

# The Register of Damage for Ukraine: A Promising First Step towards Reparation?

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## 1. Introduction

The Register of Damage for Ukraine (RD4U) stands as a tangible outcome of the Council of Europe's (CoE) fourth summit held on 16 and 17 May 2023 at Reykjavik, Iceland.[1] In the following article, RD4U will be the focal point of analysis. The article is structured as follows: Firstly, there will be a brief outline of the sequence of events leading to the creation of the register (II). This will be followed by an analysis of key provisions of the RD4U Statute (III), along with an assessment of the current state of affairs. Subsequently, attention will be directed towards elaborating on several legal issues related to the compensation mechanism, representing the ultimate objective of the register (IV). This will include examining the relationship between the proposed compensation fund and just satisfaction awards under the European Convention on Human Rights (ECHR). Lastly, consideration will be given to alternative avenues for obtaining compensation in the context of the full-scale Russian invasion into Ukraine (V). This article will conclude that the existence of a compensation fund will be pivotal to the Register's success or failure, as it has the potential to motivate victims not to pursue their claims before national courts or Arbitral Tribunals.

## 2. Creation of the Register

Shortly after the invasion of Russia into Ukrainian territory, political discourse primarily focused on holding those responsible accountable in terms of criminal liability. Suffice it to mention the initiative lead by the renowned international lawyer and book author[2] Philippe Sands to create a Special Tribunal for the Russian Crime of Aggression in Ukraine.[3] The motive for this somewhat unusual step was the desire to close an accountability gap resulting from the fact that under its current mandate, the International Criminal Court (ICC)

at The Hague lacks jurisdiction to prosecute this type of crime with regard to the situation in Ukraine.[4] After some initial hesitations, this initiative has gained significant momentum in recent times.[5]

It appears that discussions about monetary compensation arose later, as it became evident that the war was not going to be over within a few weeks or months.[6] The Parliamentary Assembly of the Council of Europe (PACE) was the first CoE organ to respond to demands by the Ukrainian government for the creation of an international compensation mechanism. The Committee of Ministers (CM) when confronted with those demands in September 2022 still remained somewhat hesitant[7] while the PACE fully endorsed the proposal in a Resolution adopted in October 2022.[8] It was not until after the UN General Assembly (GA) had adopted a Resolution in November 2022, calling for the creation of a register of damages,[9] that the CM changed its mind.[10]

Indeed, the Register of Damage for Ukraine (RD4U) became a central element of reassurance that culminated in the Reykjavik Summit. It was hailed as the Summit's 'most important deliverable' and a 'milestone in multilateral efforts to ensure the accountability of the Russian Federation'.<sup>[11]</sup> It is essential to remember that with the expulsion of the Russian Federation, the CoE had not only lost one of its main financial contributors<sup>[12]</sup> but also forfeited a substantial amount of political influence. As former ECtHR Judge Angelika Nussberger remarked in a conversation with the author, a CoE without Russia is fundamentally different from one with the country's participation. Therefore, the expulsion of Russia initiated a process of reconsideration of the CoE's ultimate purpose. Faced with grave atrocities occurring on the territory of one of its Member States, it is hard to imagine that the CoE should have remained silent. Conversely, by assuming a leading role establishing the Register, the CoE demonstrated its commitment to safeguarding its core values: human rights, democracy, and the rule of law.

### 3. The Register's Statute

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The Statute of the Register (RD4U Statute) can be found in an Appendix to a CM Resolution adopted on 12 May 2023, on the eve of the Reykjavik Summit.<sup>[13]</sup> Technically speaking, the Register is based on an Enlarged Partial Agreement, which is the CoE's instrument for differentiated integration.<sup>[14]</sup> This technicality allowed, on the one hand, those Member States that were still sceptical to abstain from the project – it was a mere *Partial* Agreement. On the other hand, by creating an *Enlarged* Partial Agreement, it was clear that the Register was open not only to CoE Member States but also to non-members.

