.), *The Oxford Handbook of Distributive Justice*, Oxford University Press, Oxford, 2018, p. 13; Shena Ashley, "Is the Inequality Equitable? An Examination of the Distributive Equity of Philanthropic Grants to Rural Communities", *Administration and Society*, Vol. 46, No. 6, 2014.

39 See, for example, Khan Khalid Adnan, "Compensation after the Climate Advisory: Reading the ICJ's Remedies Jurisprudence", *EJIL: Talk!*, 5 September 2025, available at: www.ejiltalk.org/compensation-after-the-climate-advisory-reading-the-icjs-remedies-jurisprudence/?utm_source=chatgpt.com.

40 ICJ Advisory Opinion, above note 13, para. 442.

41 *Ibid.*, para. 441.

42 Fergus Green, "Fragmentation in Two Dimensions: The ICJ's Flawed Approach to Non-State Actors and International Legal Personality", *Melbourne Journal of International Law*, Vol. 9, No. 1, 2008, p. 15.

43 Oona Hathaway et al., "Ensuring Responsibility: Common Article 1 and State Responsibility for Non-State Actors", *Texas Law Review*, Vol. 95, No. 3, 2017, p. 570. On this account, ITLOS held that a non-State

In previous publications, I have discussed how civilian war trauma is meant to be assessed by courts and quasi-judicial bodies when such trauma refers to isolated cases.⁴⁴ Other contributions to this issue of the *Review* have equally underlined how such trauma can be assessed beyond the World Health Organization framework,⁴⁵ and in light of this, I will not return to this trauma assessment question in the present article. Rather, I will focus on cumulative civilian war trauma given that contrary to cases of isolated military operations where the trauma incurred can be more easily established and proven, even if these isolated operations involve many civilians as victims, cumulative war trauma cannot be attributed only to a specific operation. This makes it difficult for the infliction of such trauma to be delineated as a wrongful act that gives rise to compensation entitlements.⁴⁶ Nonetheless, the exigencies of modern warfare, which is often conducted over long periods and on an intermittent basis in urban centres, render it imperative to examine the nexus between cumulative harm and compensation.⁴⁷

The article will proceed as follows. After the present introduction, the first substantive section will discuss how inside the realm of climate change litigation, States and, most importantly, international courts and tribunals have discussed the question of if and how compensation is to be awarded for the cumulative environmental harm caused by climate change. The second and third sections will then focus on civilian war trauma and the question of its compensation. Bridging the gap between environmental harm and war trauma, the fourth section will examine how possible schemes brought forth in the debate surrounding climate change litigation can prove useful as compensation platforms for cumulative war trauma, underlining at the same time the limitations posed by resort to such international environmental law schemes and looking at how these limitations can be surpassed. Finally, the fifth section offers some concluding remarks.

entity like the International Sea-Bed Authority can make a compensation claim for damage incurred to this sea area on account of the *erga omnes* character of the obligations relating to the preservation of the environment of the high seas. ITLOS, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, 1 February 2011, para. 180.

44 S. Solomon, above note 2; Solon Solomon, “Quasi-Judicial Bodies and the Establishment of Standards and Principles for Assessing Mental Harm Sustained by Civilians Exposed to Hostilities”, *Journal of International Dispute Settlement*, Vol. 12, No. 1, 2021.

45 See the article by Samantha Holmes in this issue of the *Review*: Samantha Holmes, “Incidental Mental Harm through a Decolonial Lens: A Culturally and Contextually Sensitive Implementation of the Principle of Proportionality”, *International Review of the Red Cross*, Vol. 108, No. 932, 2026.

46 Haim Abraham, “Tort Liability for Belligerent Wrongs”, *Oxford Journal of Legal Studies*, Vol. 39, No. 4, 2019, pp. 809–811.

47 Barbara Morais Figueiredo and Katherine Young, *Understanding Civilian Harm from the Indirect or Reverberating Effects of the Use of Explosive Weapons in Populated Areas*, UN Institute for Disarmament Research, 2024, available at: <https://unidir.org/wp-content/uploads/2024/10/UNIDIR-Explosive-Weapons-Monitor-Understanding-civilian-harm-from-the-indirect-or-reverberating-effects-of-the-use-of-EWIPA.pdf>; S. Solomon, above note 10; Lawrence Hill-Cawthorne, *International Law in Extremis*, University of Bristol Law Working Paper Series No. 001/2025, 2025, p. 23; and see the article by Eitan Diamond and Tsvetelina van Benthem in this issue of the *Review*: Eitan Diamond and Tsvetelina van Benthem, “Protections against Cumulative Mental Harm under International Humanitarian Law”, *International Review of the Red Cross*, Vol. 108, No. 932, 2026.

Cumulative environmental harm in the realm of climate change litigation

The last few years have seen international courts and tribunals becoming actively seized on the issue of climate change in a number of instances. Whereas some of these cases followed the contentious track only to be declared largely inadmissible or for judgments to be issued with only a small impact on the elucidation of the wider issues around compensation in general for climate change,⁴⁸ others were introduced to international courts and tribunals in the realm of the latter's advisory function.⁴⁹ The common thread among all these judicial bodies and the common conclusion in their rulings is that States should act with due diligence regarding climate change, taking measures to either prevent or alleviate any adverse consequences resulting from it.⁵⁰ In some instances, these judicial bodies proceeded to also discuss questions of how compensation should be allocated to affected individuals.⁵¹ These two issues – the question of if (based on the causation discussion) and how (based on the distribution mode) compensation is to be given to people affected by cumulative environmental harm in the case of climate change – will be discussed in the next two subsections.

Discussing whether compensation is to be awarded: The question of the causation link

Climate change is a multidimensional phenomenon. It involves many actors – and not just States – as polluters which through their actions contribute to pollution and to the deterioration of people's health. It also involves several different and diverse triggers which on their own can cause these adverse results. In deciding on accountability issues, international courts and tribunals can either stick to a pure restorative justice model, attaching causation to the intent or negligence of the polluting party, which must each time be proved, or opt for a strict liability model, which would require affected individuals to prove only the causal link between the harm they have sustained and a polluting factor.

In coming to pronounce their stance on causation, the international and regional judicial bodies discussed in this article opted for a pure restorative model.⁵² Thus, the question of whether compensation was due to the affected individuals was decided based on the existence of an internationally wrongful act traced in actions that contributed to climate change and which States undertook or did not prevent.⁵³

48 ECtHR, *Verrein KlimaSeniorinnen*, above note 13; ECtHR, *Careme*, above note 13; ECtHR, *Duarte Agostinho*, above note 13.

49 For a list of these cases, see above note 13.

50 ICJ Advisory Opinion, above note 13, para. 280; ITLOS Advisory Opinion, above note 13, para. 234; IACtHR Advisory Opinion, above note 13, para. 236.

51 See the subsection below on “Discussing How Compensation is to Be Allocated”.

52 ICJ Advisory Opinion, above note 13, para. 435; IACtHR Advisory Opinion, above note 13, para. 551.

53 ICJ Advisory Opinion, above note 13, paras 105, 405. But see the separate opinion of Judge Yusuf, holding that the UN General Assembly asked the Court also to render its opinion on environmental harm incurred in the absence of any wrongful act: *ibid.*, Separate Opinion of Judge Yusuf, para. 41.

The courts in question also had to take into account another parameter in how attribution is established. Traditionally, climate change compensation claims have been seen as a series of individual claims rather than a larger unified claim that rests upon climate change as a global challenge.⁵⁴ This perception around climate change compensation pleas has made it difficult for the individual to demonstrate each time the causational link between the act of a specific polluter and the harm the specific individual has sustained as a result.⁵⁵

On this question, the courts opted not merely to see the recipients of their advisory opinions as isolated individuals or States but proceeded to encompass the concept of “peoples” as a distinct unit, comprising ethnic groups, nations or communities,⁵⁶ with mass claims that are not, however, the sum of individualistic claims. Moreover, the courts and tribunals appeared ready to interpret the classical causation link more widely. Thus, the ICJ noted that in cases like climate change, the causation link between the wrongful act and the damage caused is not “static in nature”; rather, its establishment has to be assessed *in concreto* each time and “may vary depending on the primary rule violated and the nature and extent of the injury”.⁵⁷ Under these circumstances, the Court opined that the causation link in the case in question was “flexible enough to address the challenges arising in respect of the phenomenon of climate change”.⁵⁸ For its part, the Inter-American Court of Human Rights (IACtHR) has underlined how a direct causal link is not necessary in order for victims to prove the harm they have sustained due to climate change.⁵⁹ In coming to this conclusion, the Court stressed the need for “alternative probative standards” to be adopted that would permit the establishment of the causal link based *inter alia* on the “real risks” emanating from individuals’ exposure to the consequences of climate change.⁶⁰

Beyond the framework of the discussed advisory opinions, a similar tendency to read the attribution requirements in a less strict way in cases involving climate change can be discerned in quasi-judicial bodies like the UN Human Rights Committee. Addressing an Australian argument that any human rights violations stemming from climate change could not be attributed solely to one country and thus the causation link between any Australian government actions and the harm caused to the individuals concerned could not be established, the Committee observed that since Australia was among the countries with significant greenhouse gas emissions, the application filed could be heard.⁶¹

54 Azadeh Chalabi, “A Right to Environment-Based Approach as a New Route for Climate Litigation”, *Nordic Journal of Human Rights*, Vol. 3, 2025, p. 246.

55 *Ibid.*, p. 247.

56 ITLOS Advisory Opinion, above note 13, para. 410; IACtHR Advisory Opinion, above note 13, paras 105, 115; ICJ Advisory Opinion, above note 13, Separate Opinion of Judge Sebutinde, para. 6.

57 ICJ Advisory Opinion, above note 13, paras 436–438.

58 *Ibid.*, para. 436.

59 IACtHR Advisory Opinion, above note 13, para. 553.

60 *Ibid.*

61 Human Rights Committee, *Billy et al. v. Australia*, Communication No. 3624/2019, UN Doc. CCPR/C/135/D/3624/2019, 22 September 2022, paras 4.3, 7.8.

This tendency on the part of the courts involved in climate change litigation to relax the causation link requirements can also be seen in the way in which the ICJ has discussed the “polluter pays” principle, which is the principle establishing strict liability for pollution or transboundary environmental harm, as envisaged also by the ILC Principles. Referring to the latter together with other documents which establish the same principle, the ICJ held that the “polluter pays” principle was not included in any of the climate change treaties and thus was not applicable to climate change litigation.⁶² At the same time, the Court did not exclude the possibility that “forms of strict liability for hazardous acts and other kinds of acts that are not wrongful under international law are developing.”⁶³

This thread of seeing the ILC Principles as a dynamic way for international law to evolve by detaching the causation link from any wrongfulness was further discussed by Judge Yusuf. In his separate opinion, the judge referred to the ILC Principles in order to argue that the UN General Assembly would like for the Court to hold its opinion also on harm incurred by acts which contribute to climate justice but do not *per se* violate international law.⁶⁴ The possibility for such reading of the General Assembly’s request to be a game-changer has been doubted by other judges; for example, Judge Nolte has pointed out the fact that the ILC Principles do not form customary law.⁶⁵ Nevertheless, even inside this cautious reading by the ICJ, the ILC Principles can open new ideas to inform the discussion on cumulative war trauma, as will be discussed in the penultimate section of this article.

Discussing how compensation is to be allocated

As mentioned above, not all the international judicial bodies seized of climate change cases have opted to discuss questions of compensation. Even when they have done so, they have often been terse – thus, for example, the International Tribunal for the Law of the Sea (ITLOS), in its 2024 advisory opinion, mentioned only that compensation needed to be “prompt and adequate.”⁶⁶ The ICJ was a bit more eloquent when it decided to dedicate two paragraphs of its advisory opinion to the issue.⁶⁷ Resting the question of compensation inside a restorative justice framework, the Court saw compensation as a form of full restitution.⁶⁸ It did not proceed to quantify the owed compensation sum, but specified that such compensation should be due only once the harm is significant and a direct causation link exists between the harm and the act or acts of a given State. At the same time, whereas in the previous paragraphs the ICJ took pains to settle the compensation question inside a restorative justice

62 ICJ Advisory Opinion, above note 13, para. 160.

63 *Ibid.*, Separate Opinion of Judge Yusuf, para. 2.

64 *Ibid.*, Separate Opinion of Judge Yusuf, para. 42.

65 *Ibid.*, Declaration of Judge Nolte, para. 16.

66 ITLOS Advisory Opinion, above note 13, para. 284.

67 ICJ Advisory Opinion, above note 13, paras 452–454.

68 *Ibid.*, para. 450.

framework, in paragraph 454 of its opinion the Court seemed to veer away from this restorative model. In that paragraph, the Court held that

where there is uncertainty with respect to the exact extent of the damage caused, compensation in the form of a global sum, within the range of possibilities indicated by the evidence and taking into account equitable considerations, may be awarded on an exceptional basis.⁶⁹

Scholars have correctly underlined how we should not rush to interpret this paragraph as a reference to the Court introducing distributive justice grounds on compensation matters.⁷⁰ Rather, paragraph 454 should be seen as *ultimum refugium* in the way compensation is to be awarded, meaning that the “global sum” and the “equitable considerations” route stipulated therein is to be followed only if, due to lack of adequate proof, the exact amount of compensation cannot be awarded based on a restorative model.⁷¹ Whereas such a reading of the ICJ opinion does place it in the restorative justice framework inside which the opinion was rendered as mentioned above, the Court’s reference to a “global sum” and “equitable considerations” can be read as referring to elements of distributive justice which the Court, even if it did not actively introduce them, was not negatively disposed towards in the first place. Paragraph 454 of the ICJ opinion thus shows the *de lege ferenda* value and dynamic of distributive justice in cases involving cumulative harm.