Yet, the current number of States that have acceded to the Agreement is rather disappointing, especially when compared to the voting results in the UN. The GA Resolution of November 2022, which called for the creation of a register, was adopted by 94 votes to 14, with 73 abstentions.<sup>[15]</sup> In contrast, the Enlarged Partial Agreement currently has 40

participants, all of which are CoE Member States (status as of 1 March 2024).[16] Initially, Albania, Liechtenstein and the Republic of Moldova joined as Associate Members, but they have since become participants. Armenia, Azerbaijan, Bosnia and Herzegovina, Hungary, Serbia and Türkiye continue to stay away from the Agreement. Canada, Japan and the United States of America – being CoE Observer States anyway – along with the European Union have the status of Associate Members. Overall, RD4U seems quite far away from its proclaimed aim of attracting the ‘largest possible number of countries’.[17]

The Register whose seat is at The Hague[18] (Article 3.3 RD4U Statute) has been endowed with legal personality both under national and under international law.[19] With regard to legal personality under national law, the Statute expressly stipulates that the Register ‘shall possess juridical personality under the national law of the Kingdom of the Netherlands’ (the host State) ‘and of Ukraine’ as the target State (Article 3.1 RD4U Statute). As per Article 3.2 RD4U Statute, the Register ‘shall have capacity to enter into arrangements with States, international organisations and bodies in furtherance of its mandate’, so it enjoys an (albeit limited) personality under international law.

The Register’s function is to collect information regarding claims related to damages resulting from the Russian full-scale invasion on 24 February 2022 (Article 2.1, first sentence RD4U Statute). Those claims may be submitted by natural and legal persons, as well as the State of Ukraine, including its regional and local authorities, and State-owned or controlled entities (Article 2.3 RD4U Statute). Importantly, the Register does not possess any adjudicative function whatsoever (Article 2.1, second sentence RD4U Statute). Instead, it is a first step in the establishment of a compensation mechanism, which is to be created by a separate international instrument in co-operation with Ukraine and may include a claims commission and a compensation fund (Article 2.5, first and second sentence RD4U Statute).

Where do we stand today? The constitutive meeting of participating States was held in Strasbourg in June 2023.[20] At that meeting, the Ukrainian lawyer Markiyani Kliuchkovskiyi was appointed Executive Director of the Register.[21] A significant step was the adoption of the so-called Riga Principles in September 2023, to be addressed later.[22] In November 2023, a third meeting was convened where the seven members of the Register’s Board were elected.[23] Finally, in December 2024 the Board held its inaugural meeting in The Hague and elected Robert Spano, former President of the ECtHR, as the Board’s Chair.[24] So, as of today, the main positions according to the Agreement have been appointed but the register is still not fully operational. In particular, it will be for the Board to propose the rules and regulations governing the work of the Register (Article 6.5 (b) RD4U Statute). The Board shall also determine the date from which the Register shall be open for submission of claims (Article 6.6 RD4U Statute). It is expected that the Register will become fully operational in the course of 2024.

## 4. Legal Assessment

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### *With or Without Russian Consent?*

To gain a deeper understanding of the dual structure of RD4U and the proposed compensation mechanism, it is instructive to draw comparisons with two antecedents: the United Nations Compensation Commission (UNCC), established in the aftermath of the Iraqi invasion of Kuwait, and the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory (UNRoD), created in response to the International Court of Justice's (ICJ) Wall Opinion.[25] Unlike RD4U, both precursors were established under the auspices of the UN, albeit with the involvement of different stakeholders. UNCC was set up by a binding Security Council Resolution adopted under Chapter VII of the UN Charter.[26] This explains why the mechanism was not restricted to registering damages but had an adjudicative function from the start. By contrast, UNRoD was set up via a GA Resolution.[27] Since the General Assembly lacked the authority to impose legal obligations on Israel, UNRoD's role was restricted to collecting facts regarding potential claims in damages. In this vein, the Secretary General's Report on UNRoD underlined that 'registration of damage would be a technical, fact-finding process' and that it was important to understand 'that the office of the Register of Damage would not be a compensation commission or a claims-resolution facility, nor would it be a judicial or quasi-judicial body'.[28]

Returning to the conflict in Ukraine, it was clear from the outset that Russia would not participate in any treaty aimed at establishing a claims commission. It was equally evident that Russia would use its veto power in the Security Council to block the establishment of such a commission.[29] Therefore, the initial proposal[30] put forward by the Ukrainian government focused solely on the creation of a register. It could be argued that since the Register does not impose new legal obligations on the Russian State, its consent was not required. However, this raises the question of whether the Russian consent is indispensable for the creation of a future compensation mechanism. On the one hand, it could be contended that awards issued by a claims commission would impact the sovereignty of the Russian State. Therefore, creating such a mechanism through a multilateral treaty of like-minded States without Russian consent could be viewed as being in conflict with the *pacta tertiis* rule under international law.[31] On the other hand, it may be argued that such a multilateral treaty does not bind Russia, meaning that the Russian State is not obligated to comply with its provisions or the awards issued based on it. It might suffice for participating States to be bound by the treaty, allowing them, for instance, to utilise frozen Russian assets within their territories to establish the compensation fund. As Markiyan Kliuchkovskiy, the Register's Executive Director, pointed out, opinions among international lawyers are divided. In any event, the RD4U initiative embarks into uncharted waters.[32]

## *Level of compensation – the Riga Principles*

The two precursors of RD4U are of interest also with regard to the level of compensation to be granted to victims. From what has been said above, it is evident that the eligibility criteria under RD4U are not yet finalised. They are to be determined by the Conference of Participants, following a proposal put forward by the Board (Article 5.3 (c) RD4U Statute). However, the fundamental principles that should guide the Register have been established in the so-called Riga Principles, which were adopted in a declaration by the Ministers of Justice of the CoE in September 2023.[33] According to these principles, the work of the Register should follow a ‘victim-centred approach’. This means that redress should be provided to ‘the most vulnerable, such as women and children’. This includes ‘claims for human rights violations and abuses, such as those involving loss of life, enforced disappearance, conflict-related sexual violence, serious injury, torture, arbitrary arrest and detention, while pursuing the timely and efficient registration of other claims, such as damage to property, infrastructure, environment and cultural heritage’.[34]

The design of the RD4U thereby resembles that of UNCC. As is well-known, the UNCC claims procedure comprised six categories, denoted from ‘A’ to ‘F’. Categories A, B and C were all associated with claims of individuals – those who had to leave Kuwait or Iraq on account of the invasion (A); those who had suffered serious personal injury or the loss of family members (B); and smaller claims for various reasons (C).[35] These claims had in common that they were treated on a priority basis and required a fairly low level of evidence.[36] At the same time, the compensation amounts allocated were relatively modest (e.g., in category A, USD 2,500 for individual claimants and USD 5,000 for families; this amount increased to USD 4,000 and 8,000 respectively if the claimant submitted only category A claims).[37] By contrast, more complex claims of individuals (D), claims of corporations, other private legal entities and public sector enterprises (E) and of governments and international organisations (F) were subject to stricter requirements. Notably, category F claims also included claims for environmental damage.[38]

The Riga Principles and the UNCC procedure share a common emphasis on prioritising individual victims and covering a wide range of damages, including non-material harm (such as loss of family members) and environmental damage. In contrast, UNRoD differs significantly by only allowing claims for material damages (Article 11 (2) (f) UNRoD Rules and Regulations). The complete exclusion of non-material damages might have been influenced by a partially misleading wording of the ICJ Opinion, but this explanation alone is insufficient.[39] Rather, the exclusion of non-material damage could be understood in the context of the lack of clear funding. It should be noted that a crucial factor contributing to the success of UNCC was the existence of a clear and stable funding, namely, thirty per cent of the value of Iraq’s exports of petroleum and petroleum products (later, the percentage was reduced to twenty-five and subsequently to five per cent).[40] In contrast, UNRoD focused solely on registering claims. Yet, the lack of clear and reliable funding for addressing the claims might have induced the authors to exclude non-material damages from eligibility.

The lack of clear funding is also relevant to RD4U, as will be seen later. In light of this, it may be asked whether the Register risks overpromising and underdelivering. Many of the damages outlined in the Riga Principles relate to non-material damages, such as conflict-related sexual violence, torture, arbitrary arrest, etc. All those claims are firmly rooted in ECtHR case law. However, given the uncertainties surrounding the funding of the future compensation mechanism, there is legitimate concern regarding whether the eligibility criteria – the specific parameters of which are yet to be defined – may ultimately lead to disappointment.

### *Relationship with ECtHR awards*

This concern becomes especially relevant when examining the connection between the future compensation mechanism and the ECtHR. The Ukrainian government's initial proposal already included the notion that the future compensation mechanism should be instrumental in enforcing judgments rendered by bodies like the ICJ or the ECtHR.<sup>[41]</sup> PACE endorsed this idea in a Resolution adopted in January 2023. According to this Resolution, once established, the compensation mechanism should facilitate the enforcement of 'decisions by other international bodies and courts on reparation and compensation in connection with the Russian aggression, such as judgments of the European Court of Human Rights'.<sup>[42]</sup>