This dynamic has been demonstrated in a number of instances in the realm of the overall climate change litigation before all of the involved international courts and tribunals. Thus, with regard to the American continent, responding to an argument on the intergenerational impact of climate change raised by Columbia and Chile in their request for an advisory opinion,⁷² the IACtHR has called for States to address climate change and the right to environment inside a framework of “inter-generational equity”.⁷³ Similarly, echoing the text of the UN General Assembly request for the ICJ opinion to be rendered, the ICJ in its opinion also referred to “intergenerational equity” and to the fact that the climate system “must be protected for present and future generations”.⁷⁴

On this account, the fact that the ICJ did not rely on the distributive justice elements discussed above to more starkly highlight the role that distributive justice can play in compensation claims was lamented by Judge Bhandari. In particular, the judge criticized the fact that the opinion did not explicitly refer to specific distributive justice schemes as a way to make sure that the small island States would not be disproportionately burdened with the payment of any compensation claims, given the fact that these States are not so economically affluent and are disproportionately

⁶⁹ *Ibid.*, para. 454.

⁷⁰ K. K. Adnan, above note 39.

⁷¹ *Ibid.*

⁷² IACtHR Advisory Opinion, above note 13, para. 2.

⁷³ *Ibid.*, para. 282.

⁷⁴ ICJ Advisory Opinion, above note 13, paras 155, 273. Intergenerational equity is also mentioned in the request before the African Court of Human and People’s Rights for an advisory opinion on climate change: see African Court on Human and People’s Rights, above note 12, para. 132.

affected by climate change.⁷⁵ Inside this framework, any calls for these poorer small island States to provide full compensation on a restorative justice basis would negate the precepts of justice itself. In these cases, where poorer parties are called to also compensate for any harm incurred, distributive justice considerations could play a corrective role in the establishment of the exact sum of damages due.⁷⁶

Judge Bhandari further proceeded to advocate for the institution of claims commissions by the UN General Assembly, as well as the establishment of a special fund under the auspices of the UN whereby the more affluent countries would contribute towards the goal of addressing harm incurred by climate change.⁷⁷ This particular stance can be understood more clearly if seen in conjunction with the fact that in the realm of climate justice, the international community has seemed to endorse distributive justice elements. For example, in the aftermath of the Paris Agreement and in the context of COP27 in 2022, States agreed to institute a fund to compensate for losses due to climate change.⁷⁸ Yet, as stressed by the IACtHR, this fund was not meant to operate on a full restorative model and was not meant to provide full reparation for harm incurred.⁷⁹

Judge Bhandari's call for a fund to be established takes an additional turn for our discussion on cumulative war trauma given the judge's explicit reference to how such a fund could manage payments, including a symbolic monetary award for non-pecuniary damage.⁸⁰ Mental harm constitutes a form of non-pecuniary damage;⁸¹ thus, calls for it to be satisfied through a symbolic monetary award rather than through full restitution explicitly link the compensation of such harm to precepts of distributive rather than restorative justice. This is further reinforced by the fact that the ILC's Special Rapporteur, in his first report to the UN General Assembly on the issue of compensation for internationally wrongful acts, has underlined how compensation on equitable grounds can be awarded to non-State actors – in our case, civilians affected by warfare – for the non-material damage that they have suffered.⁸²

This nexus between compensation and distributive justice should be further read in conjunction with the fact that distributive justice elements can be identified in the advisory opinions rendered and their corresponding requests. For example, the intergenerational element, with its link to distributive justice as highlighted above, was evident in all the requests for an advisory opinion by the different international courts and tribunals. Thus, for example, in March 2023, the UN General Assembly

75 ICJ Advisory Opinion, above note 13, Separate Opinion of Judge Bhandari, para. 8.

76 Marc Loth, "Corrective and Distributive Justice in Tort Law", *Maastricht Journal of European and Comparative Law*, Vol. 22, No. 6, 2015, pp. 797–798.

77 ICJ Advisory Opinion, above note 13, Separate Opinion of Judge Bhandari, para. 8.

78 IACtHR Advisory Opinion, above note 13, para. 199.

79 *Ibid.*, para. 202.

80 ICJ Advisory Opinion, above note 13, Separate Opinion of Judge Bhandari, para. 9.

81 Roger Halson, "The Recovery of Damages for Non-Pecuniary Loss in the United Kingdom: A Critique and Proposal for a New Structure Integrating Recovery in Contract and Tort", *Chinese Journal of Comparative Law*, Vol. 3, No. 2, 2015, p. 249.

82 Martins Paparinskis, *First Report on Compensation for the Damage Caused by Internationally Wrongful Acts*, UN Doc. A/CN.4/793, 10 March 2026, para. 33.

adopted Resolution 77/276, which expressed concerns about the adverse effects of climate change and asked the ICJ to render an advisory opinion on the consequences not only for States, particularly small island States, but also for “peoples and individuals of the present and future generations”.⁸³ By referring to small island States, the General Assembly request echoed a similar request posed before the ITLOS by small island States in the Pacific,⁸⁴ whereas the reference to the “peoples and individuals of the present and future generations” echoed references to “future generations” in the cases brought before the European Court of Human Rights (ECtHR) and the IACtHR.⁸⁵

With regard to the request before the IACtHR brought forth by Chile and Columbia, it is noteworthy that these countries noted in the request that climate change events called for “an urgent response based on the principles of equity, justice, cooperation and sustainability, with a human rights-based approach” – concepts highly associated with distributive justice.⁸⁶ Similar reference to the notions of “climate justice”, “sustainability” and “equity” exists also in the request filed and pending (at the time of writing) before the African Court of Human and People’s Rights for a climate change-related opinion to be rendered.⁸⁷ In that sense, these distributive justice notions are seemingly starting to inform the discussion on climate change.

The question of when such considerations end up being also a normative framework, dictating the assessment and satisfaction of harm and its compensation through a distributive rather than restorative justice scope, is for the moment not addressed, but it remains open. The repercussions stemming from the non-explicit addressing of the issue become more evident once one considers how distributive justice features can be discerned in the way that other international bodies have included distributive justice features in their compensation holdings inside a restorative justice system. In the *Trail Smelter* case, for example, the arbitrators awarded damages on an equitable, distributive justice basis, noting that where the sum of damages could not be assessed with certainty, it would be enough if it was justly and reasonably inferred.⁸⁸

A model bearing distributive justice features manifested also through the possibility for a fixed lump sum to be given to individuals eligible for compensation was applied by the UN Compensations Commission (UNCC) established in the aftermath of the First Iraq War to award compensation to persons who sustained loss

83 UNGA Res. 77/276, “Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change”, 4 April 2023.

84 Commission of Small Island States on Climate Change and International Law, *Request for Advisory Opinion*, 12 December 2022.

85 ECtHR, *Verein KlimaSeniorinnen*, above note 13, para. 10; ECtHR, *Careme*, above note 13, para. 23; ECtHR, *Duarte Agostinho*, above note 13, para. 155; IACtHR Advisory Opinion, above note 13, paras 272–279.