The desire to use the compensation fund as a means of enforcing ECtHR judgments is understandable, especially considering that following its expulsion, Russia ceased all cooperation with the CoE. In June 2022, the Russian State Duma enacted legislation halting any payments of just satisfaction as of 1 January 2023, even in cases where ECtHR judgments had been rendered earlier.<sup>[43]</sup> It is crucial to note, however, that both mechanisms (the ECHR and the prospective compensation fund) serve distinct purposes and, while overlapping in part, target different groups of victims. First, the compensation mechanism (like RD4U) will exclusively address damages incurred on or after 24 February 2022 as a result of the Russian full-scale invasion.<sup>[44]</sup> Since Russia remained bound by the ECHR until 16 September 2022, there exist victims of the Russian aggression who may pursue claims under both the compensation mechanism and under Article 34 ECHR. Others affected by human rights violations perpetrated by the Russian State may solely resort to the Convention mechanism. This relates to those whose human rights violations occurred prior to 24 February 2022 or whose violations were committed prior to 16 September 2022 but are unrelated to the war. Conversely, some victims may only be eligible for compensation from the fund – namely, those whose human rights violation occurred after 16 September 2022 in the context of the war.

These considerations reveal that enacting ECtHR just satisfaction awards through recourse to the compensation fund would have the effect of delivering justice to some while leaving others empty-handed. This highlights the risk of creating disparities among victims of human

rights violations. Whether such an approach is advisable in policy terms remains questionable. Moreover, there are doubts about whether the compensation awarded via the compensation mechanism would match the level of just satisfaction granted by the ECtHR in individual cases.[45] The experience gained from the work of UNCC underscores a need for granting lump sums in a standardised manner to facilitate swift implementation. Despite various uncertainties regarding the calculation of just satisfaction by the ECtHR,[46] it is arguable that the Court tends to award higher amounts in individual cases. These considerations demonstrate that the compensation fund operates on a fundamentally different logic from the Convention mechanism and therefore cannot easily be utilised for implementing ECtHR just satisfaction awards.

## 5. Alternative Ways of Receiving Compensation

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Given the uncertainties surrounding the creation of the compensation mechanism, it is all the more important to search for alternative ways of receiving compensation. In this regard, two variants have come to the fore.[47]

### *Compensation proceedings against Russia before Ukrainian courts*

The first option entails compensation proceedings against Russia before Ukrainian courts. Until April 2022, such proceedings routinely failed due to the long-standing jurisprudence of the Ukrainian Supreme Court which emphasised the importance of upholding the principle of State immunity.[48] Yet, following the Russian invasion on 24 February 2022, the Supreme Court established a new line of case law in a notable *revirement de jurisprudence*, a position that has been upheld in a series of further judgments.[49] According to this jurisprudence, Russia can no longer claim State immunity before Ukrainian courts. Most of the points adduced by the Supreme Court echoed arguments that had not been allowed by the ICJ in the *Jurisdictional Immunities* case[50] (lack of *acta iure imperii*; customary law character of the territorial tort exception; *ius cogens* character of the breach). It is beyond the scope of this paper to delve into the details of this debate.

A novel argument appears to be the Ukrainian Supreme Court's reliance on ECtHR case law, according to which granting immunity to a State in civil proceedings 'pursues the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty'.[51] Building upon this, the Supreme Court inferred that when a State blatantly disregards another State's sovereignty, it can no longer invoke the principles of State immunity. The Court argued that 'a necessary condition for adhering to this principle (of State immunity) is the mutual recognition of the sovereignty of the country, so when the Russian Federation denies the sovereignty of Ukraine and commits a war of conquest against it, there are no obligations to respect and observe the sovereignty

of this country’.[52] However, there are doubts about the legal validity of this argument. The ECtHR presented the argument of comity and of good relations between States in the context of the proportionality test. The Ukrainian Supreme Court induced from it an *argumentum e contrario*, going beyond what the ECtHR had originally decided. Despite the undeniable importance of the principle of reciprocity in international law,[53] it is questionable whether such an exception can be justified.[54] Be that as it may, the effect of this jurisprudence is that victims of the Russian aggression have a novel instrument to claim compensation, namely, instituting law suits against the Russian State before Ukrainian Courts.

### *Proceedings under international investment law*

An alternative course of action involves initiating proceedings before Arbitration Tribunals under international investment law. According to the Bilateral Investment Treaty (BIT) between Russia and Ukraine,[55] investors of one Contracting Party enjoy protection against discrimination by the other Contracting Party (Article 3(1) BIT Russia-Ukraine). This paves the way for Ukrainian investors to pursue claims against Russia. Such proceedings have thus far been linked to the situation in Crimea. This might come as a surprise because under the BIT Russia-Ukraine, the obligations of each Contracting Party relate only to ‘its respective territory’ and Ukraine, in accordance with general international law,[56] rejects the annexation of Crimea by the Russian Federation. However, Arbitral Tribunals developed an understanding of the territorial clause deviating from general international law.[57] Since Russia at least claims sovereignty over the Crimean peninsula and exercises effective control since 2014, denying responsibility under the BIT with regards to Crimea would constitute a breach of the obligation to perform treaties in good faith (Article 26 VCLT). In this sense, an Arbitral Tribunal construed the term “territory” for purposes of the Treaty to include territory over which a State exercises settled jurisdiction or control and on behalf of which it has assumed responsibility for international relations’.[58]

Whether this course of action is viable also with regard to those parts of Ukrainian territory (in particular Donetsk and Luhansk) which have come under Russian influence as a result of the 2022 invasion is dubious. In these regions, the extent of effective control by the Russian State is much more limited, particularly due to the ongoing counter-strikes by the Ukrainian army.[59] As a result, drawing parallels to the situation in Crimea becomes challenging. Moreover, it is evident that portions of Ukrainian territory that have never been under Russian control, such as the capital city of Kyiv, do not benefit from the BIT concerning damages incurred from Russian military operations. Therefore, investment proceedings are mainly an option for the 2014 annexation of Crimea but far less with regard to the 2022 Russian act of aggression.

## *Frozen assets*

The effectiveness of the RD4U compensation mechanism, ECtHR proceedings, court proceedings in Ukrainian national courts, and arbitration proceedings all hinge on the ability to enforce awards, even against the opposition of the Russian State. In this regard, opting for the RD4U route will become appealing to possible claimants if States manage to establish the intended compensation fund *and* ensure prompt and efficient disbursement of awards without unnecessary bureaucratic obstacles. Under such circumstances, it is likely that claimants will be willing to accept smaller amounts of compensation as lump sums. Conversely, if States fail to agree on the creation of the fund, claimants are likely to pursue full compensation for the damages suffered, either through national courts or Arbitral Tribunals (where possible). In such a scenario, compensation will be distributed on a ‘first come, first served’ basis. As Badanova put it: ‘Absent successful cross-border enforcement, the Russian money available in Ukraine and closely located jurisdictions would be distributed among those few who were first in line to win legal proceedings in Ukrainian courts and get a piece of the pie. This distribution seems arbitrary and thus unfair as well as most likely disadvantageous to those who may be affected by the war but not familiar with recent developments in the Supreme Court practice.’<sup>[60]</sup>

Various proposals have been put forward for the creation of the compensation fund. One suggestion involved establishing the fund through voluntary contributions, drawing parallels with the outline of the Trust Fund for Victims under the Rome Statute of the ICC. <sup>[61]</sup> However, the proposal garnering the most political support at present involves using frozen Russian assets to finance the fund. This idea received endorsement from the PACE’s Political Affairs Committee in a Draft Resolution adopted in January 2024.<sup>[62]</sup> In February 2024, the EU decided to implement a similar measure, stipulating that exceptional revenues from frozen assets of the Russian Central Bank must be set aside, therewith paving the way for their eventual utilisation in the reconstruction of Ukraine.<sup>[63]</sup> However, a key challenge with these proposals arises from the fact that, according to international law, Central Bank assets enjoy immunity from execution.<sup>[64]</sup> While it is theoretically possible to justify breaches of immunity from execution through recourse to the rules of countermeasures, there are significant uncertainties. One major concern is that under the rules of international law as enunciated in the Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA), countermeasures must be temporary in nature, implying that they must also be reversible.<sup>[65]</sup> A wealth of arguments have been invoked by numerous international lawyers striving to justify the use of frozen Russian assets for the reconstruction of Ukraine.<sup>[66]</sup> The depth of this discussion exceeds the confines of the current article. It suffices to direct the reader’s attention to the latest study by Philippa Webb, commissioned on behalf of the European Parliament.<sup>[67]</sup>

## **6. Conclusion**

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While it is premature to come to a definite assessment as regards RD4U's success or failure, several legal challenges associated with the Register have emerged. These challenges include establishing a compensation mechanism without Russian consent, determining the appropriate level of compensation for victims of the Russian aggression, defining the relationship between the proposed compensation fund and the ECtHR, and addressing the financing of the compensation fund. A key conclusion drawn from this analysis is that for RD4U to succeed, it must be accompanied by a compensation fund capable of swiftly and efficiently granting compensation awards to the victims. This will be crucial in incentivising claimants to utilise the RD4U compensation mechanism rather than pursuing legal proceedings before national Ukrainian courts or Arbitration Tribunals where possible. For the time being, RD4U mainly represents an important political signal to the Russian Federation that the international community will not tolerate breaches of most fundamental norms of international law.