86 Nathan Pelletier, “Environmental Sustainability as the First Principle of Distributive Justice: Towards an Ecological Communitarian Normative Foundation for Ecological Economics”, *Ecological Economics*, Vol. 69, No. 10, 2010.

87 African Court on Human and People’s Rights, above note 12, paras 4–5, 132, 147, 150.

88 *Trail Smelter Case (Canada v. United States)*, *Reports of International Arbitral Awards*, Vol. 3, 16 April 1938 and 11 March 1941, p. 1920.

and damage from Iraq's illegal invasion of Kuwait in August 1990. In its Provisional Rules for Claims Procedure, the UNCC rendered clear in Article 35 that fixed sums would be awarded to people who had sustained "serious personal injury not resulting in death".⁸⁹ By doing so, the Commission managed to balance equity for the individual with the feeling of equity pertaining to the larger group of applicants.⁹⁰ It is through the striking of this balance that the Commission aspired to satisfy the feeling of fairness on an equitable manner, by awarding smaller but equal amounts of money to the large number of possible beneficiaries who filed similar applications.⁹¹

All of these examples highlight the importance that distributive justice can have to any such compensation arguments and debates of cumulative harm in international law. It is along these lines that the climate change litigation will be discussed as a *de lege ferenda* argumentative framework for cumulative war trauma in the following sections.

Civilian war trauma and its compensation

War trauma traces its scientific origins to the First World War and the trauma suffered by soldiers in that conflict, which led to scholars speaking of "shell shock" and "combat stress".⁹² Further studies about combatant stress were carried out in the course of the twentieth century, for example regarding Vietnam War veterans.⁹³ These studies showed how war trauma could continue long after the triggering effect – meaning the exposure to hostilities – had ceased to exist. With regard to civilians, the perception that they can also be subject to war trauma has been historically minimized.⁹⁴

Yet, while due to human resilience only approximately one tenth of people exposed to stressors develop post-traumatic stress disorder (PTSD),⁹⁵ once

89 UNCC Council, *Provisional Rule for Claims Procedure*, UN Doc. S/AC.26/1992/10, 26 June 1992, Art. 35(2)(b).

90 Francis McGovern, "Dispute System Design: The United Nations Compensation Commission", *Harvard Negotiation Law Review*, Vol. 14, 2009, pp. 172–173.

91 David Caron and Brian Morris, "The UN Compensation Commission: Practical Justice, not Retribution", *European Journal of International Law*, Vol. 13, No. 1, 2002 p. 191.

92 Nancy Andreasen, "Posttraumatic Stress Disorder: A History and a Critique", *Annals of the New York Academy of Sciences*, Vol. 1208, 2010, p. 67; Bret A. Moore, "The Crucial Role of Advanced Psychiatric Nurses during Wartime", *Journal of the American Psychiatric Nurses Association*, Vol. 11, No. 1, 2005; Bret A. Moore and Greg M. Reger, "Clinician to Frontline Soldier: A Look at the Roles and Challenges of Army Clinical Psychologists in Iraq", *Journal of Clinical Psychology*, Vol. 62, No. 3, 2006, p. 400; Alison Whithell and Gina Owens, "The Impact of Patriotism, Morale and Unit Cohesion on Mental Health in Veterans of Iraq and Afghanistan", *Traumatology*, Vol. 18, No. 1, 2012, p. 2.

93 Edgar Jones and Simon Wessely, "A Paradigm Shift in the Conceptualization of Psychological Trauma in the 20th century", *Journal of Anxiety Disorders*, Vol. 21, 2007.

94 Elaine Hanson and Gwen Vogel, "The Impact of War on Civilians", in Lisa Lopez (ed.), *Trauma Counseling: Theories and Interventions*, Springer, New York, 2012, pp. 412–413.

95 Although 50–69% of people experience a traumatic event at least once in their life, not all persons experiencing such an event will develop psychological trauma in general or PTSD in particular. For more on this, see Melanie D. Hetzel-Riggin and Ryan P. Roby, "Trauma Type and Gender Effects on PTSD, General Distress and Peritraumatic Dissociation", *Journal of Loss and Trauma*, Vol. 18, 2013; Mark Creamer and Meagan O'Donnell, "Post-Traumatic Stress Disorder", *Current Opinion in Psychiatry*, Vol. 15, No. 2,

exposure to violence becomes chronic and repeated, affected civilians are more likely to develop some kind of trauma, and it is a mistake to think that based on resilience, these individuals can be tagged as “symptom-free” or as bearing only very few symptoms of distress.⁹⁶ In light of this, the psychological effects of war on civilians should be seen not only as present but also as being largely associated with the fear that these civilians experience. For example, mental health experts have demonstrated how closeness to the traumatic event or direct exposure to it, as well as the number and frequency of attacks, increases the intensity of the resultant trauma symptoms.⁹⁷ Moreover, the experienced trauma is in close correlation with the socio-economic level, education and family status of the affected civilians.⁹⁸

From a legal perspective, legal scholars disagree on the manifestations that civilian trauma must display in order to be able to legally impact military decisions or give rise to compensation claims. Some scholars argue that the individuals in question must suffer from severe brain injuries,⁹⁹ while others hold that these individuals must display PTSD¹⁰⁰ or even depression.¹⁰¹ Moreover, practice has shown that compensation quests for sustained civilian war trauma can emerge either while hostilities are still under way or following their culmination through the signing of a peace treaty or a ceasefire agreement. With regard to compensation for injuries that are awarded while hostilities are still ongoing, such compensation applies almost exclusively to the payment of symbolic sums in cases involving loss of life or physical injuries.¹⁰²

Cumulative civilian war trauma and its compensation

Whereas the nature of trauma can be more easily deciphered when the trauma is due to one triggering event, things become more nebulous in cases where the civilian war

2002, p. 164; Dusica Lecic-Tosevski *et al.*, “Personality Factors and Posttraumatic Stress: Associations in Civilians One Year after Air Attacks”, *Journal of Personality Disorders*, Vol. 17, No. 6, 2003, p. 545.

96 Dean Kilpatrick *et al.*, “National Estimates of Exposure to Traumatic Events and PTSD Prevalence Using DSM-IV and DSM-5 Criteria”, *Journal of Traumatic Stress*, Vol. 26, No. 5, 2013, p. 545 (noting that the probability of PTSD increases with greater event exposure); Stevan Hobfoll *et al.*, “The Limits of Resilience: Distress Following Chronic Political Violence among Palestinians”, *Social Science and Medicine*, Vol. 72, 2011, p. 1407.

97 B. J. Luft *et al.*, “Exposure, Probable PTSD and Lower Respiratory Illness among World Trade Centre Rescue, Recovery and Clean-Up Workers”, *Psychological Medicine*, Vol. 42, 2012, p. 1070; Yuval Neria and Gregory M. Sullivan, “Understanding the Mental Health Effects of Indirect Exposure to Mass Trauma through the Media”, *Journal of the American Medical Association*, Vol. 306, No. 12, 2011.