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[1] [Reykjavík Declaration: United Around our Values, Appendix I](#).

[2] Philippe Sands, *East West Street. On the Origins of Genocide and Crimes against Humanity*, Weidenfeld & Nicolson, 2016.

[3] See Philippe Sands, 'Putin's use of military force is a crime of aggression', [Financial Times of 28 February 2022](#). For further explanation of the initiative, see: [Role of the Council of Europe in shaping accountability mechanisms for war crimes in Ukraine](#).

[4] Tom Dannenbaum, 'A Special Tribunal for the Crime of Aggression?' (2022) 20 *Journal of International Criminal Justice* 859-873; Kevin John Heller, 'Options for Prosecuting Russian Aggression Against Ukraine: A Critical Analysis' (2022) *Journal of Genocide Research*, <<https://doi.org/10.1080/14623528.2022.2095094>>.

[5] See, most recently, [CM/Del/Dec\(2024\)1490/2.3](#), para. 6, commending the 'progress towards the establishment of a special tribunal for the crime of aggression'. See also [Conference on the Special International Tribunal for the Crime of Aggression against Ukraine of 1 February 2024](#).

[6] Aleksandra Mężykowska, 'Establishment of the Registry of Damage: The first element in ensuring Russia's financial accountability for the aggression against Ukraine' [12:3 \(2023\)](#) *ESIL Reflections* 1 (2).

[7] See [CM/Del/Dec\(2022\)1442/2.3](#), para. 3 where the CM merely ‘noted with interest’ the Ukrainian proposal to establish, inter alia, a ‘comprehensive international compensation mechanism, including, as a first step, an international register of damage’.

[8] See [PACE Resolution 2463 \(2022\)](#), para. 13.6.3 where the PACE called on CoE Member States to ‘set up a comprehensive international compensation mechanism, including an international register of damage and actively co-operate with the Ukrainian authorities on this issue’.

[9] [A/RES/ES-11/5](#) ‘Furtherance of remedy and reparation for aggression against Ukraine’, para. 4. On the creation of this Resolution, see [Chiara Giorgetti, Markiyani Kliuchkovsky, Patrick Pearsall and Jeremy Sharpe](#), ‘Historic UNGA Resolution Calls for Ukraine Reparations’; Chiara Giorgetti and Patrick W. Pearsall, ‘Creating an international compensation mechanism for Ukraine’ in: Chiara Giorgetti, Patrick W. Pearsall and Hélène Ruiz-Fabri (eds.), *Research Handbook on International Claims Commissions*, Edward Elgar, Cheltenham, UK; Northampton, MA, USA, 2023, pp. 292-308, at 295-297.

[10] See ‘Legal and human rights aspects of the Russian Federation’s aggression against Ukraine’, Report (Rapporteur: Damien Cottier), [PACE Doc. 15689](#) of 24 January 2023, para. 62.

[11] ‘Political consequences of the Russian Federation’s war of aggression against Ukraine’, Report (Rapporteur: Emanuelis Zingeris), [PACE Doc. 15797](#) of 20 June 2023, para. 35.

[12] On this aspect, see Stefanie Schmahl, What Financial Resources Does the Council of Europe Have or Need?.

[13] [Resolution CM/Res\(2023\)3](#) establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine. Later in the year, this Resolution was amended by [Resolution CM/Res\(2023\)5](#), regarding Article 12 RD4U Statute.

[14] See [Statutory Resolution No. \(93\)28 on partial and enlarged agreements](#); for further reading, see Marten Breuer, ‘The Council of Europe and International Institutional Law. An Appraisal’ in: Stefanie Schmahl and Marten Breuer (eds), *The Council of Europe. Its Law and Policies*, OUP, Oxford 2017, para. 38.46; Jörg Polakiewicz, *Treaty Making in the Council of Europe*, Council of Europe Publishing, Strasbourg 1999, pp. 12-13.

[15] [A/ES-11/PV.15](#), at 30.

[16] See [CoE Treaty Office](#).

[17] [PACE Doc. 15797](#) (n. 11), para. 35. For an opposite assessment, see [Mężykowska](#) (n. 6), at 5.

[18] See Giorgetti and Pearsall (n. 9), at 301-302.

[19] On this issue, see also *ibid.*, at 299.

[20] See: The Conference of Participants of the Register of damage caused by Russia's aggression against Ukraine holds its first meeting.

[21] Markiyan Kliuchkovskyi Appointed Executive Director of International Register of Damage Caused by Aggression of Russian Federation Against Ukraine.

[22] The Conference of Participants in the Register of Damage for Ukraine has held its second meeting.

[23] Conference of Participants of the Register of Damage for Ukraine elects its Board. See also 'Briefly Noted' (2024) *International Legal Materials*, 63(1), pp. 142-144, <doi:10.1017/ilm.2024.1>.

[24] The Board of the Register of Damage for Ukraine holds its inaugural meeting.

[25] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports 2004*, 136.

[26] UNSC Resolution 687 (1991) of 3 April 1991, para. 18, supplemented by UNSC Resolution 692 (1991) of 20 May 1991. For further details, see Ronald J. Bettauer, 'Policy Issues Surrounding the Creation and Operations of the UNCC' in: Timothy J. Feighery, Christopher S. Gibson and Trevor M. Rajah (eds.), *War Reparations and the UN Compensation Commission: Designing Compensation After Conflict*, OUP, Oxford 2015, pp. 3-29, at 4 et seq.; Francis E. McGovern, 'Dispute System Design: The United Nations Compensation Commission' (2009) 14 *Harvard Negotiation Law Review* 171-193, at 177-178.

[27] A/RES/ES-10/17 of 15 December 2006, 'Establishment of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory'. See Ronald J. Bettauer, 'The United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory' in: Chiara Giorgetti, Patrick W. Pearsall and H el ene Ruiz-Fabri (eds.) (n. 9), pp. 277-291, at 278.

[28] A/ES-10/361, Report of the Secretary-General pursuant to General Assembly resolution ES-10/15, para. 4.

[29] See Ronald Bettauer, 'Collecting Claims and Evidence of Damage by Russia's Invasion of Ukraine' 27:7 (2023) *ASIL Insights*, at 2.

[30] See PACE Doc. 15689 (n. 10), para. 63.

[31] See Articles 34 and 35 of the Vienna Convention on the Law of Treaties (VCLT). See on this topic Alexander Proelss, 'The personal dimension: Challenges to the *pacta tertiis* rule' in: Christian J. Tams, Antonios Tzanakopoulos and Andreas Zimmermann (eds.), *Research Handbook on the Law of Treaties* (Edward Elgar, Cheltenham, UK; Northampton, MA, USA, 2014, pp. 222-254, at 230 et seq.

[32] See: When will Register of Damage start working and how will Ukrainians be able to receive compensation from Russia?.

[33] Declaration of the Informal Conference of Ministers of Justice of the Council of Europe, 11 September 2023.

[34] Riga Principles (n. 33), para. 5.

[35] Norbert Wühler, 'The United Nations Compensation Commission' in: Chiara Giorgetti, Patrick W. Pearsall and Héléne Ruiz-Fabri (eds.) (n. 9), 2023, pp. 90-112, at 95.

[36] Timothy J. Feighery and Jason Rotstein, 'Institutional design: How states create claims commissions and why' in: Chiara Giorgetti, Patrick W. Pearsall and Héléne Ruiz-Fabri (eds.) (n. 9), pp. 150-175, at 172.

[37] Wühler (n. 35), at 95.

[38] *Ibid.*, at 96.

[39] Remy Jorritsma, 'United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory', in: *Max Planck Encyclopedia of International Procedural Law* (September 2019), para. 30.

[40] Wühler (n. 35), at 108; Feighery and Rotstein (n. 36), at 169.

[41] PACE Doc. 15689 (n. 10), para. 64.

[42] PACE Resolution 2482 (2023) of 26 January 2023, para. 19.3.

[43] Andrew Drzemczewski and Rick Lawson, 'Exclusion of the Russian Federation from the Council of Europe and the ECHR: An Overview' (2022) 21 *Baltic Yearbook of International Law* 38-98, at 63; see also: Amendments to laws in connection with making the ECHR rulings enacted after March 15, 2022, non-enforceable in Russia.

[44] Formally, the details of the compensation mechanism are yet to be finalised. However, the two-step procedure underlying RD4U suggests that the constraints of the Register will also extend to the future compensation mechanism.