98 Solon Solomon and Ya'akov Bayer, “Is All Mental Harm Equal? The Importance of Discussing Civilian War Trauma from a Socio-Economic Legal Framework's Perspective”, *Nordic Journal of International Law*, Vol. 92, 2023.

99 Michael N. Schmitt and Chad Highfill, “Invisible Injuries: Concussive Effects and International Humanitarian Law”, *Harvard National Security Journal*, Vol. 9, No. 1, 2018, p. 89.

100 E. Liebllich, above note 1.

101 S. Solomon, above note 3, p. 168.

102 Gilat Bachar, “Collateral Damages: Domestic Monetary Compensation for Civilians in Asymmetric Conflict”, *Chicago Journal of International Law*, Vol. 19, No. 2, 2019, pp. 378–379.

trauma incurred does not have a clear source. In mental health terms, this can occur in situations where the individual in question suffers from what mental health scientists have termed as “complex PTSD”. Under complex PTSD, the trauma generated is not the result of a particular traumatizing event but rather stems from a synthesis of different triggering factors.¹⁰³ Along these lines, the causation link that tort law requires is more difficult to trace. Complex PTSD is just one example of the trauma that warfare can generate – depression can be equally caused to affected civilians.¹⁰⁴ Both PTSD and depression have an accumulative effect, being further exacerbated the longer civilians are exposed to hostilities and different war incidents. In such instances, mental health scientists refer to cumulative war trauma.¹⁰⁵ Cumulative war trauma should thus be seen as the result of a person’s overall exposure to a series of events during wartime.¹⁰⁶ Whereas it may pertain only to one individual, this article discusses cumulative war trauma affecting an undisclosed number of affected civilians. In that sense, “cumulative war trauma” becomes synonymous with the concept of “overall civilian trauma” and comes to mirror the way international law views the concept of “military advantage” on an “overall” rather than isolated basis.¹⁰⁷

Cumulative war trauma is a negative externality, meaning a negative cost that the act of warfare incurs to third parties – namely, affected civilians – beyond their choice.¹⁰⁸ To that extent, war trauma meets environmental law in that externalities are par excellence discussed in scenarios involving polluting actors¹⁰⁹ – for example, where the driving of an old-technology car ends up polluting the atmosphere of a city although this was never the driver’s intent in driving the car, or a factory ends up polluting the atmosphere by working more hours in order to produce more products. In both cases, the pollution incurred is a side-effect of specific actions that largely affects third parties – i.e., the individuals inhaling the polluted air. In the case of warfare, the argument goes, any trauma generated to civilians is the inevitable consequence of warfare and thus should lie beyond any compensation quests.

103 Joanne Stubble, Beverley Chipp and Marta Buszewicz, “Diagnosis and Management of Complex Post-Traumatic Stress Disorder (C-PTSD)”, *BMJ*, 30 January 2025; Andrea Putica and James Agathos, “Reconceptualizing Complex Posttraumatic Stress Disorder: A Predictive Processing Framework for Mechanisms and Intervention”, *Neuroscience and Biobehavioral Reviews*, Vol. 164, 2024.

104 Nexhmedin Morina *et al.*, “Prevalence of Depression and Posttraumatic Stress Disorder in Adult Civilian Survivors of War Who Stay in War-Afflicted Regions: A Systematic Review and Meta-Analysis of Epidemiological Studies”, *Journal of Affective Disorders*, Vol. 239, 2018.

105 Annett Lotzin *et al.*, “War-Related Stressors and ICD-11 (Complex) Post-Traumatic Stress Disorders in Ukrainian Students Living in Kyiv during the Russian-Ukrainian War”, *Psychiatry Research*, Vol. 330, 2023.

106 E. Diamond and T. van Benthem, above note 47.

107 On this, compare Article 51(5)(b) of Additional Protocol I to the Geneva Conventions and Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court. On the difference between the way “military advantage” is phrased in the two documents, see ILA Study Group, above note 1, p. 345.

108 On the fact that the concept of “externalities” stems from the field of economics and encompasses the economic burdens or benefits that certain actions bestow on third parties without those responsible for the actions wanting necessarily to cause such results, see Aris Trantidis, “Government Externalities”, *Public Choice*, Vol. 201, 2024, p. 454; James Buchanan and William Craig Stubblebine, “Externality”, *Economica*, Vol. 29, 1962.

109 N. Craik, T. Davenport and R. Mackenzie, above note 18, pp. 96, 116.

Inside this framework, it is quite indicative that courts all over the world have appeared reluctant to compensate individuals for cumulative war trauma. Civilians have often found it difficult to pursue tort law damages before the national courts of the State whose army is implicated in the causation of the incurred harm, due to the immunity that the State enjoys for wartime activities.¹¹⁰ The same immunity argument holds true even if the accused party behind the incurred mental harm is not a State but an international organization. In the *El Hamidi* case, the plaintiff claimed compensation from the North Atlantic Treaty Organization (NATO), *inter alia* for the psychological harm that had been caused to him due to NATO's attack on his house in Libya, yet the Belgian courts appeared amenable to NATO's plea that the case should be dismissed on grounds of immunity.¹¹¹

If reference to the concept of immunity has resulted in courts not needing to enter the merits of any mental harm assessment, the same phenomenon of courts avoiding directly facing and assessing civilian mental harm has been recorded in national courts all over Europe in cases where European nationals were tried for Islamic State of Iraq and Syria (ISIS)-related crimes, including beheadings. In these trials, the national judges opted to relate to the fact that these beheadings violated the dignity of the victims, yet they did not enter any assessment on the mental harm and anguish caused to these victims as a result of anticipating their deaths.¹¹²

Similarly, in the case of the lawsuits that Japanese civilians brought before the Japanese courts for the PTSD they had suffered as a result of the US raids on Tokyo towards the end of the Second World War, the local courts appeared hesitant to award damages for the cumulative psychological harm that these civilians had suffered.¹¹³ Equally, in the *Ali Jaber* case, the US courts, citing the foreign question doctrine, refused to enter the merits of the case and award the plaintiffs any damages for the psychological harm inflicted on them as a result of the continuous US drone strikes on Afghanistan.¹¹⁴ Whereas national courts have awarded compensation to foreign nationals for the harm they have suffered as a result of foreign army operations – such as the Dutch courts in the case of the US military operations in Chora, Afghanistan¹¹⁵ – such compensation awards refer to the harm caused to the relevant civilians on an isolated basis rather than on a cumulative basis.

110 Rebecca Crotoft, "War Torts," *New York University Law Review*, Vol. 97, No. 4, 2022, p. 1098; Yuval Shany and Amichai Cohen, "Moving Toward Blanket Immunity: Israeli Supreme Court Blocks Gaza Tort Cases," *Lawfare*, 26 July 2022, available at: www.lawfaremedia.org/article/moving-toward-blanket-immunity-israeli-supreme-court-blocks-gaza-tort-cases.