[45] From a similar context regarding violations perpetrated by Russia on Georgian (Abkhaz) territory, see: *Mamasakhlisi and Others v. Georgia and Russia* App Nos. 29999/04, 41424/04 (ECtHR, 7 March 2023), operative part, para. 9 (a) (i): EUR 35,000 to each of the first and third applicants in respect of non-pecuniary damage (violations of Articles 3, 5 and 6 ECHR); *O.J. and J.O. v. Georgia and Russia* App Nos. 42126/15, 42127/15 (ECtHR, 19 December 2023), operative part, para. 7 (a): EUR 16,000 to each applicant in respect of non-pecuniary damage (violations of Articles 5 and 6 ECHR); *Matkava and Others v. Russia* App No. 3963/18 (ECtHR, 19 December 2023), operative part, para. 6 (a) (i): EUR 130,00 to the applicants jointly in respect of non-pecuniary damage (both substantive and procedural violations of Article 2).

[46] See Franz Bydlinski, 'Methodological Approaches to the Tort Law of the ECHR' in Attila Fenyves et al (eds.), *Tort Law in the Jurisprudence of the European Court of Human Rights* (De Gruyter, Berlin/Boston 2011), paras. 2/176 et seq.

[47] The author would like to extend gratitude to Dr. Markus Perkams, Partner at Addleshaw Goddard, for his advice on the following topics.

[48] For references, see Bohdan Karnaukh, 'Territorial Tort Exception? The Ukrainian Supreme Court Held That the Russian Federation Could Not Plead Immunity with Regard to Tort Claims Brought by the Victims of the Russia-Ukraine War' (2022) 15 (3) *Access to Justice in Eastern Europe* 165-177, at 167, <<https://doi.org/10.33327/AJEE-18-5.2-n000321>>.

[49] For references, see Ielyzaveta Badanova, 'Jurisdictional Immunities v Grave Crimes: Reflections on New Developments from Ukraine', *EJIL Talk!* of 8 September 2022.

[50] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, ICJ Reports 2012, 99.

[51] *Oleynikov v Russia* App. No. 36703/04 (ECtHR, 14 March 2013), para. 60.

[52] Ukrainian Supreme Court, Judgment of 14 April 2022, Case No. 308/9708/19.

[53] See Bruno Simma, 'Reciprocity', *Max Planck Encyclopedia of Public International Law* (April 2008).

[54] For a different assessment, see Karnaukh (n. 47), 176.

[55] Agreement between the Government of the Russian Federation and the Cabinet of Ministers of the Ukraine on the Encouragement and Mutual Protection of Investments of 27 November 1998.

[56] See, e.g., Thomas D. Grant, 'Annexation of Crimea' 109 (2015) *American Journal of International Law* 68-95; Oleksandr Merezhko, 'Crimea's Annexation by Russia – Contradictions of the New Russian Doctrine of International Law' 75 (2015) *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 167-194.

[57] See Tobias Ackermann and Sebastian Wuschka, 'The Applicability of Investment Treaties in the Context of Russia's Aggression against Ukraine' 38 (2023) *ICSID Review* 453-471, at 460 et seq.

[58] *PJSC CB PrivatBank and Finance Company Finilon LLC v Russian Federation, PCA Case No 2015-21, Interim Award of 27 March 2017*, para. 186.

[59] Ackermann and Wuschka (n. 56), at 469-470.

[60] Badanova (n. 48).

[61] See Kirill Koroteev, 'Moving On in Strasbourg. How to Deal with the Russian Retreat from the European Court of Human Rights', *Verfassungsblog of 12 December 2022*.

[62] Frozen Russian state assets should be transferred to a new fund to reconstruct Ukraine, says PACE committee.

[63] Immobilised Russian assets: Council decides to set aside extraordinary revenues. For an assessment, see Daniel Franchini, 'Immobilised Assets, Extraordinary Profits: The EU Council Decision on Russia's Central Bank Reserves and Its Legal Challenges', *EJIL Talk!* of 1 March 2024.

[64] See most recently Ingrid Brunk, 'Central Bank Immunity, Sanctions, and Sovereign Wealth Funds' 91 (2023) *George Washington Law Review* 1616-1660.

[65] Brunk (n. 63), at 1653-1656 with further references.

[66] See, among others, Giorgetti and Pearsall (n. 9), at 305-307; Ron van der Horst, 'Illegal, Unless: Freezing the Assets of Russia's Central Bank' 34 (2023) *European Journal of International Law* 1021-1031; Oona Hathaway, 'War Reparations: The Case for Countermeasures' 76 (2024) *Stanford Law Review* (forthcoming); Harold Hongju Koh, 'Past Time to Liquidate Russian Assets', *EJIL Talk!* of 5 March 2024.

[67] Philippa Webb, 'Legal options for confiscation of Russian state assets to support the reconstruction of Ukraine'.