111 Brussels Court of Appeal, *El Hamidi and Chlih v. North Atlantic Treaty Organization (NATO) and Belgium (Intervening)*, ILDC 3043 (BE 2017), JT 6772, 23 November 2017; Brussels Tribunal of First Instance, *El Hamidi v. NATO*, R.G. No 11/9647/A, 22 October 2012.

112 S. Solomon, above note 2.

113 *Ibid.*, p. 133; Kyodo, "Damages Suit Over 1945 Air Raids on Osaka Dismissed," *Japan Times*, 9 December 2011, available at: <https://perma.cc/V3K6-FFVC>.

114 *Ali Jaber v. United States*, 861 F.3d 241, 249–50 (D.C. Cir. 2017); *Salim bin Jaber et al. v. United States et al.*, 155 F. Supp. 3d 70 (D.C. Cir. 2016).

115 The Hague District Court, *X v. The Netherlands*, C/09/581972 HA ZA 19-1099 and C/09/604819 HA ZA 20/1244, Judgment, 23 November 2022. For a discussion on the judgment, see Marten Zwaneburg, "Dutch Judgment on IHL Compliance in Chora District, Afghanistan," *Articles of War*, 19 December 2022, available at: <https://lieber.westpoint.edu/dutch-judgment-ihl-compliance-chora-district-afghanistan/>.

Equally unsurprising is the fact that on a legislative level too, States demonstrate an aversion towards compensation for civilian war trauma. In several countries, legislation prohibits enemy civilians from filing tort law claims against the State's national army's activities.¹¹⁶ Intrinsic in the rationale behind these legislation motifs is the conviction that trauma is an externality to warfare, an element tied to exposure to hostilities that cannot be avoided. Consequently, due to their nature as an unavoidable consequence of a given situation, externalities are not meant to constitute a wrong for which restitution is owed.¹¹⁷

Yet even if this is true in the short run, it does not apply to long-term effects. To illustrate this with an example from the field of environmental law, a factory operating in one country may also end up, in the long term, polluting the air of a neighbouring country, even if the factory owners have taken all due diligence measures to minimize the polluting effects of their activities. This is equally true for civilian war trauma: even if isolated military operations respect the laws of war and attacks do not incur disproportionate mental harm to civilians compared to the anticipated military advantage, the cumulative effect that war has on these civilians ends up augmenting the levels of their experienced trauma.¹¹⁸ In these cases, the question is, if we preclude wrongfulness, whether we can establish liability – or in other words, whether externalities can be compensated for inside a strict liability framework. On this, the contribution of the ILC Principles will be discussed in the following section.

Of course, an additional way to bypass the question of how to render compensation for cumulative war trauma would be to argue that such trauma does not constitute an externality in the first place; rather, it is a form of harm which traces its origins directly to the opening of hostilities and would thus not be in place had the war not started. On this account, it should be noted that the opening of warfare has largely been seen as an overall wrongful act for which compensation can be claimed.¹¹⁹ Scholars have argued and international courts have accepted that compensation can include the unlawful opening of hostilities;¹²⁰ for example, in the case of the hostilities between Nicaragua and the US and between the Democratic Republic of the Congo and Uganda, the ICJ ordered the US and Uganda respectively to pay compensation for the unlawful resort to force and the opening of hostilities in the first place.¹²¹ While this approach can be pertinent in cases where hostilities

116 Haim Abraham, *Tort Liability in Warfare: States' Wrongs and Civilians' Rights*, Oxford University Press, Oxford, 2024, pp. 1–3.

117 Pierre Lemieux, "The Threat of Externalities", *Regulation*, Vol. 44, 2021.

118 Tobias Kube, Anna Caroline Ellsner and Philipp Herzog, "The Relationship between Multiple Traumatic Events and the Severity of Posttraumatic Stress Disorder Symptoms – Evidence for a Cognitive Link", *European Journal of Psychotraumatology*, Vol. 14, No. 1, 2023.

119 Hannes Jobstl and Dean Rosenberg, "The Humanization of War Reparations: Combatant Deaths and Compensation in Unlawful Wars", *Michigan Journal of International Law*, Vol. 45, No. 1, 2024, pp. 43–46.

120 Andrea Gattini, "The UN Compensation Commission: Old Rules, New Procedures on War Reparations", *European Journal of International Law*, Vol. 13, No. 1, 2002, p. 162.

121 ICJ, *Nicaragua*, above note 27, para. 292; ICJ, *Armed Activities on the Territory of Congo*, Reparations Judgment, *ICJ Reports* 2002, para. 405.

have unlawfully started, the argument it poses cannot address the postulations that all parties to a conflict put forth each time – namely, that they have lawfully opened hostilities, most frequently invoking their right to self-defence. This I will also discuss below, again drawing from the ILC Principles.

From cumulative environmental harm to cumulative war trauma: Discussing the prospects and limitations of the climate change argumentative framework

As discussed in the previous sections, the question of compensating for civilian war trauma has emerged in the realm of tort law. Yet, whereas this took place in a restorative justice framework, compensation for cumulative war trauma as an externality – if it is to take place – can happen only in a distributive justice scheme. Distributive justice can interact with tort law¹²² to the extent that it invites us to view tort law not only as the fixing of a wrong between two players in society but also as a way to reallocate risks fairly¹²³ – in this case the risks inherent to warfare that the military commander undertakes every time he executes a military operation affecting civilians.

States have compensated civilians for the harm that the latter have sustained due to their exposure to hostilities. In cases involving the US or Dutch armies compensating Iraqi civilians, or other countries including Canada, Australia, Poland and Norway holding this option open,¹²⁴ States have proceeded to pay *ex gratia* payments – namely, symbolic sums – to individuals affected by warfare¹²⁵ or have established insurance schemes meant to deter these civilians from resorting to domestic courts.¹²⁶ Yet, at the same time, these compensation gestures have involved a small number of recipients; the question thus is whether these can be extended to cover cases where the beneficiaries are a larger number of civilians. Secondly, supposing that cumulative war trauma as an externality can be compensated even on a distributive justice basis, we must ask whether it is fair and just to do so in cases where the State had to take certain warfare measures or embark on military operations out of pure national security considerations. In other words, it is essential to consider whether in these cases, any distributive justice compensation collides with the principles of fairness and justice upon which distributive justice rests. The ILC Principles can contribute to this discussion.

122 Hanoch Sheinman, “Tort Law and Distributive Justice”, in John Oberdiek (ed.), *Philosophical Foundations of the Law of Torts*, Oxford University Press, Oxford, 2014, p. 354.

123 John Gardner, “What Is Tort Law For? Part 2: The Place of Distributive Justice”, in J. Oberdiek (ed.), above note 122, p. 351.

124 Steven van de Put, “Ex Gratia Payments and Reparations: A Missed Opportunity?”, *Journal of International Humanitarian Legal Studies*, Vol. 14, No. 1, 2023, pp. 137–138.

125 H. Abraham, above note 116, pp. 153–154.

126 *Ibid.*, pp. 154–155.

The ILC Principles and the compensation of cumulative war trauma

The ILC Principles recognize that States sometimes have to undertake hazardous activities and that equally, sometimes, despite all the precautionary measures that States take, harm for certain individuals can occur as a result of those activities. In cases where this happens, and no matter whether the relevant State caused the incurred harm through intent or negligence,¹²⁷ the ILC Principles call upon the State in question to provide “adequate and prompt compensation” to the affected individuals. Moreover, the ILC Principles extend this obligation for compensation to operators undertaking hazardous activities to the extent that these operators are different than the State authorities. In that sense, on the one hand, by requiring a link between hazardous activity and the harm incurred, the ILC Principles remain attached to a restorative justice framework. On the other hand, by compensating for such harm on an “adequate and prompt” basis,¹²⁸ which includes, as the ILC itself clarifies, the award of a lump sum to affected civilians,¹²⁹ the ILC Principles undertake a distributive justice logic in the question of how, and how much, the affected persons are to be compensated.¹³⁰

It is inside this distributive justice framework that the ILC Principles speak generally about “personal harm”, defining it in Article 2 as “significant damage”, comprising *inter alia* “loss of life or personal injury”.¹³¹ The fact that the ILC Principles’ reference is not to “physical injury” *in concreto*, coupled with the way in which the concept of “injury” has been interpreted in the realm of the laws of war,¹³² makes it plausible to argue that the logic underpinning the ILC Principles can address instances of civilian mental harm. Additionally, the emphasis on “significant” damage aligns the concept of damage in the ILC Principles with that put forth by international courts and tribunals in the climate change litigation and with the way in which mental harm has been delineated as a legal measure by international law scholars.

Prima facie, it is easy to imagine the utopian result that an automatic transposal of the ILC Principles to the field of warfare would yield. The fact that warfare is by itself a “hazardous activity” would automatically render every civilian suffering trauma because of warfare eligible for compensation. This would overly broaden the scope of the civilians to be compensated, making their compensation an unrealistic task unless resort to distributive justice precepts takes place, for example through the payment of an equal, lump sum to all eligible people. However, the ILC Principles are still important to the discussion on cumulative war trauma.

Whereas States are called to compensate affected civilians only once intent or negligence for the harm has been proved, for non-State actors this obligation does

127 On this, see ILC Principles, above note 20, p. 74.

128 *Ibid.*, Principle 4.

129 *Ibid.*, p. 78.

130 Marco Cappelletti, “Justifying Harm-Based Strict Liability”, *Law and Philosophy*, Vol. 45, 2026, p. 16.

131 ILC Principles, above note 20.

132 E. Lieblich, above note 1, p. 188.

not have to entail any need for proof of such intent or negligence. In practical terms, this means that while States will be expected to compensate former enemy civilians only in cases where those States admit that they have opened hostilities illegally, in violation of the *jus ad bellum* framework, non-State actors will have to do so in all cases. At the same time, and having in mind that this scheme draws its inspiration from the ILC Principles which are meant to govern transboundary harm, any stricter legal treatment of non-State actors in warfare scenarios would relate to cases of international armed conflicts where these non-State actors operate outside the borders of the State in question, causing harm to the latter's civilians.

In that sense, it can be argued, the fact that when it comes to non-State actors, the ILC Principles detach compensation from the concept of wrongfulness, creates a momentum where emphasis is being placed not on the wrong but on the incurred result; this perception could also govern, *de lege ferenda*, the way in which States approach the issue of compensation for the harm that hostilities have caused to civilians, beyond the question of which side should be seen as instigating the hostilities in violation of *jus ad bellum*. Such an approach would be in tandem with efforts by former warring parties to heal their wounds in a *post-bellum*, transitional justice framework, though one which could only come about in the context of a permanent peace treaty that would ensure hostilities would not be renewed, rather than a mere ceasefire or truce. Moreover, such an approach would accord with the voices both of international scholars and the ICJ calling for compensation to be given for the harm incurred to civilians even in cases where the use of force has been undertaken with no violation of international law norms, such as in cases of self-defence or pursuant to a Chapter VII UN Security Council resolution.¹³³

The transposal of the strict liability rationale for private entities from environmental law to the reality of warfare can also address the cumulative war trauma that civilians experience through the actions of private entities such as mercenaries or private military and security companies. The need to hold such entities accountable for laws of war violations has been highlighted both by scholars and by UN experts.¹³⁴

At the same time, the transboundary element that the ILC Principles pose is a major differentiating element to any efforts to automatically transpose environmental harm approaches to the harm incurred in warfare. Environmental harm in the realms of the ILC Principles presupposes that the harmful event or trigger exists outside the victims' borders. On the other hand, the trauma that civilians suffer can have transboundary elements – for example, in cases where civilians suffer the trauma due to missiles launched from another State – but it can have also a very

133 On the fact that the payment of compensation has not been ruled out in these cases either by scholars or the ICJ, see S. Solomon, above note 3, p. 188; R. Crootof, above note 110, p. 1113; Yael Ronen, "Avoid or Compensate? Liability for Incidental Injury to Civilians Inflicted during Armed Conflict", *Vanderbilt Journal of Transnational Law*, Vol. 42, No. 1, 2009, p. 197; Emanuela-Chiara Gillard, "Reparations for Violation of International Humanitarian Law", *International Review of the Red Cross*, Vol. 85, No. 851, 2003, p. 551; ICJ, *Armed Activities*, above note 121, para. 164.

134 UN Human Rights Special Procedures, *Mercenarism and Private Military and Security Companies*, HRC/NONE/2018/40, April 2018, p. 28.

territorial element, in cases where the trauma is caused by ground hostilities taking place in a given territory.

At the same time, in a quite paradoxical way, the transboundary element that the ILC Principles entrench can turn out to also be a bridge between environmental and mental harm. The transboundary element transcends space in the same way that the intergenerational element cited by the IACtHR in the climate change opinion transcends time. This intergenerational feature also characterizes trauma, since the latter can span over generations.¹³⁵ In that sense, trauma, like environmental harm, knows no boundaries. The spatial transboundary element that features in environmental harm becomes a temporal transboundary element in the case of mental harm and trauma. This does not mean that the ILC Principles should automatically apply *mutatis mutandis* in cases involving compensation of cumulative war trauma, but rather that their relevance – especially regarding the attribution element discussion – cannot be excluded once the international lawmaker comes to draft a compensation model for such trauma. Along these lines, such a war trauma compensation model can rest on the CRPD and disability law when it comes to the question of how the amount of compensation is to be determined and distributed.

Given that previous studies have shown how war trauma can constitute a form of disability under the CRPD,¹³⁶ the latter could be seen as also supplementing the ILC Principles in the field of mental health justice. For example, resting upon the ILC Principles, which require the polluting body – to the extent that it is not the State – to be inside the State's realm,¹³⁷ any war trauma compensation scheme would not include instances where the affected civilians have ceased to be inside the State's territory or control, for example in cases where a State has withdrawn its force from another State's territory. In such cases, should civilians start displaying their trauma symptoms after the retreat has culminated, it would not be possible for those civilians to argue for any compensation claims based on the logic underpinning the ILC Principles. It is not difficult to imagine such a scenario, given that certain psychiatric disorders – most notably PTSD – are displayed only after days or even months following exposure to a traumatizing event.¹³⁸

The CRPD becomes important not only because it can supplement the ILC Principles, but because it also echoes the climate change discourse in the role given to national bodies – be they commissions or other mechanisms – as gatekeepers of the relevant legal regimes that the various international documents have established.

135 Charlotte El-Khalil, Denisa Caculidis Tudor and Catalin Nedelcea, "Impact of Intergenerational Trauma on Second-Generation Descendants: A Systematic Review", *BMC Psychology*, Vol. 13, 2025, p. 668.

136 S. Solomon, above note 3.

137 The fact that the polluting factors have to be based inside the territory or jurisdiction of a State stems from the ILC Principles, which hold that the term "transboundary harm" means "damage caused to persons, property or the environment in the territory or in other places under the jurisdiction or control of a State other than the State of origin" and that "State of origin" refers to "the State in the territory or otherwise under jurisdiction or control of which the hazardous activity is carried out". ILC Principles, above note 20, Principle 2.

138 Shi-Kai Wang *et al.*, "Psychological Trauma, Posttraumatic Stress Disorder and Trauma-Related Depression: A Mini-Review", *World Journal of Psychiatry*, Vol. 19, No. 6, 2023, p. 334.

For example, when it comes to environmental discourse, national commissions and bodies in various and diverse countries all over the world are entrusted with forming and supervising climate policies and actions.¹³⁹ Similarly, in its Article 33, the CRPD calls for the establishment of national mechanisms for monitoring and coordinating the implementation of the Convention.

Although the CRPD itself does not mention anything about compensation, the committee entrusted with the Convention's implementation has rendered compensation a cardinal way for States to fix inequalities and address violations of the Convention for which they have been found culpable.¹⁴⁰ Moreover, in the context of the Convention's Article 13, which speaks about the need for disabled persons to have equal access to justice, the *International Principles and Guidelines on Access to Justice for Persons with Disabilities*, which are meant to provide interpretation of that particular provision, stipulate in Principle 8 that effective remedies must be in place in case the provision is violated, including compensation.¹⁴¹

Inside this framework, and given that per Article 33 of the CRPD the role of national mechanisms is not just the monitoring but also the implementation of the Convention, those mechanisms could also be entrusted with distributing the compensation that former enemy States or non-State actors will have given to the State in question for the war trauma that the latter's civilians have endured. As mentioned above, international practice has shown how in cases where hostilities have unlawfully erupted – as for example in the Iraqi invasion of Kuwait that the UNCC examined – environmental harm pleas can be compensated even with the award of low amounts and without the affected parties always having to bring forth robust evidence about the harm sustained.¹⁴²

In coming to better deliver this distribution of compensation task, the national mechanisms could be aided or partially manned by mental health experts who would be in a position to assess the level of mental harm that each civilian has sustained and whether such harm amounts to trauma in order for the civilian in

¹³⁹ See, for example, the websites of the New Zealand Ministry for the Environment, available at: <https://environment.govt.nz/acts-and-regulations/acts/climate-change-response-amendment-act-2019/establishing-the-climate-change-commission/>; the French High Council on Climate, available at: www.hautconseilclimat.fr/en/; the Philippines Climate Change Commission, available at: <https://climate.gov.ph/>; and the Nigerian National Council on Climate Change, available at: <https://climatecouncil.gov.ng/>.

¹⁴⁰ On this, see Committee on the Rights of Persons with Disabilities, *Follow-Up Progress Report on Individual Communications*, UN Doc. CRPD/C/32/3, 5 May 2025, paras 8, 15–16, 27, 30, 35, 47, 65, 90 (referring to nine different cases where the Committee has held that compensation should be awarded to the applicant). See also Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc. CRPD/C/GBR/CO/1, 29 August 2017, paras 15, 51.

¹⁴¹ UN Special Procedures, *International Principles and Guidelines on Access to Justice for Persons with Disabilities*, Geneva, August 2020, Principle 8, p. 24; Linda Steele, "Truth Commissions on Disability Institutions: Towards a Disability Truth and Repair Framework", *Human Rights Law Review*, Vol. 25, No. 2, 2025, p. 7.

¹⁴² Cymie Payne, "Legal Liability for Environmental Damage: The United Nations Compensation Commission and the 1990–1991 Gulf War", in Carl Bruch, Carroll Muffett and Sandra Nichols (eds), *Governance, Natural Resources and Post-Conflict Peacebuilding*, Routledge, Abingdon, 2016, p. 719.

question to be eligible for compensation.¹⁴³ In order to increase trust and accountability, States or non-State parties formerly at war could furthermore agree that any decisions of these national mechanisms could be challenged before national courts or could go to international arbitration. In that sense, any such national mechanisms would act as bodies of first instance for any compensation allocation, and the involvement of courts or arbitral bodies on a second level could alleviate any fears that these commissions, given that they will be manned by administrative staff, may be largely controlled by the respective national parties and thus may be more prone to politicization and manipulative political control manoeuvres.

Conclusion

The question of compensating civilians for the war trauma that they have sustained because of their exposure to hostilities is important given that compensation constitutes the most common way of addressing legal wrongs. This is further stressed in cases where the incurred trauma is cumulative and additionally affects a large number of civilians. Resorting to climate change litigation, this article has discussed how elements pertaining to deviation from the strict restorative justice model, regarding both the causation and attribution of harm as well as the allocation of compensation to the beneficiaries, can be useful to inform a future reflection on how civilian cumulative war trauma may be compensated. Cognizant of the similarities as well as the differences between environmental harm and civilian mental harm, the discussion has resorted to climate change litigation on a *de lege ferenda* basis and to underline the distributive justice element that can be brought forth.

Paying out mass civilian claims for mental harm can be challenging and utopian if not carried out on a firm, realistic legal basis. States called to provide full compensation to all the civilians affected by warfare would soon find their finances drained and thus will be unwilling to do so. It is this challenge that the present article has tried, *inter alia*, to address. Under the distributive justice system, the fact that the lump sums to be paid to the affected civilians may be lower may serve as an impetus for the State to go forth with these payments.

It is not enough for peace to reign following the end of hostilities – peace must be accompanied by justice,¹⁴⁴ and the alleviation of civilians' trauma and suffering is a first step in this direction. It is imperative for all parties involved to realize how compensation plays a vital role in this.

143 On the role that mental health experts should play in the conclusions about civilian mental harm that international bodies reach, see S. Solomon, "Quasi-Judicial Bodies", above note 44.

144 In the words of Benjamin Ferencz, "there can be no peace without justice, no justice without law and no meaningful law without a court to decide what is just and lawful under any given circumstance". See Benjamin Ferencz, *An International Criminal Court: A Step Toward World Peace – a Documentary History and Analysis*, Vol. 1, Oceana, New York, 1980, p. 30.